State Street Corporation

Stefan M. Gavell
Executive Vice President and Head of
Regulatory, Industry and Government Affairs

State Street Financial Center
One Lincoln Street
Boston, MA 02111-2900

Telephone: 617.664.8673
Facsimile: 617.664.9339
smgavell@statestreet.com

www.statestreet.com

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

Via CFTC Web site: http://comments.cftc.gov

Re: Notice of Proposed Rulemaking - De Minimis Exception to the Swap Dealer Definition (RIN 3038–AE68)

Dear Mr. Kirkpatrick:

State Street Corporation ("State Street") appreciates the opportunity to comment on the Notice of Proposed Rulemaking by the Commodity Futures Trading Commission ("CFTC" or "Commission") on the De Minimis Exception to the Swap Dealer Definition. We strongly urge the Commission to except foreign exchange ("FX") non-deliverable forwards ("NDFs") from the swap dealer de minimis calculation. As noted by the Commission in the proposal, excepting NDFs would lead to a more consistent regulatory environment by which NDFs are treated similarly to FX swaps and deliverable FX forwards.

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management, data and analytics, and investment research and trading. With $33.867 trillion in assets under custody and administration and $2.723 trillion in assets under management as of June 30, 2018, State Street operates in more than 100 geographic markets worldwide. State Street's primary banking subsidiary, State Street Bank and Trust Company, is provisionally registered with the CFTC as a swap dealer and is a major global dealer in FX, operating through multiple branches in U.S. and foreign markets.

As a general matter, State Street opposes the current inconsistent treatment of physically settled FX forwards and NDFs under U.S. swaps rules, which has led to market fragmentation, increased costs due to a decrease in overall market competition, and a decline in liquidity for NDFs in the U.S.

U.S. investors seeking exposure to non-U.S. securities convert between relevant currencies using the services of a FX dealer. FX transactions may be for immediate (i.e. "spot") or future (i.e. "forward") access to currency. These transactions are typically physically settled, involving

an actual exchange of currency (FX forward), but can also, for certain currencies, be net settled in cash without physical exchange of currency (NDF). For example, if a transaction involves a currency that cannot be delivered outside of its home jurisdiction, it must net settle, and would therefore be considered an NDF. NDFs and deliverable FX forwards are viewed as equivalent products by the market because the net value transferred is the same in both structures. The difference relates solely to whether the trade closes out at maturity upon delivery by each party to the transaction of the gross amount (FX forward) or upon delivery of the net value of the underlying exchange (NDF).

Despite their similarities, physically settled FX forwards and NDFs are treated differently under current U.S. rules. Physically settled FX forwards are not considered “swaps” for regulatory purposes, while NDFs are considered swaps. As a result of this inconsistent treatment, numerous CFTC rules, such as those governing Swap Execution Facilities (SEFs), apply to NDFs but not physically settled FX forwards, and market participants outside of the U.S. are, as a result, reluctant to transact with U.S. counterparties in NDFs. The result has been a bifurcation of liquidity pools between those available to U.S. persons and those available to non-U.S. persons, to the detriment of U.S. market participants and dealers. In addition, an entity that acts as a dealer in NDFs is required to register as a swap dealer even if it does not transact in other, non-FX swaps, creating administrative burdens and further distortion in the marketplace.

While not a significant portion of the overall FX market, NDFs are an important tool for market participants, particularly the “real money” institutional investors served by State Street. Rationalizing the regulatory landscape for FX forwards and NDFs will benefit markets by increasing market liquidity and tightening bid/offer spreads, lowering transaction costs for customers and creating smoother liquidity globally for customers and banks in all time zones.

While out of scope of the proposed rulemaking, the CFTC should, ideally, align the treatment of physically settled FX forwards and NDFs by excluding NDF from the CFTC’s definition of “swap.” Revising the definition of swap to exclude NDFs would align CFTC rules with market practice and remove the considerable competitive disadvantage for U.S.-based swap dealers like State Street, particularly with respect to the U.S. SEF rules.

Absent a change in the definition of swap, however, State Street strongly supports the suggestion made in the preamble to the proposed rule that NDFs be excluded from the de minimis calculation for swap dealer registration. Such a change would eliminate the need for a market participant to register as a swap dealer based solely on NDF-related activity, and make the CFTC dealer registration rules consistent between physically settled FX forwards and economically identical NDFs. The result would be improved market efficiency for U.S. providers and users of NDFs and FX services generally, and increased market liquidity for U.S. persons.

Please feel free to contact me at smgavell@statestreet.com should you wish to discuss State Street’s submission in further detail.

Sincerely,

Stefan M. Gavell