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August 13, 2018

**Via Electronic Submission**

Christopher Kirkpatrick  
Secretary of the Commission  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: De Minimis Exception to the Swap Dealer Definition (RIN 3038–AE68)**

Dear Mr. Kirkpatrick:

Optiver US LLC (“**Optiver**” or “**we**”) is a member of The Futures Industry Association (the “**FIA**”) and the FIA Principal Traders Group (“**PTG**”), and fully supports the comment letter provided by the FIA and the PTG (the “**FIA Comment Letter**”) to the Commodity Futures Trading Commission’s (“**Commission**”) proposed rule “De Minimis Exception to the Swap Dealer Definition” (the “**Proposal**”). We respectfully submit this supplemental comment letter to provide additional background and justification for certain additional potential changes to the *de minimis* exception described in the FIA Comment Letter that we believe will promote an active and liquid swaps market while also furthering the ultimate policy goals of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Title VII**”). Specifically, in addition to excepting cleared swaps that are traded on a swap execution facility (“**SEF**”) or designated contract market (“**DCM**”), the Commission should except from *de minimis* calculations all uncleared swaps in the foreign exchange (“**FX**”) asset class (*e.g.*, FX non-deliverable forwards and FX options) that are executed on a SEF or DCM.<sup>1</sup>

Excepting uncleared FX contracts that fall under the definition of “swaps” for the purposes of Title VII (“**FX Swaps**”) that are executed on a SEF or DCM would reduce unnecessary regulatory impediments that inhibit market participants from engaging in on-platform trading for fear of exceeding the *de minimis* threshold and facilitate growth and competition in swaps executed on SEFs.<sup>2</sup> As noted in the FIA Comment Letter, “most of the uncleared SEF and DCM-executed swaps are in the [FX] asset class . . . , which overwhelmingly involve a *prime broker*, and most prime brokers are already *registered swap dealers*.<sup>3</sup>” Non-swap dealer participants access SEFs and DCMs to trade FX Swaps by entering into a prime brokerage arrangement with a registered swap dealer. In such arrangement, the prime broker stands between the non-swap dealer and other market participants. Any trade executed by the non-swap dealer with any third-party participant results in (a) a trade between the prime broker/swap dealer and third-party participant, and (b) an economically equivalent trade between the prime broker/swap dealer and its non-swap dealer participant/customer, leaving the prime broker/swap dealer flat. In all

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<sup>1</sup> See Section IV.C. of the FIA Comment Letter.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* (emphasis added).



cases, a prime broker/swap dealer is a party to such SEF/DCM traded FX Swaps. As described below, when one party to an FX Swap—the prime broker—is a swap dealer, including such FX Swap in the *de minimis* calculations of all parties does not further advance any of the policy objectives of Title VII.

When an FX Swap is executed on a SEF, and at least one party to such swap is a registered swap dealer, the policy objectives of Title VII are met. Reporting requirements are generally met by the SEF and would be the obligation of the prime broker/swap dealer to complete. Business conduct standards are also generally met through compliance with rules governing trading behavior on the SEF, which would apply to both the prime broker/swap dealer and the non-swap dealer. The prime broker/swap dealer must also adhere to all capital and margin requirements under the applicable rules with respect to SEF or DCM executed swaps, as well as the various business conduct standards provisions applicable to registered swap dealers. Including such swaps in *de minimis* calculations functions to reduce and limit available liquidity in the market, particularly in the FX asset class, by maintaining regulatory impediments that do not further advance Title VII's policy objectives.

When a prime broker that is a swap dealer is a counterparty to an FX Swap traded on a SEF or DCM, such FX Swap will always be subject to swap dealing rules and regulations, achieving maximum "Regulatory Coverage"<sup>4</sup>. The prime broker/swap dealer must already adhere to all applicable swap dealing regulations under Title VII, including transaction level, entity level and business conduct requirements. Such prime broker/swap dealer would be obligated to satisfy all transaction-level requirements, and other applicable swap dealing rules and regulations would apply to such FX Swaps. Excepting such FX Swaps from *de minimis* calculations would have no impact on Regulatory Coverage of FX Swaps.

We appreciate this opportunity to reinforce our support for the FIA Comment Letter and provide further comment on the Proposal. Excepting FX Swaps that are executed on a SEF or DCM would further reduce "unnecessary regulatory impediments" without sacrificing Title VII's policy objectives or Regulatory Coverage and ultimately encourage competition and transparency in swaps markets, especially in light of the fact that nearly all FX Swaps will include at least one swap dealer counterparty (a prime broker). Please contact John Rothstein, Chief Operating Officer, at 312-821-9500 if you have any questions about this letter.

Respectfully Submitted,

Sebastian Koeling  
Chief Executive Officer  
Optiver US LLC

cc: Honorable J. Christopher Giancarlo, Chairman  
Honorable Brian D. Quintenz, Commissioner  
Honorable Rostin Behnam, Commissioner  
Matthew Kulkin, Director, Division of Swap Dealer and Intermediary Oversight  
Erik Remmler, Deputy Director, Division of Swap Dealer and Intermediary Oversight

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<sup>4</sup> As defined in the Proposal.