



August 13, 2018

Via Electronic Submission: <https://comments.cftc.gov>

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

Re: De Minimis Exception to the Swap Dealer Definition (RIN Number 3038-AE68)

Dear Mr. Kirkpatrick:

Managed Funds Association (“MFA”)¹ welcomes the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) notice of proposed rulemaking on the “De Minimis Exception to the Swap Dealer Definition” (“Proposed Rules”).² The U.S. derivatives markets are important to the investment and hedging strategies of MFA members, and thus, we are strong proponents of Commission efforts to streamline existing swap requirements as well as increase competition, liquidity, and efficiency in these markets. To further these goals, and to respond to the Commission’s and Chairman Giancarlo’s direct inquiries,³ we support and respectfully request that in the final rules the Commission exclude all cleared swaps from the calculation of aggregate gross notional amount for purposes of the *de minimis* threshold.

MFA’s members are active participants in the cleared swaps market, and we believe that the exclusion of all cleared swaps from the *de minimis* threshold calculation would be beneficial to

¹ Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policymakers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

² 83 FR 27444 (June 12, 2018), available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-06-12/pdf/2018-12362.pdf> (“Proposed Rule Release”).

³ See Proposed Rule Release at 27444, 27466, and 27468-70, where the Commission seeks additional comment on excepting from consideration when calculating the aggregate gross notional amount for purposes of the *de minimis* threshold swaps that are exchange-traded and/or cleared. See also *id.* at 27480, where Chairman Giancarlo similarly raises the question of, and indicates possible support for, excluding cleared swaps from counting towards the registration threshold.

central clearing,⁴ a key mandate of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”).⁵ Since implementation of the Commission’s clearing mandate for swaps, we believe that there has been clear evidence of the risk reduction benefits of central clearing. However, we believe the Commission’s current *de minimis* exception to swap dealer (“**SD**”) may be constraining liquidity in the cleared swaps markets. Specifically, potential new entrants may avoid making markets in cleared swaps, while existing market participants may curtail their swaps trading activity to stay below the *de minimis* threshold and avoid SD registration.

MFA believes that the Commission’s SD registration requirements could reduce such behavior by simultaneously recognizing the risk-reducing benefits of, and encouraging greater, central clearing. Crossing the SD registration threshold, in part, is an indication that a dealer’s swap trading activities are of such a level that the Commission needs to subject the dealer to registration and additional regulatory requirements and oversight. However, because central clearing is beneficial to the financial system and cleared swaps pose little or no systemic risk, a dealer’s cleared swaps trading activity is not indicative of risky activity that necessitates special Commission oversight. Rather, it is trading activity that the Commission has been, and should continue to, encourage. Therefore, excluding cleared swaps from the *de minimis* threshold calculation would be in support of Dodd-Frank central clearing goals by increasing the number of available cleared swap counterparties, which should in turn increase competition, improve liquidity, and drive narrower bid/offer spreads.

In addition, to address a related question raised by the Commission in the Proposed Rule Release,⁶ MFA does not believe that excluding cleared swaps from the *de minimis* threshold calculation (and thus, potentially reducing the number of registered SDs) would be harmful to the market or increase systemic risk. As discussed above, central clearing reduces systemic risk and is beneficial to the market. In addition, as the Commission acknowledges, systemic risk concerns related to SD regulation are reduced for cleared swaps “because risk management is handled centrally by the [derivatives clearing organization]”.⁷ The Commission’s concern about having fewer registered SDs is also mitigated by the fact that the impact of the change is more likely to lead to new entrants marking markets in cleared swaps than to lead existing SDs to deregister (as existing SDs largely transact in both cleared and uncleared swaps).

MFA appreciates the Commission’s thoughtful consideration of whether to exclude all cleared swaps from the *de minimis* threshold calculation. As discussed above, we strongly believe that permitting such an exclusion will improve the swap markets and will not reduce the Commission’s

⁴ See Proposed Rule Release at 27468, where the Commission expresses its belief that excluding centrally cleared swaps from the calculation could encourage more central clearing.

⁵ Pub.L. 111–203, 124 Stat. 1376–2223, available at: <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>

⁶ See Proposed Rule Release at 27469, welcoming comments on the question of “[h]ow would an exception for cleared swaps from a person’s *de minimis* calculation impact the policy considerations underlying SD regulation and the *de minimis* exception?”

⁷ *Id.* at. 27468.

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ability to regulate and oversee important swap market participants. As a result, we support the Commission incorporating such an exclusion into the final *de minimis* threshold calculation.

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MFA thanks the Commission for considering our views on the Proposed Rules. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact the undersigned or MFA at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Carlotta D. King

Carlotta D. King
Associate General Counsel
Managed Funds Association