March 11, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: RIN 3235-AK65: Further Definition of "Swap Dealer," "Major Swap Participant" and "Eligible Contract Participant," 75 Fed.Reg. 80174 (December 21, 2010)

Dear Mr. Stawick:

This letter is submitted in response to the Commodity Futures Trading Commission's ("Commission's") proposed rules further defining the terms "swap dealer," "major swap participant," and "eligible contract participant."[1] The undersigned firms[2] support transparent, competitive, and well-regulated markets and regulatory measures that support these goals. We, therefore, support the Commission's efforts to implement those provisions of the Dodd-Frank Act designed to bring much needed regulation and oversight to the over-the- counter derivatives market.

The undersigned firms trade their own capital in the exchange-traded and cleared swaps markets. We engage in manual, automated and hybrid methods of trading and are active in a variety of asset classes, such as futures, equities, foreign exchange, commodities and fixed income. These firms are a critical source of liquidity in these markets, allowing those who use these markets to manage their business risks (including commercial end-users) to enter and exit the markets efficiently.

Importantly, none of these firms have customers. Although it is known that we are active participants in the exchange-traded markets and frequently act as counterparties in connection with "off-market" transactions, such as block trades and certain cleared

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1 75 Fed.Reg. 80174 (December 21, 2010). The rules were proposed jointly with the Securities and Exchange Commission, which has proposed rules to further define the terms "security-based swap dealer" and "major security-based swap participant." Because our comments are limited to the proposed definition of a "swap dealer," we have addressed our letter solely to the Commission.

2 These firms include Allston Trading, LLC; Atlantic Trading USA LLC; Bluefin Trading LLC; Chopper Trading LLC; DRW Holdings, LLC; Eagle Seven, LLC; Endeavor Trading, LLC; Geneva Trading USA, LLC; GETCO; Hard Eight Futures, LLC; HTG Capital Partners; IMC Financial Markets; Infinium Capital Management LLC; Kottke Associates, LLC; Liger Investments Limited; Marquette Partners, LP; Nico Holdings LLC; Optiver US; Quantlab Financial, LLC; RGM Advisors, LLC; Tibra Trading America LLC; Traditum Group LLC; WH Trading; XR Trading LLC.

derivatives products, *e.g.*, energy contracts executed through Clearport and ICE, these transactions are generally effected through intermediaries. We generally do not solicit customers and never hold customer funds.

The undersigned firms are not required to be registered with the Commission in any capacity. Rather, we are properly considered customers of the futures commission merchants ("FCMs") that carry and clear our trades or self-clear our own proprietary trades. We are not subject to capital requirements in connection with our exchange-traded futures and options activities. Any financial resources we must maintain, over and above our obligation to assure that our open positions are fully margined at all times, is a business decision between the firm and its FCM, which guarantees that firm's obligations to the respective exchange and clearing organization.

Depending on the eventual structure of the developing markets for cleared swaps, as determined by the Commission in its final rules, some of these firms expect to continue to engage in activities on these markets and expand further into newly-created markets, providing additional liquidity, counterparty diversification, and enhancing competition, all of which benefits commercial end-users. Our willingness and ability to do so, however, will depend on a number of factors, including the costs associated with complying with applicable regulatory requirements, as well as the absence of other barriers to entry to the swaps market.

An important cost factor will be any capital requirement that the Commission may determine to impose. The undersigned firms submit that cleared swaps executed on or through a designated contract market ("DCM") or a swap execution facility ("SEF") are no different from exchange-traded futures and options.[3] Therefore, market participants whose swaps-related activities are limited to trading cleared swaps executed on or through a SEF should not be subject to capital requirements.

In order to minimize the costs associated with providing liquidity in cleared swaps traded on SEFs and remove any regulatory uncertainty, we request the Commission to confirm that firms solely trading such swaps would not be "swap dealers" with respect to the activities described below. Our analysis of the proposed rules governing swap dealers leads us to conclude that the rules generally would not apply to participants that limit their activities to cleared swaps executed on or through a SEF. Regulation of these entities as swap dealers, therefore, is clearly unnecessary to achieve the purposes of the Dodd-Frank Act. Nonetheless, as explained below, the Commission's proposed definition of a "swap dealer" is ambiguous in this regard and should be clarified.

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[3] We understand that swaps may be traded on or through either a DCM or a SEF. Since we anticipate that swaps will generally be traded on or through a SEF, for convenience, the following discussion refers only to SEFs. Our comments, however, apply equally to swaps executed on or through a DCM.

Firms That Limit Their Swaps Activities to Cleared Swaps Executed Through a SEF Should Not Be "Swap Dealers"

The Commission has proposed to define a "swap dealer" to mean any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in swaps.[4] The definition is admittedly quite broad and, if the Commission determines to interpret it broadly, the activities in which some of these firms currently engage and expect to engage on SEFs could fall within its terms.

However, we submit that the explanation set out in the accompanying Federal Register release, and the substance of the proposed rules to which swap dealers may be subject reflects the Commission's intent to center its regulatory efforts on swap participants engaged in uncleared swaps transactions. For example, the non-exclusive list of activities identified by the Commission (and the Securities and Exchange Commission) "that may reasonably indicate that a person is holding itself out as a dealer or is commonly known in the trade as a dealer" is focused on conduct common to the OTC derivatives markets:

- Contacting potential counterparties to solicit interest in swaps;
- Developing new types of swaps (which may include financial products that contain swaps);
- Informing potential counterparties of the availability of such swaps and a willingness to enter into such swaps with the potential counterparties;
- Becoming members in a swap association in a category reserved for dealers;
- Providing marketing materials (such as a Web site) that describe the types of swaps that one is willing to enter into with other parties; and
- Generally expressing a willingness to offer or provide a range of financial products that would include swaps.[5]

More importantly, the rules that the Commission has proposed to govern the conduct of swap dealers generally would not apply to trading activities that are limited to transactions executed on or through SEFs.[6] For example, the Commission's proposed

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[4] Proposed rule 1.3(ppp).

[5] 75 Fed.Reg. 80174, 80176 (December 21, 2010).

[6] As a general matter, the proposed rules appear to contemplate that at least some of the transactions to which a swap dealer is a party will be effected on a bilateral, uncleared basis.

rules relating to real-time public reporting of swap transaction data (Part 43)[7] and swap data recordkeeping and reporting requirements (Part 45)[8] generally provide that, with respect to transactions executed on or through a SEF, it is the SEF and not the swap dealer that is required to comply with these rules. Accordingly, registration of SEF market participants is unnecessary to achieve the transparency these proposed rules are designed to achieve.

Similarly, market participants that trade only cleared swaps executed on or through a SEF would not be subject to the proposed rules relating to the protection of collateral of counterparties to uncleared swaps.[9]

In addition, the proposed business conduct standards for swap dealers and major swap participants with counterparties (Part 23, Subpart H)[10] generally would not apply to participants trading on SEFs. These rules assume that the participant has direct contact with the counterparty to the trade. As explained above, however, "off-market" transactions are generally entered into through intermediaries. Therefore, we anticipate that SEF participants generally will not know the identity of their counterparties and will have no obligations under this subpart.

We recognize that proposed rule 23.410(c), Trading Ahead and Frontrunning Prohibited, could apply to a participant trading on or through a SEF. We note, however, that the Commission's proposed rules relating to the registration and operation of SEFs will

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[7] 75 Fed.Reg. 76140 (December 7, 2010). The proposed rules prescribe the requirement for real-time reporting of swap transactions to a swap data repository ("SDR") and the subsequent real-time public dissemination of swap transaction information. The proposed rules prescribe the entities responsible for reporting swap transactions and pricing data, the entities responsible for publicly disseminating the data, and the data fields and guidance of the appropriate order and format for data to be reported, the appropriate minimum size and time delay for block trades and large notional swaps, and the proposed effective date and implementation schedule for the proposed rules. The rules provide that a SEF (or DCM) is the "reporting party" with respect to transactions executed on the respective market.

[8] 75 Fed.Reg. 76574 (December 8, 2010). The proposed rules would require a "reporting party" to create records and report to SDR various detailed types of swap data as set out in the proposed rules ("swap creation data"). All records required to be created would be required to be maintained through the life of the swap and for a period of five years following the termination of the swap. All records would be required to be readily accessible through real-time electronic access throughout the life of the swap and for the two years following the termination of the swap, and must be retrievable within three business days following termination of the swap. The proposed rule generally provides that a SEF (or DCM) is responsible for reporting "swap creation data" with respect to transactions executed on the respective market.

[9] 75 Fed.Reg. 75432 (December 3, 2010). As discussed above, the undersigned firms never receive or hold customer funds in connection with transactions.

[10] 75 Fed.Reg. 80638 (December 22, 2010). Among other things, the proposed rules would require swap dealers to: (i) verify the eligibility of their counterparties; (ii) disclose to their counterparties material information about swaps, including material risks, characteristics, incentives and conflicts of interest; and (iii) provide counterparties with information concerning the daily mark for swaps.

require SEFs to adopt and enforce rules prohibiting such conduct. Moreover, participants will be required to consent to the jurisdiction of the SEF before the participant will be permitted to trade. Therefore, these firms will be subject to such prohibitions in any event.[11]

Finally, the proposed rules regarding implementation of conflicts of interest policies and procedures by swap dealers and major swap participants (proposed rule 23.605)[12] would not apply. As noted, the undersigned firms trade solely for their own account. They do not have customers, do not provide research, and are not affiliates of futures commission merchants.

If the Commission nonetheless determines that SEF participants without customers, such as the undersigned firms, should be registered as swap dealers, we request that the Commission clarify which proposed rules governing the conduct of swap dealers described above would be specifically applicable to entities that limit their activities to cleared swaps executed by or through a SEF.

We are also concerned about two additional rule proposals that have not yet been mentioned: (1) designation of a chief compliance officer; required compliance policies; and annual report of a futures commission merchant, swap dealer, or major swap participant, 75 Fed.Reg. 70881 (November 19, 2010); and (2) reporting, recordkeeping, and daily trading records requirements for swap dealers and major swap participants, 75 Fed.Reg. 76666 (December 9, 2010).

With respect to the proposed rules relating to the designation of a chief compliance officer, we have reviewed the comment letter filed jointly by FIA and the Securities Industry and Financial Markets Association, dated January 18, 2011. The undersigned firms support the views expressed therein.

With respect to the proposed rules that would impose certain recordkeeping and reporting requirements on swap dealers and major swap participants and, in particular, to create and maintain daily trading records, we are concerned that the potential administrative burdens and costs will outweigh the limited additional benefits such records would provide in the cleared swaps markets.

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[11] We note that a SEF participant may need to readjust its open positions or enter into a new risk reducing position before providing a bid or offer or agreeing to enter into a particular swap. In adopting final rules, we request the Commission to confirm that such transactions would not violate proposed rule 23.410(c) or any parallel rule adopted by a SEF. If such risk reducing transactions are not permitted, the risk management practices of SEF participants will be severely limited and they may be less willing to provide quotes for or enter into certain swaps, adversely affecting liquidity and, potentially, the price at which a swap is entered into.

[12] 75 Fed.Reg. 71391 (November 23, 2010).

Conclusion

As the Commission is aware, on January 18, 2011, President Obama issued an Executive Order entitled *Improving Regulation and Regulatory Review*. Reaffirming principles first published in a 1993 Executive Order, the President directed each agency to, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; [and] (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Further:

> Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

In an editorial published in *The Wall Street Journal* the same day, the President added:

> Our economy is not a zero-sum game. Regulations do have costs; often, as a country, we have to make tough decisions about whether those costs are necessary. But what is clear is that we can strike the right balance. We can make our economy stronger and more competitive, while meeting our fundamental responsibilities to one another.

As discussed above, the undersigned firms are an important source of liquidity in the exchange-traded and existing cleared swaps markets. Depending on the eventual structure of the cleared swaps market, some of these firms expect to continue to provide liquidity to these markets. Currently, almost all liquidity providers in uncleared swaps are large banks. As we know from the recent financial crisis, the fates of all of these large banks are highly correlated. The introduction of participants such as the undersigned firms into this pool of liquidity providers will reduce systemic risk by creating badly needed heterogeneity among this group.

These firms' willingness and ability to participate, however, will depend to a significant extent on the costs associated with complying with requirements applicable to cleared swaps, as well as the absence of other barriers to entry to the swaps market. In particular, the capital requirements to which swap dealers will be held will be a critical factor.

We submit that principal traders should be encouraged to participate in the markets for cleared swaps executed on SEFs and that such participation greatly benefits all market participants, including commercial end-users. We, therefore, urge the Commission to "strike the right balance" and confirm that members of a SEF that trade solely for their

own account will not be deemed to be swap dealers under the Commission' definition. Such a determination would be entirely consistent with the President's Executive Order.[13]

Sincerely,

Allston Trading, LLC
By: /s/ Carlton Jones, CEO

Atlantic Trading USA LLC
By: /s/ Matt Joyce, CEO

Bluefin Trading LLC
By: /s/ Arthur Duquette, Managing Member

Chopper Trading LLC
By: /s/ Raj Fernando, CEO

DRW Holdings, LLC
By: /s/ Donald R. Wilson, Jr., CEO

Eagle Seven, LLC
By: /s/ Stuart Shalowitz, General Counsel

Endeavor Trading, LLC
By: /s/ Justin Serbinski, Managing Partner

Geneva Trading USA, LLC
By: /s/ Robert S. Creamer, President

GETCO
By: /s/ Stephen Schuler, Co-Founder and CEO

Hard Eight Futures, LLC
By: /s/ Francis Wisniewski, Managing Director

[13] We appreciate that, as an independent agency, the Commission is not an "agency" subject to the Executive Order. However, we further note that, in testimony before the House of Representatives Committee on Agriculture on February 10, 2011, Chairman Gensler stated that the Commission's rulemaking is nonetheless consistent with the Executive Order.

HTG Capital Partners
By: /s/ William McNeill, Managing Director

IMC Financial Markets
By: /s/ Andrew Stevens, Legal Counsel

Infinium Capital Management LLC
By: /s/ Charles Whitman, CEO

Kottke Associates, LLC
By: /s/ J. Michael Crouch, Vice-President

Liger Investments Limited
By: /s/ Trevor Gile, Principal

Marquette Partners, LP
By: /s/ James Heinz, Managing Partner

Nico Holdings LLC
By: /s/ Peter J. Meyer, CEO

Optiver US
By: /s/ Sebastiaan Koeling, Managing Director

Quantlab Financial, LLC
By: /s/ Cameron Smith, General Counsel

RGM Advisors, LLC
By: /s/ Richard B. Gorelick, CEO

Tibra Trading America LLC
By: /s/ Steven A. Schwab, Chief Compliance Officer and General Counsel

Traditum Group LLC
By: /s/ Michael Creadon, Managing Partner

WH Trading
By: /s/ William Hobert, Managing Member

XR Trading LLC
By: /s/ Matthew W. Haraburda, Head of Operations

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Mark Fajfar, Assistant General Counsel