September 21, 2017

BY ELECTRONIC SUBMISSION

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
Via Electronic Submission:
http://comments.cftc.gov

Re: ***Commodity Futures Trading Commission Request for Public Input to Make Regulation(s) Simpler, less burdensome, and less costly (Project Kiss)***

Dear Mr. Kirkpatrick:

The Northern Trust Company ("Northern Trust") greatly appreciates the opportunity to provide suggestion and comment to the Commodity Futures Trading Commission ("CFTC" or "Commission") as it strives to apply existing rules and regulations in a "simpler, less burdensome, and less costly manner."[1] We support the Commission's willingness to reevaluate certain rules and regulations, particularly those which "impose costs that exceed benefits"[2] and that are often inappropriately tailored to certain market participants.[3]

The passage of The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), including Title VII, created several registrant categories (e.g. swap dealer registration) which effectively serve as the linchpin to swaps regulatory reform in the United States. Given the opaque nature of the swaps markets throughout the financial crisis and in its aftermath, the swap dealer registration category was understandably created on the basis of minimal market and trade data. Consequently, the swap dealer registrant category is inappropriately tailored and, as a result, applies the same regulatory requirements to small or mid-size swap dealers as it does to systemically important banks/financial institutions known to be both highly interconnected and concentrated in their exposures. Of the potentially 145 registered swap dealers trading in credit default swaps ("CDS") and interest rate swaps ("IRS"), the largest 62 enter into approximately 98.5% of aggregate notional activity.[4] Similarly, an estimated 98% of all CDS and IRS transactions are entered into with a registered swap dealer.[5] The swap dealer registration category has resulted in oversight of the swaps markets that is over-inclusive, imposing significant additional costs on small or mid-size market participants presenting less risk to the broader marketplace. Additionally, the

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[1] 82 Fed. Reg. at 23,765.
[2] 82 Fed. Reg. 12,285
[3] *See* Executive Order 13772, Core Principle (f).
[4] *See* "Swap Dealer De Minimis Exception Final Staff report," a report by Staff of the U.S. Commodity Futures Trading Commission pursuant to Regulation 1.3(ggg), p. 21.
[5] Id. at 22.

Commission's resources are at risk of being inefficiently deployed as more than half of the registered swap dealers enter into only roughly 1% of all swaps activity.[6]

In order to more appropriately tailor the swap dealer registrant category, improve regulatory impact and cost efficiency, and lower compliance and transactional costs for small to mid-size swap dealers, we submit the following suggestions for consideration:

- ***Prioritize consideration of limited purpose swap dealer designation applications submitted by any registered dealer entering into minimal notional volumes across two or fewer product classes.*** Existing statutory authority and previous rulemakings, provide the Commission with the authority to exercise its judgment when determining whether a swap dealer should remain registered. For example, the Commodity Exchange Act provides, "A person may be designated as a Swap Dealer for a single type or single class or category of swap or activities and considered not to be a Swap Dealer for other types, classes…"[7] In addition to creating the permissible exemption of certain swaps or products, the Commission has found that a limited purpose designee "could be a particular business unit *within a company*."[8]

- ***Expand the exclusion for swaps made in connection with loans issued by Insured Depository Institutions ("IDI Exclusion").***[9] Among other parameters required to satisfy the IDI Exclusion is the requirement that a swap be entered into with the customer "between 90 days before and up to 180 days after execution of the loan agreement..." In establishing this requirement, the Commission noted that it was necessary to "maintain a flexible approach while reducing the risk of evasion."[10] A market participant's sound risk management practices may require more than 180 days for swap execution. For example, a customer entering into a variable rate loan prior to December 2015 is likely to have taken comfort in a steady interest rate environment, opting not to hedge unforeseen interest rate exposure. However, in light of the current U.S. interest rate environment, the same customer may seek to execute a floating-to-fixed interest rate swap well beyond the 180 day cut-off. We recommend adopting a more flexible, accommodative approach that contemplates the sound risk management practices of end-users. Even with a more flexible approach, swap dealer market concentration will result in a substantial percentage of swaps being captured by Title VII requirements, thereby reducing the risk of evasion.

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[6] It is worth noting that the Commission deems a <1% difference in additional "captured" notional volumes as between the current $8 billion de minimis threshold and a reduced $3 billion threshold as "insignificant additional regulatory coverage". However, the difference between applying the current $8 billion *de minimis* threshold and a hypothetical $15 billion threshold is only slightly greater than 1% (in notional volume).

[7] Commodity Exchange Act § 1a(49).

[8] 77 Fed. Reg. at 30,646.

[9] *See generally*, 17 CFR 1.3(ggg).

[10] 77 Fed. Reg. at 30622.

- ***Revisit the "Swap Dealer de Minimis Exception Report" by further analyzing the exemption of swaps traded on a SEF/DCM from inclusion into the 'de minimis' threshold.***[11] Concerns and comments of market participants relating to this issue were thoroughly addressed in the final staff report issued by the Commission on August 15, 2016. The Commission left open the possibility of revisiting this issue and we encourage the Commission to re-examine the issue in light of implementation of the uncleared margin rules and the maturing clearing mandates.

Taking any of the above actions would not be without precedent given recent efforts by U.S. regulators to narrow the applicability of certain Dodd-Frank reforms to entities not considered to be systemically important. Notably, the Federal Reserve Board recently exempted "large and noncomplex" firms from the qualitative assessment of its Comprehensive Capital Analysis and Review, as well as other requirements, an action which reduces "significant burden on these firms…and [focuses] on the largest, most complex financial institutions."[12] If acted upon, these suggestions would tailor regulation and enable the Commission to direct resources towards those market participants presenting the most risk. For those market participants able to de-register as swap dealers, any financial entity organized in the U.S. would still be subject to clearing, margin, trade reporting, and various other CFTC regulations.

Northern Trust respectfully requests the Commission's careful consideration of the suggestions made herein. Please feel free to contact Ryan Hayden at rph1@ntrs.com or (312) 444-3285, or Neville Hedley at nh75@ntrs.com or (312) 557-9375, to discuss these matters in further detail.

Respectfully Submitted,

Neville S. Hedley
Senior Vice President
Compliance Manager & Chief Compliance Officer Swaps

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[11] "Swap Dealer de Minimis Report" at p.25.
[12] Federal Reserve Board press release, here: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20170130a.htm.