One M&T Plaza, Buffalo, NY 14203

August 8, 2018

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

Via Electronic Mail

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

Dear Mr. Kirkpatrick:

Manufacturers and Traders Trust Company, Buffalo, New York ("M&T")[1], welcomes the opportunity to submit these comments in response to the proposed rulemaking of the Commodity Futures Trading Commission (the "CFTC") to amend the definition of "swap dealer" under the Commodity Exchange Act (the "CEA"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). 17 CFR Part 1, RIN 3038_AE68 De Minimis Exception to the Swap Dealer Definition (the "Proposal").[2]

M&T supports the CFTC's Proposal to set the *de minimis* threshold for swap dealer registration at $8 Billion of gross notional in swap dealing activity entered into over the preceding twelve months. As the CFTC noted in the Proposal, the current $8 billion threshold already subjects the vast majority of transactions to swap dealer regulation and allowing the $8 billion threshold to decrease to $3 billion could result in decreased liquidity in certain markets. Finally, maintaining the status quo $8 billion *de minimis* threshold would enhance certainty by providing long-term regulatory stability.

In addition, as discussed below, M&T supports and endorses the proposal to except from the *de minimis* calculation loan-related swaps with insured depository institutions ("IDIs") that meet a less restrictive set of requirements than the paragraph (5) IDI exclusion. (the "IDI *De Minimis* Provision*")*. Our responses to certain of the CFTC questions are set forth below.

Based on the data and related policy considerations, is the proposed IDI De Minimis Provision appropriate?

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1 Principal subsidiary of M&T Bank Corporation (NYSE Symbol:MTB). A bank holding company headquartered in Buffalo, New York, which had assets of approximately $118 billion as of June 30, 2018.
2 83 Fed. Reg. 27444 (June 12, 2018).

M&T supports the proposed IDI *De Minimis* Provision because it better aligns the regulatory framework with the risk mitigation demands of our bank customers: (1) to hedge their loan interest rate risk at any time during the lifetime of a loan using interest rate swaps; (2) to hedge such risk in connection with credit financings that include loans, credit enhanced bonds, letters of credit, leases, revolving credit and other credit facilities; and (3) to hedge such risk that is anticipated to arise in the future beyond an arbitrary 90-day limit when the anticipated need is documented.

As M&T has commented previously, commercial borrowers expect, as part of the loan origination process *and at any time during the lifetime of a loan,* to be able to (and are frequently required to under the terms of the loan) enter into interest rate swaps with their bank lenders and expect banks, non-dealer IDIs, to hedge their loan interest rate risk with their bank lenders.[3] By removing the arbitrary time period around origination within which a non-dealer IDI must enter into an interest rate swap with a commercial borrower, the non-dealer IDI will have the flexibility to accommodate its customers in connection with the loan transaction.

How will the proposed IDI De Minimis Provision impact IDIs who enter into swaps with customers in connection with loans? Will IDIs enter into more swaps with loan customers as a result of the proposed IDI De Minimis Provision?

By clarifying additional factors in determining those swaps that may be excluded from the de minimis calculation, the proposed IDI *De Minimis* Provision should facilitate additional hedging on the part of IDIs to meet loan customer demand. In particular, the proposed IDI *De Minimis* Provision provides additional clarification that hedging of credit financings including, leases, letters of credit, bank-qualified tax exempt loans and credit enhanced bonds need not be counted against the *De Minimis* threshold. This clarification should result in IDIs entering into more swaps with loan customers, as is intended by this Proposal.

If the underlying loan is called, put, accelerated, or if it goes into default before the scheduled termination date, should the related swap be required to be terminated to remain eligible for the IDI De Minimis Provision?

When the underlying credit financing that is hedged with the interest rate swap is terminated, it is common practice that such event triggers the termination of the swap.

Are there circumstances that can be anticipated at the time of loan origination that would support permitting the termination date of the swap to extend beyond termination of the loan?

3 ***See*** M&T Bank Comment Letter dated January 13, 2016, Swap Dealer *De Minimis* Exception Preliminary Report dated November 18, 2015.

Yes, there are many examples of loans that may be extended in this manner —e.g., construction, bridge loans, credit lines, revolving credits, variable rate demand bonds, bank qualified and non-bank qualified bonds with call dates set prior to the bonds' maturity date. Loan customers may request the interest rate swap that hedges such credit financings extend to an anticipated maturity date that extends beyond the hedged loan's or bond's stated maturity date.

Does the provision in proposed paragraph (4)(i)(c)(1) referencing "executed commitment" or "forward agreement" sufficiently reflect market practice regarding how swaps may be entered into in connection with a loan in advance of the loan being executed?

Yes.

Is it common for an IDI to have as low as five percent participation in a syndicated loan and also provide swaps in connection with the loan?

No. In our experience the administrative agent and lenders holding larger shares in the credit facility tend to also be the swap providers.

Is it common for the AGNA of loan-related swaps to exceed the outstanding principal amount of the loan? In what circumstances?

This circumstance could arise in construction lending when the project had not advanced sufficiently such that the loan was fully funded, yet the loan had been hedged with a forward-starting or accreting interest rate swap having a notional amount that anticipated the future and higher loan balance.

If an IDI would have to register as an SD but for the IDI De Minimis Provision, should that IDI be required to provide notice to the Commission, Commission staff, of the National Futures Association? Alternatively, to utilize the proposed IDI De Minimis Provision, should IDIs be required to directly reference the related loan in the written swap confirmation?

M&T respectfully submits that the CFTC should not impose any prior notice requirement or other conditions on the ability of non-dealer IDIs to rely on the proposed IDI *De Minimis* Provision. The IDI *De Minimis* Provision is intended to allow limited ancillary dealing to accommodate an institution's existing clients that have a need for swaps (on a limited basis). In addition, it is intended to promote competition by allowing a person to engage in limited swap dealing activity without immediately incurring the regulatory costs associated with swap dealer registration. Imposing any regulatory requirements for use of the IDI *De Minimis* Provision would be contrary to these intentions.

We appreciate your consideration of our comments. If you have any questions about this letter, or about any of the issues raised by our views, please do not hesitate to call the undersigned at (716) 842-5373.

Sincerely,

Douglas A. Sheline
Senior Vice President and
Assistant Treasurer