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Christopher J. Kirkpatrick
Secretary
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

Dear Mr. Kirkpatrick:

Thomson Reuters (SEF) LLC (“**TR SEF**” or “**we**”) welcomes the opportunity to submit its comments to the Commodity Futures Trading Commission (the “**Commission**”) on its proposed rule “De Minimis Exception to the Swap Dealer Definition” (the “**Proposed Rule**”).¹ TR SEF supports the efforts of the Commission and its Staff, in addition to evaluating the appropriate *de minimis* threshold, to consider circumstances in which certain swaps should be excepted from *de minimis* calculations. With the benefit of several years of regulatory oversight over the swaps market, we believe it is prudent that the Commission examine whether the swap dealer *de minimis* exception can be tailored to achieve appropriate regulatory objectives.

In particular, and in response to the Commission’s request for comment on this issue, we believe the Commission could better achieve certain goals of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”), while still maintaining necessary customer protection benefits, by providing an exception from *de minimis* calculations for the type of swaps executed on TR SEF’s platform.

I. About Thomson Reuters

TR SEF is a subsidiary of Thomson Reuters Corporation. Thomson Reuters Corporation is a world-leading source for intelligent information for businesses and professionals. With a global presence in more than 100 countries, Thomson Reuters Corporation combines industry expertise with innovative technology to deliver critical information to leading decision makers in the financial and risk, legal, tax and accounting, and media markets, powered by the world’s most trusted news organization. Thomson Reuters Corporation shares are listed on the Toronto and New York Stock Exchanges.

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

Certain subsidiary companies of Thomson Reuters Corporation are leaders in various segments of the dynamic foreign exchange (“FX”) market. Our FX Trading Solutions provide access to liquidity in OTC markets, trade execution capabilities and connections for market participants worldwide.² They also offer post-trade services globally, enabling banks, brokers and electronic marketplaces to connect seamlessly with their counterparties. Together, they offer comprehensive solutions for price discovery, order handling, trade analysis, execution and post-trade services in the FX market.

II. About TR SEF

TR SEF is registered with the Commission as a swap execution facility (“SEF”). It facilitates trading in FX non-deliverable forwards (“NDFs”) and FX options. TR SEF enables its participants to trade NDFs and FX options through its request-for-quote and request-for-stream systems, as well as an order book. Participants benefit from TR SEF’s complete end-to-end workflow solution, including straight-through processing and settlement.

As an FX-only SEF, TR SEF is a “**Permitted SEF**” in that it only facilitates the execution of “**Permitted Swaps**” that are not currently subject to a trade execution mandate or mandatory clearing. TR SEF does not facilitate the execution of any “**Required Swaps**” that are required to be cleared and traded on a SEF or a designated contract market.

For the reasons set forth below, TR SEF urges the Commission to provide an exception from *de minimis* calculations for Permitted Swaps executed on SEFs.³

III. Benefits of Excepting Permitted Swaps from *De Minimis* Calculations

Excepting Permitted Swaps that are executed on SEFs from *de minimis* calculations would benefit the swaps market and market participants in several ways.

First, such an exception would lead to greater participation and competition in swaps executed on SEFs. This, in turn, would result in enhanced liquidity and trading volume, greater pre-trade price transparency, lower trading costs for end-users and a systemically safer and more diverse swap marketplace. Encouraging greater participation on SEFs is part of the Commission’s mandate under the Dodd-Frank Act.⁴ It also is consistent with principles of good regulatory governance. As Chairman Giancarlo wrote in his White Paper, “[t]he full range of

² Thomson Reuters’ FX markets serve thousands of institutions globally, including industrial companies, asset managers, governments, international agencies and other financial institutions. Our platforms facilitate competitive pricing, internal trading controls, risk management and a granular audit trail. We have succeeded in improving efficiency and transparency and reducing risk for the FX market that is important to both the US and the world economy. Today, a large part of the FX market is traded on electronic systems such as TR SEF – including less liquid or infrequently traded instruments customized by end users to meet their specific commercial requirements.

³ TR SEF believes that all the reasons we delineate for Permitted Swaps also apply for Required Swaps and that they should be treated the same for this issue. Therefore, we believe that both types of swaps executed on SEFs should be excepted from *de minimis* calculations.

⁴ See Commodity Exchange Act (“CEA”), Section 5h(e), 7 U.S.C. 7b-3(e) (“The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.”). See also Proposed Rule, 83 Fed. Reg. at 27468 n.168.

liquidity formation, price discovery and trade execution methods should be encouraged to take place on licensed SEF environments requiring high professional standards and regulatory transparency for the greater benefit and durability of the marketplace.”⁵ We agree, and therefore believe the Commission’s approach to all regulations affecting SEFs should focus on improving trade execution in furtherance of its statutory mandate to promote trading on these regulated markets. With respect to the *de minimis* threshold, the Commission should fulfill this mandate by excepting Permitted Swaps that are executed on SEFs.

Second, excepting Permitted Swaps that are executed on SEFs from *de minimis* calculations would enhance regulatory efficiencies. Specifically, the greater participation on SEFs from such an exception would result in regulatory requirements (like certain reporting obligations) being satisfied by SEFs as market infrastructure providers, rather than by a large and diverse group of swap dealers and other liquidity providers. Consolidating regulatory obligations in this way would enhance the consistency and reliability of data reported to swap data repositories, and increase efficiency in fulfilling other regulatory requirements (for example, by centralizing the production of swap confirmations and storage of audit trail data).

Third, excepting Permitted Swaps that are executed on SEFs from *de minimis* calculations would reduce the costs and burdens resulting from the legal uncertainty faced by many market participants as to whether their swap trading activity on these platforms could inadvertently be considered swap dealing activity. The determination of whether a particular trade or strategy constitutes swap dealing is often complex, and is particularly difficult in the context of certain SEF-executed trades. For example, the ordinary trading activity of financial entities such as asset managers and proprietary traders that trade large volumes of swaps could be viewed as providing liquidity to the market, and therefore create uncertainty as to whether the entity is engaged in “swap dealing activity.”

In its 2012 rulemaking defining the term “swap dealer” (among others), the Commission declined to limit the “market maker” prong of the statutory swap dealer definition in the Dodd-Frank Act to persons or entities that participate in a formal market making program.⁶ Rather, the Commission indicated that merely seeking compensation from spreads, fees or other compensation not attributable to changes in the value of swaps would be indicative of market making (and thus swap dealing) activity. Given the speed and ease with which swaps can be executed on SEFs (including trading using two-sided strategies), the normal trading activity of many financial entities on SEFs could be captured by this broad definition, even if they are not otherwise holding themselves out as dealers in swaps.

This legal uncertainty in the definition of a “swap dealer” requires active trading firms on SEFs to closely track their activities, as well as those of affiliated entities where aggregation requirements apply, in order to assure that they remain below the *de minimis* threshold (or prepare to register). Not surprisingly, we understand that this uncertainty has impeded SEF

⁵ See J. Christopher Giancarlo & Bruce Tuckman, Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps at 47 (April 26, 2018) (hereinafter, the “**White Paper**”).

⁶ See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 Fed. Reg. 30596, 30610 n.200 (May 23, 2012).

trading, including the development of two-sided trading on SEFs (*i.e.*, where any participant can effectively act as a price “maker” or a price “taker”).⁷

SEF participation (including two-sided trading on SEFs) would be enhanced if financial entities were assured that, regardless of whether their normal trading activity on SEFs constitutes swap dealing activity, their swaps executed on a SEF were excepted from *de minimis* calculations. And, for the reasons discussed in the following section, with respect to Permitted Swaps of the type traded on the TR SEF platform, this reduction in regulatory uncertainty would not adversely impact the policy objectives underlying swap dealer regulation.

IV. Excepting Permitted Swaps Would Not Adversely Impact the Policy Objectives Underlying Swap Dealer Regulation

While there would be significant benefits to excepting Permitted Swaps that are executed on SEFs from *de minimis* calculations as set forth above, such an exception would not adversely impact the policy objectives underlying swap dealer regulation.

As an initial matter, we note that the reason the Commission declined to exclude SEF-executed swaps from *de minimis* calculations in the first instance – *i.e.*, due to uncertainty as to how SEF trading would evolve – no longer applies. For example, the Commission stated in 2012 that “[a] variety of exchanges, markets, and other facilities for the execution of swaps are likely to evolve in response to the requirements of the Dodd-Frank Act, and there is no basis for any bright-line rule excluding swaps executed on an exchange, given the impossibility of obtaining information about how market participants will interact and execute swaps in the future. . . .”⁸

Additionally, in explaining why it would be “inappropriate to disregard swaps executed on exchanges in order . . . to encourage market participants to use, or to provide liquidity to, exchanges,”⁹ the Commission stated that “the structures of the markets on which swaps will be executed are still in development, and market obligations have not been established.”¹⁰ Yet, SEFs have been operational for five years now, so the uncertainty that was the basis for the Commission’s decision not to exclude such swaps is no longer relevant.

What experience over the past five years has demonstrated is that Permitted Swaps represent a small portion of SEF activity.¹¹ Accordingly, excepting Permitted Swaps would not result in a significant change in the number of registered swap dealers. Nor would it result in a material change in “Regulatory Coverage” as defined in the Proposed Rule (*i.e.*, the extent to

⁷ Dis-incentivizing two-sided trading is detrimental to the marketplace because such trading would encourage alternative forms of price formation and greater diversity of participation in electronic markets.

⁸ Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 Fed. Reg. at 30610.

⁹ *Id.*

¹⁰ *Id.* at n.200.

¹¹ The vast majority of SEF-executed trades are interest rate swaps. See FIA SEF Tracker, *SEF Tracker In-Depth*, available at <https://fia.org/node/1834/>. These are almost entirely Required Swaps that are centrally cleared. See White Paper at 7 (“According to data collected by the CFTC on U.S. reporting entities, about 85% of both new interest rate swaps and new credit default swaps were cleared in 2017.”).

which the swap market is subject to swap dealer regulation because at least one counterparty to a swap is a registered swap dealer). As explained in the Proposed Rule, even increasing the *de minimis* threshold to \$50 billion or \$100 billion in aggregate gross notional amount would have a minimal impact on Regulatory Coverage;¹² excepting the small percentage of the overall SEF market that consists of Permitted Swaps would likely have an even smaller impact.

As a result, excepting these swaps from *de minimis* calculations would have a minimal impact on the extent to which capital and margin requirements apply to Permitted Swaps (*i.e.*, because such requirements apply if one of the counterparties is a registered swap dealer). Importantly, many of the other policy objectives underlying swap dealer registration also are satisfied with respect to Permitted Swaps. In such trades, the SEF satisfies the reporting, documentation and business conduct standards requirements that would otherwise be applicable to a swap dealer. In addition, SEFs afford market participants many types of counterparty protections akin to those provided by swap dealer regulations. For example, SEFs monitor trading activity and investigate (among other things) off-market pricing that could be indicative of unfair trading practices. SEFs provide market participants with easy access to multiple liquidity providers and the ability to see multiple prices, thereby reducing the potential for unfair trading practices in the first place. And SEFs ensure that their participants or members are financially sound, and require notifications from market participants after and leading up to certain default events.

Thus, excepting Permitted Swaps executed on SEFs from *de minimis* calculations would not adversely impact the policy objectives underlying the Commission's swap dealer regulations.

To account for the possibility that an exception for SEF-traded swaps could result in entities that engage in a significant amount of swap dealing activity on SEFs not having to register as swap dealers, the Proposed Rule seeks comment on whether it would be appropriate to: (i) establish a notional "backstop" above which an entity must register; or (ii) apply a haircut to notional amounts of SEF-traded and/or cleared swaps.¹³ These measures would yield little regulatory benefit with respect to Permitted Swaps, given their limited share of the SEF market. They would, however, add complexity, continue to impede the development of liquidity and trading volume on these platforms, and negate the benefits of the exception from *de minimis* calculations discussed above. Accordingly, the Commission should except Permitted Swaps executed on SEFs from swap dealer *de minimis* calculations without limiting the exception through a notional backstop or haircut requirements.¹⁴

¹² See Proposed Rule, 83 Fed. Reg. at 27454 (showing Regulatory Coverage of 99.95% at \$8 billion, and 99.88% at \$100 billion, measured by aggregate gross notional amount).

¹³ See Proposed Rule, 83 Fed. Reg. at 27469.

¹⁴ Similarly, we appreciate the temptation to limit any exception for SEF-traded swaps to those that are anonymously executed, since the external business conduct standards for registered swap dealers are inapplicable in these circumstances. As demonstrated in the above text, however, even aside from external business conduct standards, Permitted Swaps satisfy other policy objectives underlying swap dealer regulation. Therefore, a limitation to anonymously executed swaps is not warranted.



V. Conclusion

For all the foregoing reasons, TR SEF respectfully requests that the Commission establish an exception from *de minimis* calculations for Permitted Swaps executed on SEFs.

TR SEF appreciates the opportunity to provide the Commission and Staff with its perspective on the Proposed Rule. If you have any questions regarding our comments, please contact the undersigned at (202) 572-0198.

Respectfully submitted,

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