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January 27, 2016

Christopher J. Kirkpatrick  
Secretary  
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:

The FIA Principal Traders Group<sup>1</sup> (“FIA PTG”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) Swap Dealer De Minimis Exception Preliminary Report (“The Report”). This letter focuses on the section in The Report entitled “Swaps Executed on a SEF or DCM and/or Cleared.”

As background, in March 2011, many of our members filed a comment letter<sup>2</sup> on this subject in response to the Commission’s proposed definitions of “Swap Dealer,” “Major Swap Participant” and “Eligible Contract Participant”. That letter stated in part:

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.

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<sup>1</sup> FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively.

<sup>2</sup> <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31644&SearchText=>

Unfortunately those barriers have proven to be quite significant. However, we are hopeful that comments and discussion around The Report will lead to the removal of those barriers related to SEF or DCM-traded and cleared swaps and allow our members to become active providers of liquidity in those markets.

Specifically in response to the questions raised in the section of The Report entitled “Swaps Executed on a SEF or DCM and/or Cleared”, we respond as follows.

**(1) How would the exclusion of SEF or DCM-traded and/or cleared swaps from an entity’s *de minimis* calculation impact the policy considerations underlying swap dealer regulation and the *de minimis* exception?**

We believe the intent underlying swap dealer regulation is fully met by trading swaps on a SEF or DCM and clearing those swaps through a clearinghouse (“exchange traded and cleared swaps”). The Treasury proposal on financial reform (“*Financial Regulatory Reform, A New Foundation*”) leading up to the passage of the Dodd Frank Act stated:

All OTC derivatives dealers and all other firms whose activities in those markets create large exposures to counterparties should be subject to a robust and appropriate regime of prudential supervision and regulation. Key elements of that robust regulatory regime must include conservative capital requirements (more conservative than the existing bank regulatory capital requirements for OTC derivatives), business conduct standards, reporting requirements, and conservative requirements relating to initial margins on counterparty credit exposures. Counterparty risks associated with customized bilateral OTC derivatives transactions that should not be accepted by a CCP would be addressed by this robust regime covering derivative dealers. As noted above, regulatory capital requirements on OTC derivatives that are not centrally cleared also should be increased for all banks and BHCs.<sup>3</sup>

Each of the “key elements” discussed above is met in an exchange traded and cleared swap without the need either to require market participants to register as a swap dealer or to place additional regulatory requirements on them. Taking each of the key elements individually, in an exchange traded and cleared swap:

- Clearing members of the CCP facilitate swap clearing and are already subject to regulatory capital requirements
- Business conduct standard regulations are met by the policies governing trading behavior at the SEF or DCM
- Reporting requirements are met by the SEF or DCM
- Approved margin requirements are met by both parties clearing through the CCP

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<sup>3</sup> U.S. Dept. of Treasury, *Financial Regulatory Reform: A New Foundation*, available at [https://www.treasury.gov/initiatives/Documents/FinalReport\\_web.pdf](https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf)

Given that exchange traded and cleared swaps achieve the regulatory goals of swap dealer regulation in and of itself (i.e. without any further regulatory action), dealing activity in these instruments should be exempted from an entity's *de minimis* exemption.

**(2) Should anonymity be a factor in determining whether exchange-traded and/or cleared swaps are treated differently under the *de minimis* exception?**

The various ways a swap may be executed on a SEF or DCM are set out in CFTC approved SEF/DCM rulebooks in compliance with CFTC rules and regulations. Therefore, we do not believe anonymity plays a role in whether or not exchange traded and cleared swaps should be treated differently under the *de minimis* exception.

**(3) If exchange-traded and/or cleared swaps are excluded from an entity's *de minimis* calculation, what other requirements, if any, should apply to the exclusion?**

As explained above, we believe all relevant regulatory goals underlying the registration and regulation of swap dealers are met when dealing in exchange traded and cleared swaps.

**(4) Would an exclusion for exchange-traded and/or cleared swaps increase the volume of swaps executed on SEFs or DCMs?**

We have been and remain adamant supporters of the growth of exchange traded and cleared swap markets. Reducing unnecessary and duplicative regulatory burdens related to swap dealer regulation is one way the CFTC can help facilitate this transition.

**(5) Are there any unique costs or benefits associated with this alternative to the *de minimis* exception?**

This alternative to the *de minimis* exception would reduce unnecessary costs for firms to provide liquidity in exchange traded and cleared swaps and, we believe, would lead to greater participation and competition in swaps traded on SEFs and DCMs, resulting in lower trading costs for end users and a systemically safer and more diverse swap marketplace.

**(6) Has the Floor Trader Exclusion (see Appendix A) encouraged additional trading on SEFs?**

Unfortunately to date, the Floor Trader Exclusion has not generated the type of growth in exchange traded and cleared swaps we had hoped to see. Further clarifications in the permissible actions of firms utilizing the Floor Trader Exclusion are necessary to see greater utilization of the Exclusion. In our view, the treatment of exchange traded and cleared swaps suggested in this alternative to the *de minimis* exception would accomplish similar goals as to those underlying the Floor Trader Exclusion.

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In conclusion, FIA PTG supports the exclusion of SEF or DCM-traded and cleared swaps from an entity's *de minimis* calculation. We believe that principal traders should be encouraged to participate in the markets for cleared swaps executed on SEFs and DCMs and that such participation greatly benefits all market participants. We are confident that this exclusion will clear the way for more active participation.

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Mary Ann Burns ([maburns@fia.org](mailto:maburns@fia.org)).

Respectfully,

FIA Principal Traders Group

A handwritten signature in black ink that reads "Mary Ann Burns". The signature is written in a cursive, flowing style.

Mary Ann Burns  
Chief Operating Officer  
FIA

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