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September 20, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-16-10 - Advance Notice of Proposed Rulemaking; Request for Comments: Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (75 Fed. Reg. 51429)

Dear Mr. Stawick and Ms. Murphy:

Primus Guaranty Ltd. and Quadrant Structured Investment Advisers, LLC, hereafter referred to as "the Companies", respectfully submit the following response to the request for comments to help inform the Commissions' rulemaking on some of the definitions set forth in Title VII of the Dodd-Frank Act of 2010. The Companies are credit derivative product companies.

About Credit Derivative Product Companies (CDPCs)

The function and operations of CDPCs significantly differ from those of dealers or other over-the-counter derivatives counterparties. First, CDPCs were established to specialize in selling credit risk protection in the form of credit default swap ("CDS") contracts; they are not and have never been derivatives dealers or market-makers. These swap contracts offer protections against the risk of default on the obligations of individual corporate or sovereign debtors (each, a "reference entity") and/or on diversified pools of credit (consisting of the obligations of well over 50 reference entities).

As a result, CDPCs are "long" credit risk. They are long-term investors in credit and generally employ a "buy-and-hold" investment approach. Dealers, on the other hand, generally run risk-neutral trading books. Their focus is mostly short-term and trading oriented.

The first CDPC began operation in 2002. Since then, the Companies and other CDPCs have raised significant amounts of equity and debt capital from institutional investors. Today there are fewer than 10 CDPCs with an approximate total of $100 billion notional amount of credit default swaps outstanding.

The CDPC Business Model

In several important ways, the CDPC business model is unique in the financial industry. CDPCs generally adhere to well-defined capital and operating guidelines. Tested on a daily basis, these guidelines mandate parameters for capital adequacy, leverage, risk exposure and diversification, among other things, and provide counterparties with the protection that collateral or margining otherwise would. These factors establish CDPCs as stable, creditworthy counterparties to protection buyers.

An essential part of CDPC's operating guidelines and their CDS contracts is the restriction placed on them with regard to posting collateral or margin. Specifically, CDPCs are contractually prohibited from posting collateral with counterparties. These terms are incorporated in the contracts that CDPCs have with their counterparties and were an important feature in raising equity and debt from the capital markets. Therefore, CDPCs do not have collateral (margin) call risk, the type of risk that led to the collapse and ultimate bailout of AIG. It is worth noting that the lack of such collateral triggers contributed to the stability of the CDPC industry throughout the crisis.

CDPCs Today

The financial crisis that began in 2008 led to changes in how CDPCs operate. While most counterparties had previously accepted the CDPC business model, over the past two years, virtually all major financial institutions have required their other counterparties (i.e. non-CDPCs) to post collateral, irrespective of their actual creditworthiness and agreed upon safeguards.

As a result of the change in counterparty requirements with regard to collateralization, CDPCs have stopped writing new business. They are essentially in wind-down, in which a CDPC's portfolio will naturally run-off over time as their contracts reach maturity.

CDPCs, however, do continue to function, and their swap contracts remain in force. CDPCs continue to receive premiums for their swap contracts and they pay counterparties the required amounts if a credit event occurs and triggers a payment obligation under their swap contracts. CDPCs are required to, and do, maintain pre-agreed upon capital against the contingent liabilities of their CDS portfolios. They maintain staffs and offices and compensate employees.

It is also important to realize that because of the strength of the CDPC business model, no counterparties have lost money due to a CDPC's inability to make a payment under the terms of a CDS, and no federal or state bailout of any CDPC has been required. Moreover, many CDPCs have recently been restructuring and re-positioning their swap portfolios, in some cases effectively recollateralizing them, in order to minimize the probability that they will not be able to pay a claim if and when it comes due.

Turning to the specifics of the Dodd-Frank Act, we seek the following definition clarifications:

"Security-Based Swap"

Section 761(a)(6) defines a "Security-Based Swap" in part as a swap that is based on "an index that is a narrowly-based security index, including any interest therein or on the value thereof;". The Commodity Exchange Act provides a definition for a "narrow-based security index." In the context of credit default swaps, the definitions need to be written in such a way to reflect the letter and the spirit of the definition provided in the CEA and to make clear that CDS indices that reference multiple corporate entities (i.e. in excess of nine entities) are not Security-Based Swaps. The regulations should also make clear that tranched CDS that are based on a pool of entities greater than nine in number that would, if formalized as an index, not be considered a "narrow-based index" under the definition provided for such term in 7 USC 1a(25) should not be defined as a Security-Based Swap.

"Major Swap Participant" and "Major Security-Based Swap Participant"

The legislative history of the Dodd-Frank Act pertaining to the establishment of a category of Major Swap Participant demonstrates that the intent behind the creation of such a regulatory designation is to apply heightened prudential regulatory oversight to a limited number of derivatives markets participants that are not intermediaries (i.e. dealers) but who, nevertheless, could pose a systemic risk by virtue of their positions in their respective derivatives markets. On the other hand, CDPCs are not active participants in the derivatives market (in fact, they have not written any new swaps since 2008 and are in run-off) and do not pose any systemic risk to the market.

"Highly Leveraged" Financial Entities

The definitional criteria for an MSP under Subsection (iii) related to financial entities that are "highly leveraged" leaves a great deal of subjectivity in the hands of regulators and gives industry little certainty going into the rulemaking process. The regulators should take great care in crafting the definitions in these Subsections that contemplate leverage in terms of the actual risk assumed by the entity and not some broad stroke leverage threshold for the MSP designation.

Effects of MSP Designation on CDPCs

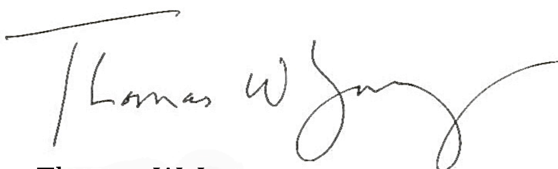
If regulators create a definition that results in a CDPC being designated as an MSP, that designation effectively results in the MSP being regulated like a dealer. An MSP designation by the CFTC results in heightened prudential regulation. This prudential regulation includes capital and margin requirements, business conduct rules, registration, and enhanced record keeping and reporting requirements.

As explained in our description of the CDPC industry above, the derivatives portfolio of the Companies are in run-off; CDPC's have not written any new swaps since 2008, at the latest. However, the Companies continue to collect premiums and pay claims when required on their existing swap portfolios. The economics of these contracts were based on the business model described above and without any of the regulatory requirements contemplated under the Dodd-Frank Act. Additional costs associated with the increased regulatory requirements of the MSP designation, particularly the potential for capital and/or margin on the existing derivatives portfolio, significantly alters the economics of the transactions and the legal certainty of its existing contracts. As the Companies are in run-off, their capacity to raise capital to pay for additional costs over the capital already reserved to pay claims is extremely limited at best.

"Substantial Position" under the MSP and MSBSP Definitions

The regulators are instructed to define Substantial Position as necessary to establish effective oversight of entities that are "systemically important" or can "significantly impact the financial system of the United States." The Companies believe that this definition should account for the size of an entity's derivatives portfolio relative to the market in which it participates. Given that CDPCs are in run-off, the Companies feel they should not be viewed as either systemically significant or significant to the financial system. As explained below, more market disruption and less certainty about the risk associated with CDPCs would be created from such a designation than simply allowing the CDPC portfolios to run-off. Regulators can achieve effective oversight of the CDPCs through the other tools provided in the Dodd-Frank Act (such as data repository reporting and enhanced enforcement authority) without crafting a definition for Substantial Position that captures too broad a universe of entities.

Sincerely,



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