Commodity Futures Trading Commission
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Swap Dealer *De Minimis* Exception Preliminary Report

Staff from the Division of Swap Dealer and Intermediary Oversight and the Office of the Chief Economist of the U.S. Commodity Futures Trading Commission (Commission) is issuing a swap dealer *de minimis* exception preliminary report (Preliminary Report).

Overview of the Preliminary Report

The Preliminary Report is prepared pursuant to Regulation 1.3(ggg)(4)(ii)(B), which directs staff to publish for public comment a report that analyzes swap data to assess the *de minimis* exception. Market participants who exceed $8 billion in gross notional swap dealing activity over a twelve-month period are required to register with the Commission as swap dealers during the phase-in period currently in effect. This phase-in period is scheduled to end, and the threshold will fall to $3 billion, in December 2017, unless the Commission takes action to amend Regulation 1.3(ggg)(4)(i).

Swap dealers must comply with a variety of regulations designed to reduce systemic risk, increase customer protections, and promote market integrity within the financial system. These regulations include requirements applicable to internal and external business conduct, reporting and recordkeeping, risk management, and chief compliance officer designation and responsibilities. Today, more than 100 swap dealers are provisionally registered with the Commission.

The Preliminary Report has five sections. Sections I and II provide an overview of the Preliminary Report and the statutory and regulatory provisions relevant to the *de minimis* exception. Section III discusses the data available, the methodology for analyzing the data, and certain observations from this analysis. Section IV discusses the policy considerations underlying swap dealer regulation and the *de minimis* exception.

Section V considers the data in light of the current $8 billion *de minimis* threshold, the potential effects of raising or lowering the threshold, and several possible alternatives to the current *de minimis* exception. The alternative approaches considered are largely derived from alternatives considered during the swap dealer definition rulemaking process as well as staff's observations from the data analysis. The following alternatives are discussed: (1) a notional *de minimis* threshold specific to each asset class; (2) a multi-factor approach that would potentially include counterparty count and/or transaction count metrics in the *de minimis* exception, in addition to a gross notional dealing threshold; (3) a multi-tiered approach where the regulatory requirements associated with swap dealer registration are commensurate with an entity's level of dealing activity; and (4) the exclusion from an entity's *de minimis* calculation of swaps that are traded on a registered or exempted swap execution facility or designated contract market and/or cleared.

The report is preliminary in nature and does not make recommendations to the Commission on the appropriate *de minimis* level or alternatives to the current *de minimis* exception. Rather, the Preliminary Report uses the extensive data available since swap transaction reporting requirements were implemented pursuant to the Dodd-Frank Act to further explore the general policy issues that may be relevant for additional analysis of the *de minimis* exception. The report is designed to seek public comment and to consider those comments before making a final report to the Commission.