



**Virtu Financial**  
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January 19, 2016

Submitted Electronically

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Swap Dealer *de Minimis* Exception Preliminary Report

Dear Mr. Kirkpatrick:

Virtu Financial, Inc. (together with its affiliates, “Virtu” or “we”) is submitting this letter to share our views with the Commodity Futures Trading Commission (the “CFTC” or “Commission”) regarding the CFTC staff report (the “Report”)<sup>1</sup> requesting comment on the *de minimis* exception to the CFTC’s swap dealer registration requirement.

Consistent with the description provided in our previous submissions,<sup>2</sup> Virtu is a leading technology-enabled market-maker and liquidity provider to the global financial markets,

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<sup>1</sup> *Swap Dealer De Minimis Exception Preliminary Report: A Report by staff of the U.S. Commodity Futures Trading Commission Pursuant to Regulation 1.3(ggg)* (Nov. 18, 2015); available on the CFTC’s website at: [http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport\\_sddeminis\\_1115.pdf](http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf).

<sup>2</sup> See Letter from Douglas Cifu, commenting on the CFTC’s Notice of Proposed Rulemaking on Regulation Automated Trading (Dec. 28, 2015); available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60574>.

operating from offices in New York, Austin, Singapore and Dublin. Virtu acts as a registered market-maker across numerous exchanges and asset classes, is a direct member of most recognized futures exchanges in the United States and around the globe, and, through its subsidiary, is registered as a Floor Trader with the Commission and the National Futures Association.

### ***General Comments***

Responding to the questions raised in the Report, Virtu strongly supports maintaining the *de minimis* threshold at the current \$8 billion level. In the event that the Commission does not take action to prevent the threshold from automatically decreasing to \$3 billion, we believe that the primary outcome will be contractions in liquidity without any corresponding regulatory benefit. Due to the uncertainty involved in classifying a transaction as “dealing” or “non-dealing” activity, and the related uncertainty associated with classifying transactions as swaps versus forwards, a \$3 billion *de minimis* threshold is more likely to deter market participants from engaging in swaps than it is to prompt more market participants to register as swap dealers.

Therefore, we believe that the Commission should act quickly to assure market participants that there is no risk of the CFTC permitting the \$8 billion threshold to decrease to \$3 billion. Absent this confirmation, market participants may be forced to scale back their swaps activity as early as this year in preparation for complying with a lower *de minimis* level.

### ***Floor Traders***

In addition, we suggest that the Commission take this opportunity to also clarify and revise certain conditions of the Commission’s exemption from the swap dealer *de minimis* calculation for certain swaps entered into by CFTC-registered floor traders (the “Floor Trader Exclusion” or the “Exclusion”).<sup>3</sup> Among other things, the conditions of the Floor Trader Exclusion currently prohibit (1) entering into swaps other than on a CFTC-registered designated contract market (“DCM”) or swap execution facility (“SEF”), and (2) fully participating in all market making programs offered by a DCM or SEF.<sup>4</sup> Therefore, we request that the Commission either clarify or otherwise provide relief confirming that the Commission would not take an enforcement action against any person for:

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<sup>3</sup> CFTC Regulation 1.3(ggg)(6)(iv)(A) – (H), as adopted in *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”*, 77 Fed. Reg. 30596, at 30614 (May 23, 2012) (“Final Entity Definitions”), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-10562a.pdf>.

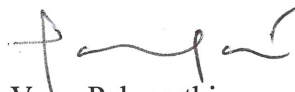
<sup>4</sup> We note that CFTC staff have provided helpful no-action relief with respect to this second condition. See CFTC Letter 13-80 (December 23, 2013), available at: <http://www.cftc.gov/ucm/groups/public/@lrlattergeneral/documents/letter/13-80.pdf>.

- Failure to meet the requirements of conditions (B) and/or (D) of Regulation 1.3(ggg)(6)(iv) solely because such person enters into swaps that are not executed on or subject to the rules of a DCM or SEF, whether or not cleared, provided that such swaps, to the extent they constitute dealing activity, do not otherwise exceed the *de minimis* thresholds in set forth in Regulation 1.3(ggg)(4), or
- Failure to meet the requirements of condition (G) of Regulation 1.3(ggg)(6)(iv) solely because such person participates in a market making program offered by a DCM or SEF.

\* \* \* \*

If you have questions about any of the foregoing, please contact me via e-mail at [vpalaparathi@virtufinancial.com](mailto:vpalaparathi@virtufinancial.com).

Sincerely,



Venu Palaparathi  
Senior Vice President  
Virtu Financial, Inc.

Via E-Mail

cc:

Chairman Timothy G. Massad  
Commissioner Sharon Y. Bowen  
Commissioner J. Christopher Giancarlo

*CFTC Division of Swap Dealer and Intermediary Oversight*

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