Coalition for Derivatives End-Users

January 19, 2016

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

RE: Comments on the Swap Dealer *De Minimis* Exception Preliminary Report

Dear Mr. Kirkpatrick:

The Coalition for Derivatives End-Users (the "Coalition") is pleased to respond to the request for comments by the Commodity Futures Trading Commission ("CFTC" or the "Commission") for the Swap Dealer *De Minimis* Exception Preliminary Report ("Preliminary Report").[1] We urge the Commission to follow clear Congressional intent and promptly draft an interim final rule that makes clear that the swap dealer *de minimis* exception threshold shall remain at the $8 billion gross notional level or be raised. The Coalition is concerned that any decrease below the current $8 billion level could reduce liquidity and the availability of counterparties for end-users to trade with, thereby concentrating risk in fewer counterparties and negatively impacting end-users' ability to hedge.

The Coalition represents end-user companies that employ derivatives to manage risks. Hundreds of companies have been active in the Coalition on both legislative and regulatory matters and our message is straightforward: financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on derivatives end-users, who are the engines of the economy. Imposing unnecessary regulation on derivatives end-users, parties that did not contribute to the financial crisis, would fuel economic instability, restrict job growth, decrease productive investment and hamper U.S. competitiveness in the global economy.

The use of derivatives to hedge commercial risk benefits the global economy by allowing a range of businesses—from manufacturing to healthcare to agriculture to energy to technology—to improve their planning and forecasting and offer more stable prices to consumers and a more stable contribution to economic growth. Many end-users choose a diverse group of counterparties to hedge these risks in order to find competitive pricing and to spread credit exposure over several counterparties. End-user counterparties may include larger registered swap dealers as well as smaller entities that have limited dealing activities that fall below the $8

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1 *See* CFTC Staff Report, Swap Dealer *De Minimis* Exception Preliminary Report (Nov. 18, 2015), *available at* http://www.cftc.gov/PressRoom/PressReleases/pr7280-15.

billion swap dealer *de minimis* threshold. Derivatives end-users rely on certain smaller market participants for limited dealing activities that may not otherwise be available or that may offer more competitive pricing.

The swap dealer *de minimis* exception should remain broad enough to exclude swap dealing activities that do not rise to the level of systemic significance, either because the level of activity or the type of transaction.[2] Lowering the threshold from the $8 billion gross notional amount would needlessly and unnecessarily capture a significant number of additional market participants and require them to register as swap dealers or, more likely, reduce their available products and services to derivatives end-users to ensure they remain below the thresholds. Any decrease from the current threshold would likely cause a further consolidation of swap dealing activities reducing competitiveness and potentially increasing risk. Such changes to the market would reduce liquidity to end-users, reduce counterparty selection and increase interconnectedness of counterparties—results that run contrary to the goals of the Dodd-Frank Act.

We are pleased that Congress has recognized the negative impacts that a drop in the swap dealer *de minimis* threshold could have on the markets by directing the Commission to not lower the $8 billion gross notional amount threshold. The Explanatory Statement accompanying H.R. 2029, Consolidated Appropriations Act, 2016, which became law on December 18, 2015[3] "directs the Commission to comply with the directive regarding swap dealer *de minimis* in H.Rpt. 114-205."[4] This statement reaffirms the language in H.Rpt. 114-205 in which the "Committee directs the Commission to promulgate a rulemaking either maintaining the Swap Dealer de [m]inimis threshold at $8,000,000,000, the amount currently set forth in the regulation, or above this amount pursuant to the results of the study currently being conducted as well as stakeholder input, within 60 days of enactment of this Act."[5] Further, based on the number of assumptions and the limitations on the available data referenced in the Preliminary Report, it would be premature for the Commission to reduce the swap dealer *de minimis* threshold without fully understanding the consequences that such a reduction would have on the markets, and particularly on derivatives end-users.

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[2] The Dodd-Frank Act requires that entities conducting a *de minimis* amount of dealing activity be exempted from the swap dealer and security-based swap dealer definitions. *See* CEA section 1a(49)(D), 7 U.S.C. 1a(49)(D).

[3] *See* H.R. 2029, Consolidated Appropriations Act, 2016.

[4] Explanatory Statement to H.R. 2029, Consolidated Appropriations Act, 2016, Division A, p. 32, *available at* http://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD002.pdf.

[5] H.Rpt. 114-205, p. 76, *available at* https://www.congress.gov/114/crpt/hrpt205/CRPT-114hrpt205.pdf.

We thank the CFTC for the opportunity to comment on the Preliminary Report. The Coalition appreciates the efforts of the CFTC to implement registration requirements that serve to strengthen the derivatives market without unduly burdening end-users and the economy at large. Thank you for your consideration of these important issues to derivatives end-users. Please contact Michael Bopp at mbopp@gibsondunn.com if you have any questions or concerns.

Sincerely,

Coalition for Derivatives End-Users