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August 13, 2018

Via Electronic Submission and Electronic Mail

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

**Re: 17 CFR Part 1 De Minimis Exception to the Swap Dealer Definition
Federal Register Release 83 FR 27444
RIN 3038-AE68**

Dear Mr. Kirkpatrick:

Virtu Financial Inc. (together with its affiliates, “Virtu” or “we”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (the “CFTC” or the “Commission”) De Minimis Exception to the Swap Dealer Definition (the “Proposal”).¹ We commend the Commission’s efforts on this important initiative and support its proposed amendments to the de minimis exception to the definition of “swap dealer” under the Commodity Exchange Act.

Virtu is a leading technology-enabled market maker and liquidity provider to the global financial markets. Virtu operates as a registered market maker across numerous exchanges and asset classes from its offices in the U.S., Dublin, London, and Singapore and is a direct member of most recognized derivative exchanges in the United States (including several swap execution facilities) and around the world. Virtu provides liquidity in more than 25,000 instruments on more than 235 venues and marketplaces in 36 countries. Virtu broadly supports innovation and enhancements to transparency and fairness which promote competition and enhance liquidity to the benefit of all marketplace participants.

¹De Minimis Exception to the Swap Dealer Definition, Proposed Rule, 83 Fed. Reg. 27444 (June 12, 2018).



In addition to the proposed de minimis exceptions set forth in the Proposal, Virtu recommends that the Commission consider a de minimis exception for swap transactions by market makers maintaining net open positions that do not exceed \$1 billion over a rolling twelve month period, to all swap transactions entered to hedge a financial position, and swap transactions where a party to the transaction is already a registered swap dealer. As more fully discussed below, we believe that a market maker exception and the exceptions proposed by the Commission will increase price competition in the marketplace, foster efficiency, and encourage innovation without increasing systemic risk or reducing the scope of the Commission's regulatory and risk oversight.

A. The Threshold of the De Minimis Exception Should be Permanently Set at \$8 Billion

Virtu is supportive of the Commission setting the de minimis threshold at an aggregate gross notional amount ("AGNA") of \$8 billion (the "Proposed Threshold"). The CFTC acknowledges in the Proposal that the Proposed Threshold already subjects a majority of transactions to swap dealer ("SD") regulation and decreasing the AGNA to \$3 billion could decrease liquidity in certain markets. Virtu agrees with the Commission that the fundamental policy goals for SD regulation, that being, reducing systematic risk, increasing counterparty protections and increasing market efficiency, orderliness, and transparency would not be significantly advanced if the de minimis threshold was decreased to \$3 billion. Moreover, it appears that reducing the threshold to \$3 billion would possibly impact risk hedging activities. As noted by Chairman Giancarlo in his opening statement to the Commission meeting on June 4, 2018:

The data shows quite clearly that a drop in the de minimis definition from \$8 billion to \$3 billion would not have an appreciable impact on coverage of the marketplace. In fact, any impact would be less than one percent - an amount that is truly de minimis.²

In addition, we agree with the conclusions reached by the CFTC that the Proposed Threshold (1) encourages competition by permitting a person to engage in limited dealing activities without subjecting itself to the costs associated with registration and regulation; and (2) increases regulatory efficiency by enabling the Commission to focus its regulatory efforts on swap dealer activity that is significant in "size and scope to warrant oversight".³

² Opening Statement of Chairman J. Christopher Giancarlo, Open Commission Meeting, June 4, 2018.

³ See Proposal, 83 Fed. Reg. at 27447.



B. Transactions by Market Makers Maintaining Net Open Positions Not Exceeding \$1 Billion Should be Exempt from the Proposed Threshold Calculation

Virtu recommends that the Commission exempt from the Proposed Threshold calculation, swap dealing transactions that do not qualify for one of the other de minimis exemptions when those transactions are entered into by a market maker whose net open positions do not exceed \$1 billion over a rolling twelve month period.

As the Commission states in the Proposal, one of the policy objectives underlying the de minimis exceptions is to encourage competition by allowing new participants to enter the market without barriers to entry that may stifle competition and reduce swap market efficiency. The Commission also stated its preliminary belief is that “[a]ll else being equal . . . price discovery might . . . be improved if there are more entities engaged in ancillary dealing”.⁴ It well recognized that market makers like Virtu have driven innovation, increased transparency, and lowered costs in the equities, fixed income, currency, and futures markets. Market makers like Virtu do not hold positions or carry risk for long periods of time, but rather seek to facilitate efficient risk transference to earn a spread and, in doing so, lower costs for investors through increased price competition and driving more transparency in the market. Market makers have contributed to the modernization of today’s marketplaces through electronic offerings that make trading more efficient, reliable, transparent, and auditable.

While in aggregate the number of transactions engaged in by market makers might exceed the \$8 billion AGNA threshold simply because of the volume of their trading, the net risk of these trades would not have the same potential impact to overall systemic risk because exempt market makers’ open net positions in otherwise non-exempt transactions would be capped at \$1 billion over a rolling twelve month period. The risk that these transactions would not be subject to oversight is also minimized because market makers like Virtu typically access the market through prime brokers – who are registered swap dealers – for these transactions and, as such, they would ultimately be included in the regulatory reports of the prime broker and subject to Commission oversight.

⁴ See Proposal, 83 Fed. Reg. at 27475



C. Non-Deliverable Forwards Should be Excluded Under the Proposed Threshold Calculation

Virtu supports the Commission’s proposal to exclude non-deliverable forwards (“NDFs”) from the calculation of AGNA for purposes of the Proposed Threshold. Currently, NDFs are treated as swaps for purposes of the Commission’s swap rules, including the calculation of the de minimis threshold, while deliverable foreign exchange forwards are not included.

This change would unify the treatment of NDFs and deliverable foreign exchange forwards (which are exempt from the definition of “swap” for most purposes under the Commodity Exchange Act). The Proposal notes that “... the Commission has learned from market participants that the markets continue to treat both NDFs and deliverable foreign exchange forwards functionally the same product. Like deliverable foreign exchange forwards, NDFs settle on a net rather than gross basis, which significantly mitigates counterparty risk in this context.”⁵ Accordingly, Virtu supports the consistent treatment of NDFs and deliverable foreign exchange forwards by exempting both from the calculation of AGNA for purposes of the Proposed Threshold.

D. The Proposed Threshold Should Exclude Exchanged Traded and Cleared Swaps

Virtu supports excluding swaps that are executed on-exchange, i.e. a SEF or a DCM, and/or cleared by a designated clearing organization (“DCO”), from the calculation of AGNA for purposes of the Proposed Threshold. Virtu agrees with the Commission that exempting such activity could improve the utilization of exchanges and increase clearing of these transactions. Market makers participate in transactions both on-exchange and off-exchange. Increasing the utilization of exchanges for swap transactions brings significant benefits in the form of increased competition and transparency that is provided by the dissemination of bids and offers to market participants and introduction of competitive and innovative trading systems and platforms.

The benefits of that transparency carries over to the off-exchange markets where the bid ask spread can also be expected to tighten as a result of price formation function of the exchanges. Systemic risk is mitigated because risk management is managed by the DCO which collects margin and is subject to capitalization requirements. As the Commission notes in the Proposal, in addition the these benefits, the market efficiency, orderliness, and transparency goals of SD regulation would also potentially be enhanced since, for example, the obligations of reporting trade

⁵ See Proposal, 83 Fed. Reg. at 27470



information and engaging in portfolio reconciliation and compression exercises would be centrally (and more efficiently) managed by the exchange and/or DCO, as applicable.

E. Swaps Entered to Hedge Financial Positions Should be Exempt from the Proposed Threshold Calculation

Virtu agrees with the Commission that swaps entered into to hedge financial positions should be exempt from the AGNA calculation for purposes of the Proposed Threshold. This change would homogenize the treatment of physical and financial positions under the de minimis calculation.

Currently, the definition of swap dealer provides that swaps entered to hedge physical positions are not counted toward the Proposed Threshold. However, there is no similar exemption for swaps entered for hedging financial positions. The Proposed Rule would put physical and financial positions on equal footing and would provide clarity to the swap market and its participants. However, as proposed, hedging transactions that provide liquidity through price making transactions would not be exempt, while hedging transactions where a participant is taking liquidity would be exempt.

Virtu further submits that transactions to hedge financial positions should be exempt and recommends extending the proposed exemption to include all transactions to hedge financial positions, regardless of whether a participant is making or taking liquidity.

We believe that the proposed exemption and the extension of the proposed exemption to price making transactions to hedge financial positions would provide important benefits to the marketplace as it would allow more market participants to provide competitive quotes – including when participants are passively hedging – and potentially reduce hedging costs for both price makers and price takers.

F. Swaps Where One Party is a Registered Swap Dealer

Virtu recommends that the Commission exempt from the Proposed Threshold swap transactions where one party is a registered swap dealer or one party holds their account with a registered swap dealer as these transactions are already subject to the existing reporting requirements and, as such, subject to Commission oversight.



Virtu appreciates this opportunity to comment on the Proposal. We believe that the Proposal will continue to modernize the swap dealer marketplace while appropriately managing marketplace risk. Please do not hesitate to contact me if you have any questions regarding any of the comments provided in this letter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Doug A Cifu', is written above the typed name.

Douglas A. Cifu
Chief Executive Officer

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