August 13, 2018

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

Re: RIN 3038-AE68

De Minimis Exception to the Swap Dealer Definition, Notice of Proposed Rulemaking, 83 Fed. Reg. 27,444 (June 12, 2018)

Submitted via CFTC Comments Portal: http://comments.cftc.gov

Dear Mr. Kirkpatrick:

SVB Financial Group ("SVB") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC") in response to its proposed rulemaking to amend the CFTC's regulations regarding the de minimis exception from the swap dealer definition.[1] As discussed more fully below, SVB:

- Agrees with the CFTC's view that the De Minimis Threshold should not drop to $3 billion;
- Requests that the CFTC consider raising the threshold to $20 billion; and
- Recommends that non-deliverable forwards ("NDFs") and window forwards involving foreign exchange ("FX") should be excluded from the de minimis calculation because they are functionally and economically equivalent to exempted FX Forwards.

I. Background on SVB and its Affiliates

SVB is a bank and financial holding company. Our principal subsidiary, Silicon Valley Bank, is a California-chartered bank and a member of the Federal Reserve System. As of June 30, 2018, SVB had total assets of $55 billion.

We are the premier provider of financial services for start-up and growing companies in the technology, life science, and clean technology sectors, as well as the venture capital funds that finance their growth. Over nearly thirty years, we have become the most respected bank serving the technology industry. We have developed a comprehensive array of banking products

[1] *De Minimis Exception to the Swap Dealer Definition*, 83 Fed. Reg. 27,444 (June 12, 2018)(the "Release").

and services specifically tailored to meet our clients' needs at every stage of their growth. Today, we serve roughly half of the venture-backed high growth start-ups across the United States and well over half of the venture capital firms, working through 29 U.S. offices and international offices located in China, India, Israel, Germany and the United Kingdom.

SVB's swaps business poses low risk to the U.S. economy. It engages in FX and interest rate derivatives for clients, allowing them to prudently manage currency risk arising from their operations or investments and interest rate risk arising from their obtaining SVB credit facilities. SVB runs a flat, fully-hedged FX portfolio and hedges its FX and interest rate exposure with 19 institutions. SVB also uses FX forwards to hedge exposures associated with funding foreign currency loans that it originates. We have never engaged in proprietary trading other than market-making or hedging activity permitted under the Volcker Rule, and our market-making activity is focused on FX and interest rate swaps. Revenues derived from derivatives activities represent only 6%, approximately, of SVB's revenue, and thus is ancillary to our core banking business.

II. Discussion

A. De minimis Threshold Should Not Drop to $3 Billion

SVB agrees with and supports the Commission's view that the de minimis threshold should not drop to $3 billion.

1. Lower Threshold Will Impose Large Costs on Market Participants with Little Regulatory Benefit

As the Commission explains in the Release, swaps data shows that lowering the threshold to $3 billion will result in a statistically insignificant gain of regulatory coverage in terms of swaps with a registered swap dealer counterparty, but may negatively impact market liquidity.[2] SVB agrees that lowering the threshold to $3 billion would likely reduce liquidity as market participants (particularly small and regional banks) reduce swaps activity to avoid the costs of swap dealer registration.

SVB believes that these costs are substantial. We conservatively estimate that the initial cost of swap dealer registration, including initial build out of systems, employing counsel to draft compliance policies and other consultants, membership dues with the National Futures Association, compliance with uncleared swaps margin rules and other costs, would be approximately $8 to $10 million. Further, we estimate ongoing costs to meet regulatory requirements of $2 million per year thereafter. All of these costs would be required to maintain an ancillary business activity for SVB.

[2] See generally Release at 27,450.

In addition to these costs, swap dealer registration would impose significant additional burdens on our clients, many of whom are startups and growing small companies. For example, adherence to the ISDA protocols for swaps to comply with various swap dealer regulatory requirements (or bilateral agreements to accomplish the same result) would be required of SVB's clients post-registration, which is not required of them now, and would require them to incur legal costs to review these documents. Registration would also require SVB to comply with the uncleared swaps margin rules, which require the posting and collecting of variation margin with financial end-users and posting and collecting initial margin with such end-users that have material swaps exposure. SVB clients that fall into these categories would incur costs, including attorney fees and administrative expenses, as well as margin costs, to which they are not now subject.

These burdens are significant and, if the threshold were to drop to $3 billion, would require us to make a decision as to whether the cost and effort involved of registration for an ancillary business line are worthwhile, or whether we should curtail our swaps business to avoid registration. Curtailing our business -- the likely outcome -- would in turn result in higher costs for many of our clients or, for those of our clients who do not have relationships with the large swap dealers, losing access to derivatives markets and their ability to hedge their commercial risks altogether.

By contrast, if the de minimis threshold does not drop to $3 billion, SVB would be able to continue serving the risk mitigating needs of our small, early stage and middle market clients in the U.S. innovation economy. It thus would facilitate the Commission's policy goal under the de minimis exception of allowing limited ancillary dealing activity to accommodate our clients that have a need for risk mitigating swaps along with other services.[3]

Fixing the threshold at $8 billion will permit SVB to continue to provide liquidity to its clients in the innovation economy in the coming years without registration. This threshold would give us a modest amount of time to grow our derivatives business without incurring the substantial costs and burdens of swap dealer registration.

We also do not believe that lowering the threshold to $3 billion and requiring swaps market participants like SVB to register would lower systemic risk. SVB's product set as described above is relatively low-risk and narrow in scope. As such, we do not believe that we and similarly situated small and medium-sized market participants present the systemic risk concern that the swap dealer registration requirement was trying to address. This view is buttressed by the statistically insignificant loss of regulatory coverage if the threshold remains at $8 billion that the swaps data cited in the Release shows.

[3] See Release at 27,447.

2. CFTC Should Consider Raising the Threshold to $20 Billion

We respectfully request that the Commission consider raising the de minimis threshold to $20 billion.

A $20 billion threshold will allow us to confidently dedicate resources to build and enhance our swaps business knowing that we will be able to offer our clients access to market and liquidity on a sustained basis beyond the near- and middle-term.

Raising the threshold to $20 billion would not result in a significant loss of regulatory coverage. Tables 9 and 10 of the Release show that raising the threshold to $20 billion would result in only an estimated 0.01% decrease of notional coverage, and a 0.05% decrease of transaction coverage, in terms of swaps in which one of the parties is a swap dealer. These decreases are statistically insignificant. While Table 11 shows a 2.8% decrease of counterparty coverage at that level, this decrease is still relatively small.[4]

By contrast, raising the threshold to $20 billion would confer significant benefits on small to mid-sized derivatives market participants who would breach the $8 billion level in a relatively short period. A $20 billion threshold would provide more time for us and similarly situated market participants to grow our derivatives businesses to a level where they could generate enough profit sufficient to shoulder the significant costs and burdens of swap dealer regulation.

We believe that raising the threshold to $20 billion would foster the Commission's policy goal of encouraging new participants in the derivatives market. We note in that regard the Commission's statement in the Release that "an appropriately calibrated de minimis exception could lower the barrier to entry of becoming an SD by allowing smaller participants to gradually expand their business until the scope and scale of their activity warrants regulation (and the costs involved with compliance)."[5] This goal is very important in light of the highly concentrated nature of the swap dealer market today, where the nation's largest banks control the vast majority of swaps market share.[6] A $20 billion de minimis threshold would greatly encourage new participants, and advancing that objective should outweigh the very limited loss of estimated regulatory coverage that the swaps data indicates would occur at that level.

B. NDFs and Window Forwards Should Be Excluded From the De Minimis Calculation

[4] See Release at 27,455 (Tables 9, 10 and 11).
[5] Release at 27,447.
[6] See Office of the Comptroller of the Currency, "Quarterly Report on Bank Trading and Derivatives Activities First Quarter 2018," available at https://www.occ.gov/topics/capital-markets/financial-markets/derivatives/derivatives-quarterly-report.html (noting that a small group of large financial institutions continues to dominate trading and derivatives activity in the U.S. commercial banking system, with four large commercial banks representing 89.8 percent of the total banking industry notional amounts).

In the Commission's requests for comment regarding NDFs, SVB agrees that NDFs should be excluded from the de minimis count. NDFs are functionally and economically equivalent to exempted FX Forwards that the Treasury Secretary exempted from most of the Commodity Exchange Act's requirements (including counting them toward the de minimis threshold) and should be treated the same way.[7]

SVB notes that the Commission has requested comment on whether other FX derivatives should be excluded from the de minimis calculation.[8] We believe FX window forwards should be excluded as well for similar reasons. An FX window forward, like an exempt FX Forward, involves the physical exchange of two currencies at a fixed rate within a specific fixed range of settlement dates agreed upon on the inception of the contract. Because the settlement date is not confined to a single date, it is uncertain whether window forwards satisfy the "on a specific future date" criterion of the definition of the term FX Forward in the Commodity Exchange Act.[9] Thus, it is unclear whether window forwards should be counted toward the de minimis threshold. Even more so than NDFs, window forwards are functionally and economically identical to exempted FX forwards, and we believe should also be treated the same.

Excluding window forwards from the de minimis calculation also would further enhance hedging opportunities for commercial end users. These instruments are usually requested by corporate clients who need delivery flexibility with regard to foreign currency because of uncertainty regarding the specific settlement date for a future payable or receivable obligation. Such instruments generally are their preferred vehicle for currency risk mitigation. If market participants are required to include these instruments in their de minimis calculations, they may prematurely incur the costs of swap dealer registration or face the decision of having to discontinue offering window forwards in response to their clients hedging needs. Not having to face this choice means that market participants, including SVB, can continue to meet their corporate clients' hedging needs without incurring swap dealer registration costs with respect to instruments that do not present systemic risk.

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[7] See *Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act*, 77 Fed. Reg. 69,694 (Nov. 20, 2012).

[8] See Release at 27,470, question (2).

[9] Section 1a(24) of the Commodity Exchange Act, 7 U.S.C. 1a(24)(defining the term FX Forward to mean "a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.").

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Financial Group

SVB thanks the Commission for the opportunity to comment. If there are any questions, please do not hesitate to contact the undersigned at (415) 764-2417.

Sincerely,

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Head of Global Treasury Advisory Services

Cc: Chairman J. Christopher Giancarlo
Commissioner Brian Quintenz
Commissioner Rostin Behnam
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