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COMMENT

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Commodity Futures Trading Commission
Three Lafayette Center
1155 Twenty First Street, N.W.
Washington, D.C. 20581

Attention: Office of the Secretariat

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DNI Holdings, Inc. ("DNI") is pleased to offer its comments on the proposed Commodity Futures Trading Commission (the "Commission") rulemaking referred to as "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations" (the "MTEF Rulemaking"). DNI is the developer, owner and operator of the first electronic system for the negotiation of those derivatives commonly referred to as "swaps".

DNI has followed the tremendous evolution over the past year in the Commission's thinking with respect to its own regulatory mission. DNI commends the Commission and its staff on recognizing that the businesses that the Commission regulates and the national interests that those businesses serve will in turn best be served by a closely focused, policy-based approach to regulation. The MTEF Rulemaking represents such an approach.

112 South Tryon St., 18th fl. Charlotte, NC 28284
T 704 944 4760 F 704 944 4770

In one respect that is particularly relevant to swaps, however, DNI is concerned that the MTEF Rulemaking will not meet its stated goal, to "promote innovation, maintain U.S. competitiveness and at the same time reduce systemic risk and protect customers". The problem is in the definition of "multilateral transaction execution facility" itself.

The term "multilateral transaction execution facility" ("MTEF") was created in the Swaps Exemption promulgated by the Commission in 1993. The Release accompanying the Swaps Exemption explained that an MTEF is a facility in which "all" participants have the ability to execute transactions by accepting offers made by one and open to "all". 58 FR 5587, 5591 (January 22, 1993). The present MTEF Rulemaking, however, would define an MTEF as a facility in which participants may accept offers made by one participant and open to "multiple" participants.

This new definition of MTEF constitutes an expansive declaration by the Commission of its potential jurisdiction over a broader range of facilities than ever before. Although this declaration is mitigated by the Commission's express statement that it is not making any determination that any "market" eligible to be an MTEF is or is not subject to the Commission's jurisdiction,

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65 FR 38986, 38989, (June 22, 2000), any business within the scope of the definition will have to give serious thought to its jurisdictional status. These businesses may suffer the effects of the same sort of uncertainty as has periodically plagued swaps businesses.

Although the new, expansive MTEF definition proposed by the Commission is the gate-keeper concept for the entire MTEF Rulemaking, it is relieved by only three narrow exclusions. These exclusions may have had meaning in past (now largely historical) debates of jurisdictional limits, but these exclusions are likely to be of limited utility given the swift march of technological progress.

The first of the exclusions is for services that allow negotiation - but not execution - on the facility. In view of the rapid movement to full-service electronic trading platforms overseas, it is impossible to imagine that U.S. parties will long tolerate the inefficiencies of limited-use systems, such as those eligible for this first exclusion.

The second exclusion is for transactions resulting "from the content of bilateral communications exchanged by the parties and not by the interaction of multiple orders within a predetermined, non-discretionary automated trade matching algorithm". Unfortunately, the language of this exclusion may perpetuate exactly the kind of ambiguity that both the Commission and Congress are trying to eradicate. It will leave the Commission with the continuing burden of defining the new jurisdictional concept of "multiple orders . . . within a predetermined . . . algorithm." That burden will be heavy from the outset and will rapidly become very difficult, given that the basic thrust of the new electronic technology is to perfect computer systems that can recognize and respond appropriately, even flexibly, to the interaction of increasingly complex sets of variables. In fact, the second exclusion read narrowly would protect only the simplest existing electronic systems.

The third and final exclusion is for single market-maker systems. This exclusion, like the two discussed above, may have some meaning now, in these early days of electronic system development and use. Over the long term, however, it seems unlikely that sophisticated U.S. participants will accept being required to use multiple systems and screens if they wish to access multiple market makers.

DNI is concerned that the exclusions from the definition of MTEF are ambiguous or almost out-dated at inception despite the benign nature of the exemptive regulation that the Commission proposes in the MTEF

Rulemaking. Continuing risk from a complex overlay of agency mandates and ambiguous, perhaps inconsistent, regulatory initiatives has been a hallmark of the U.S. swaps business environment, especially when viewed from overseas. DNI is hopeful that the Commission will take steps now to change the definitional structure in its proposed rules so as to depart from this inhibiting tradition.

The Commission might accomplish this goal, of course, by returning to the Swaps Exemption definition of MTEF. DNI recognizes, however, that the new, expansive definition is woven through the proposed regulations, including those portions dealing with derivatives transaction facilities and registered futures exchanges. Instead of proposing a sweeping change and the thorough re-examination of the proposed regulations it would require, DNI suggests that the Commission simply consider further exclusions from the proposed MTEF designation. For example, DNI would urge the Commission to add a fourth exclusion to the MTEF definition for systems that incorporate credit screens that effectively require that each participant make a credit judgment with respect to the others. This credit emphasis has always been a characteristic of swaps transactions, but has never been a characteristic of the futures exchanges. The following language would be sufficient:

> (iv) any electronic communication system that enables participants to enter into bilateral transactions with other participants and that incorporates credit screens or filters that prevent any participant from executing a transaction with another participant unless both participants have approved the extension of credit to the other.

DNI believes that adding the foregoing exclusion would do much to instill in the proposed regulation badly needed flexibility to accommodate developing technology. DNI also believes that such an exclusion is consistent with the policy goals the Commission seeks to fulfill, as well as with the flexible, forward-looking approach that the Commission is so wisely taking.

DNI would be delighted to discuss the foregoing with the Commission and its staff, and to help in any way with development of the new regulatory framework.

Sincerely yours,

Shawn A. Dorsch
President and COO
DNI Holdings, Inc.