



August 13, 2018

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

Via CFTC Comments Portal: <https://comments.cftc.gov>

RE: *De Minimis Exception to the Swap Dealer Definition*--Notice of Proposed Rulemaking,
RIN 3038-AE-68

Dear Mr. Kirkpatrick:

Regions Financial Corporation¹ ("Regions") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") Notice of Proposed Rulemaking² ("NPR") to amend the *de minimis* exception within the swap dealer definition in the Commission's regulations. Regions supports the Commission rule that will set and make permanent the aggregate gross notional amount threshold for the *de minimis* exception at \$8 billion in swap dealing activity. While Regions believes the threshold could be set higher without impacting the Commission's public policy goals, a permanent threshold provides needed certainty that will better allow Regions and similar firms to serve their customers. Moreover, the step is taken in concert with the Commission's action to exclude from consideration certain swaps entered into with customers of an insured depository institution ("IDI"). The meaningful changes remove overly restrictive definitions of swaps tied to lending activity and better reflect the way that traditional regional banking organizations, like Regions, interact with their commercial customers.

¹ Regions Financial Corporation (NYSE: RF), with \$123 billion in assets, is a member of the S&P 500 Index and is one of the nation's largest full-service providers of consumer and commercial banking, wealth management, mortgage, and insurance products and services. Regions serves customers across the South, Midwest and Texas, and through its subsidiary, Regions Bank, member FDIC and Equal Housing Lender, operates approximately 1,500 banking offices and 1,900 ATMs. Additional information about Regions and its full line of products and services can be found at www.regions.com.

² *De Minimis Exception to the Swap Dealer Definition*, 83 Fed. Reg. 27444 (June 12, 2018)

We note that the Commission proposes that for purposes of the IDI de minimis exception, a swap is “in connection with” a loan if “the rate, asset, liability or other term underlying such swap is, or is related to, a financial term of such loan” or if “such swap is required as a condition of the loan, either under the IDI’s loan underwriting criteria or as is commercially appropriate, in order to hedge risks incidental to the borrower’s business that may affect the borrower’s ability to repay the loan.” In connection with the final rulemaking, we would recommend that the Commission remove the reference to the swap being “required as a condition of the loan” while retaining the reference to the swap being commercially appropriate “in order to hedge risks incidental to the borrower’s business that may affect the borrower’s ability to repay the loan”.

As indicated by the Commission in the NPR, one potential benefit of the inclusion of the “commercially appropriate” language is to provide greater flexibility for borrowers to hedge commodity price risks with IDIs that either may not have been evident at the time the loan was entered into or that may otherwise be executed in connection with a loan being provided by the IDI to the borrower. We believe that inclusion of the requirement that the swap be a “condition of the loan” would significantly reduce the likelihood that such a swap would fall within the exception. The “condition of the loan” requirement could lead to many swaps that are commercially appropriate for a borrower being excluded from the IDI de minimis exception. Exclusion from the IDI de minimis exception may reduce the willingness of IDIs to offer these swaps or may encourage IDIs to impose covenants on their borrowers solely for allowing the swaps to fall within the exception. We recommend that in the final rulemaking, the Commission revise paragraph (C)(2)(ii) to retain the “commercially appropriate” requirement and remove the “condition of the loan” requirement.

The Commission has requested comment on whether an entity should be able to qualify for the de minimis exception if its level of swap dealing activity is below any of the following three criteria: (1) an aggregate gross notional amount (‘AGNA’) threshold, (2) a proposed dealing counterparty count threshold, or (3) a proposed dealing transaction count threshold. The Commission has also requested comment on whether it would be appropriate to establish a dealing counterparty count threshold of 10 counterparties and a dealing transaction count threshold of 500 transactions.

We believe that a multi-factor, risk-based approach is preferable to determining a de minimis threshold compared to a single-factor AGNA-based approach. However, we agree with an earlier ABA comment letter that “counterparty count and transaction count are arbitrary and potentially misleading measurements for determining whether a bank or bank holding company is engaged in dealing activity”. Regions routinely enters into swaps with customers for the purpose of hedging risks related to lending relationships with our customers. These swaps are usually done on a loan-by-loan basis rather than on an aggregate basis. As economic growth improves and interest rates rise, we and other commercial banks will likely execute a higher number of swaps with customers and with our dealer entities. During such periods, counterparty and transaction volumes will be higher, but these higher volumes would not be indicative of an increase in “dealing” activity. The higher volumes would instead reflect higher underlying economic activity and related risk management activity by borrowers and IDIs. As a result, we believe that the use of counterparty and transaction count are not effective means of determining dealing activity by commercial banks.

The Commission has requested comment on whether there should be an exception from the de minimis calculation for non-deliverable forwards (“NDFs”). We believe that the Commission should adopt an exception for NDFs in the final rulemaking. NDFs are economically identical to deliverable FX forwards. While NDFs do not account for a significant portion of the FX market, they are an important tool for market participants seeking to hedge currency price risk when one of the relevant currencies being hedged is incapable of delivery or is impracticable to deliver. We note that the offering of NDFs by non-swap dealers can be impeded because of the potential difference in regulatory treatment between NDFs and deliverable FX forwards. We believe that NDFs pose no greater risk to the financial system than deliverable FX forwards and would encourage the Commission to except NDFs from the de minimis calculation.

Thank you in advance for your consideration of these comments. Regions applauds the Commission’s efforts to make permanent the swap dealer threshold and alter several of the restrictive IDI exceptions. We look forward to continuing to work with the Commission on these important issues. Please contact me at (404) 279-7410 if you have any questions about these comments or about Regions.

Sincerely,



Jason Maxwell
Managing Director
Regions Bank