

January 31, 2011

Mr. Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Ms. Mary L. Schapiro
Chairwoman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Section H.5 (“Additional Interpretive Issues – Legacy Portfolios”) of Release Number 34-63452, File Number S7-39-10 Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”

Dear Chairman Gensler, Chairwoman Schapiro, and Members of the Commission:

Primus Financial Products, LLC, Quadrant Structured Investment Advisers, LLC and Invicta Advisors LLC, hereafter referred to as “the companies,” respectfully submit the following response to Section H.5 (“Additional Interpretive Issues – Legacy Portfolios”) of Release No. 34-63452, File No. S7-39-10. The companies are credit derivative product companies (or “CDPCs”).

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) is, by its nature, complex and covers a wide range of business and financial activities. However, the complexity and breadth of the law may lead to unintended consequences. This letter seeks to address a small group of entities (less than 10), called CDPCs, who could be impacted unnecessarily in unintended ways by the Dodd-Frank Act unless afforded an appropriate exclusion from the definition of Major Swap Participant or Major Securities-Based Swap Participant under the law.

About Credit Derivative Product Companies (CDPCs)

CDPCs were established several years ago as limited purpose companies that sold credit default protection in the form of credit default swaps to predominately large financial institutions (mainly sophisticated, international banks, referred to as “counterparties”). These swaps provide protection against the risk of default on single-name corporate entities and on tranches referencing diversified portfolios of corporate entities. CDPCs analyzed and assessed the credit

risk of each swap contract, negotiated terms with counterparties, and receive premiums over the life of the swap in return for providing credit default protection.

The CDPC Business Model

In several important ways, the CDPC business model is unique in the financial industry. As a general rule, CDPCs adhere to well-defined operating guidelines and capital requirements. A standardized model (“Capital Model”) determines minimum capital requirements based on the exact risks of the credit swap portfolio. The Capital Model factors in the fundamental credit risk of the underlying portfolio, diversity, and the term of each contract. The Capital Model is run on a daily basis to verify capital adequacy (i.e. creditworthiness) and the operating guidelines dictate leverage constraints, risk exposure and diversification, among other things. These strict parameters and limitations provide counterparties with the protection that would otherwise be provided by collateral or margining.

An essential part of a CDPC’s operating guidelines and the CDS contracts signed with their counterparties is the restriction placed on them with regard to posting collateral or margin. Specifically, CDPCs are *contractually prohibited* from posting collateral with counterparties and, as a result, were paid lower premiums for the risk they assumed. These terms were explicit in the swap agreements between CDPCs and their counterparties and were an important feature in being able to raise equity and debt in the capital markets to fund their operations. It is worth noting that the absence of such collateral requirements contributed to the stability of the CDPC industry throughout the financial crisis of 2008-2009.

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 curtailed their credit swap businesses and required their counterparties to post collateral, irrespective of counterparty creditworthiness or credit rating.

As a result of the change in counterparty requirements regarding collateralization, CDPCs have been unable to write new business. So, for the last two years, CDPCs have been simply running-off their legacy swap portfolios (i.e. letting swap contracts mature over time and not transacting any new business).

Nevertheless, CDPCs continue to function. They receive premiums for their swap contracts which remain in-force. They pay counterparties the required amounts if a credit event occurs within their portfolios. CDPCs continue to maintain sizeable amounts of capital against their portfolios in accordance with their Capital Model and operating guidelines. They maintain staff and offices and compensate employees.

It is also important to realize that because of the strength of the CDPC business model, no CDPC has been unable to make a payment under the terms of a CDS, and no federal or state bailout of any CDPC has been requested or required.

Comments to Section 5 – Legacy Portfolios

With respect to Section 5, we would propose that a certified CDPC in run-off be excluded from the definition of a Major Swap Participant or a Major Security-Based Swap Participant for the following reasons:

1. CDPCs have not executed any new swap transactions for the past two years (i.e. a company cannot be a “major swap participant” if it is no longer participating in the swap market and has not written any new swaps for two years) and are simply running-off legacy swap portfolios which will naturally expire over time (on average, less than 5 years).
2. CDPCs do not pose any systemic risk to the swap market or the financial system. There are less than 10 CDPCs in existence with an aggregate outstanding (and declining) CDS notional of less than one half of one percent of the entire CDS market.
3. CDPCs generally have strict operating guidelines that include daily capital adequacy requirements which performed well throughout the crisis.
4. CDPCs are expressly prohibited in their organization and ISDA documents from posting collateral. A new collateral requirement could cause a liquidity squeeze for many CDPCs, would explicitly breach existing contracts and would expose CDPCs (and thereby CDPC counterparties) to risks that their structure was explicitly designed to avoid.

Proposed Language for Section 5 – Legacy Portfolios

To avoid abuse, we would propose that CDPCs certify that (i) they are in run-off, (ii) the contractual terms of their existing swaps preclude collateral posting, and (iii) they will not enter into any new swap transactions (except those that hedge or reduce risk of their pre-existing credit swap portfolios). In addition, as confirmation of their run-off status, CDPCs would be required to provide position information to the appropriate regulator, similar to that required of registered Major Swap Participants or Major Security-Based Swap Participants.

To assist you in the rule making process, we have prepared draft language that we hope will help address the proposed exclusion for CDPCs from the definition of a Major Swap Participant or a Major Security-Based Swap Participant:

“As defined below, a “Run-Off Entity” shall be expressly excluded from being considered a Major Swap Participant or a Major Security-Based Swap Participant.

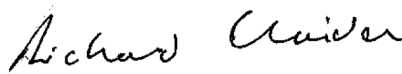
A Run-Off Entity is defined as an entity whose activities are limited to prudently managing the run-off of one or more portfolios of credit default swaps upon enactment of the Dodd-Frank Act and which was not required to post collateral under its current contractual swap agreements. A

Run-Off Entity is not permitted to enter into any new credit default swap transactions post enactment other than specific risk reducing restructuring or hedging of its existing swap portfolio. Run-Off Entities are required to register themselves with the appropriate regulator(s) and provide position information to the appropriate regulator(s) similar to that required of registered Major Swap Participants or Major Security-Based Swap Participants.”

Sincerely,



Steven Kahn
President
Invicta Advisors LLC



Richard Claiden
Chief Executive Officer
Primus Guaranty Ltd.



Eugene Park
Chief Executive Officer
Quadrant Structured Investment
Advisers, LLC