

# MILLBURN RIDGEFIELD CORPORATION

411 WEST PUTNAM AVENUE  
GREENWICH, CT 06830

203-625-7554

WRITER'S DIRECT NUMBER  
(203) 485-1539

WRITER'S E-MAIL ADDRESS  
sfelsenthal@millburncorp.com

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## *Via Electronic Submission*

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, DC 20581

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant" 75 F.R. 80174 (December 21, 2010) (SEC File No. S7-39-10)**

Dear Secretaries Stawick and Murphy:

Millburn Ridgefield Corporation welcomes the opportunity to submit, and respectfully submits, comments to the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and, together with the CFTC, the "Commissions") with respect to the above-captioned proposed rules ("Proposed Rules") promulgated as part of the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>1</sup> Our comments are limited to the proposed definition of "eligible contract participant" ("ECP") under the Proposed Rules.

Millburn Ridgefield Corporation is a commodity trading advisor ("CTA") and commodity pool operator ("CPO") registered with the CFTC and an investment adviser registered with the SEC. We are writing in the capacity of an experienced market participant concerned that the Proposed Rules will unnecessarily hamper an efficient manner of participation in certain markets by segments of the investing public. This comment is set forth to express our views and concerns about the proposed amendments to the ECP definition as applied to

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"). The proposal contains rules proposed jointly by CFTC and the SEC.

commodity pools engaged in over-the-counter (“OTC”) foreign currency (“FX”) transactions pursuant to Section 2(c) of the Commodity Exchange Act (“CEA”).

### Background Regarding Trading of OTC FX by Commodity Pools

For decades, commodity pools have traded OTC FX forward contracts in order to hedge exchange rate risk and for speculative purposes. The FX markets are among the most liquid in the world and provide commodity pools the opportunity to hedge exchange rate risk on non-US dollar assets and, through speculative trading, diversification into an additional commodity interest asset class often sought by investors in commodity pools and by the CPOs that sponsor and the CTAs that manage the assets of those pools.

As further described below, the portion of the Proposed Rules relating to the definition of ECP would:

- have an adverse effect on the continuing ability of many commodity pools to trade OTC FX forward contracts in the most efficient, and efficiently priced, manner and markets;
- make accessing minor or “exotic” currencies significantly more difficult and expensive; and
- cause unnecessary and increased trading expenses to commodity pools, which will typically be borne by investors in those pools.

### The Definitional and Proposed Changes

Currently, CEA Section 1a(12)(A)(iv)<sup>2</sup> provides that a commodity pool with \$5 million in assets that was formed and is operated by a person subject to regulation by the CFTC (or similar foreign regulation) is an ECP (the “\$5 Million Pool ECP”). CEA Section 1a(12)(A)(v) provides a separate catch-all method of qualifying as an ECP for entities (presumably including commodity pools that are entities) with at least \$10 million in assets (the “\$10 Million Entity ECP”). There are three aspects of changes to these definitions which severely, and negatively, affect the traditional pool industry:

1. The Dodd-Frank Act altered the definition of the \$5 Million Pool ECP slightly but significantly so that a commodity pool cannot qualify as a \$5 Million Pool ECP with respect to OTC FX transactions unless all of the investors in the commodity pool qualify independently as ECPs. In other words, the ECP definition will now be applied on a look through basis (the “Look Through Provision”).

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<sup>2</sup> Redesignated as Section 1a(18)(A)(iv) by the Dodd-Frank Act.

2. The Proposed Rules would exacerbate the effect of the Look Through Provision by applying it to both direct and indirect investors in a commodity pool.
3. The Proposed Rules preclude a commodity pool from qualifying as an ECP based on the \$10 Million Entity ECP. The clear intent of the \$10 million ECP provision is to permit entities, especially those with the added protection to investors of being formed by a CPO and the assets of which are managed by a CTA, to otherwise qualify as an ECP even if they don't meet the \$5 million ECP provision.

The combined effect of these provisions leads to the seemingly absurd result that greatly limits the ability of entities managed by sophisticated money managers that are subject to registration and examination by regulators to qualify as ECPs.

### *The Adverse Result*

The result of the combination of the changes described above is a significant departure in that, historically, a commodity pool of sufficient size managed by a CTA and formed by a CPO qualified as an ECP, thus making it eligible to enter into OTC FX transactions as a direct participant in the inter-bank and dealer markets. The effect of the Proposed Rules will be that many commodity pools and all public commodity pools (because their investors are not ECPs in their own right) will not be able to enter into OTC FX transactions efficiently, despite the fact that the assets of those pools are managed by CTAs. Adverse results of the Proposed Rules will most likely include the following:

- since not all currencies have corresponding exchange-traded futures contracts or are represented on futures commission merchant (“FCM”) or retail foreign exchange dealer (“RFED”) platforms, commodity pools and CTAs will not be able to trade, or easily trade, certain currencies, thus depriving them and their investors of the desired level of diversification and limiting their access to certain markets;
- trading strategies that have included OTC FX for many years will instead need to resort to trading illiquid exchange-traded currency futures contracts or those contracts that FCMs and RFEDs make available at inefficient prices. Such result would be disruptive to the operations of pools that have traded the liquid global currency markets for years without incident, would require professional money managers to utilize less effective and efficient methods of gaining the same exposure and diversification benefit and would diminish their level of diversification;
- documentation governing FX transactions, some of which has been in place for many years, would need to be revised or replaced at a substantial cost to investors (who, in most commodity pools, would ultimately bear such cost); and

- limiting the ability of commodity pools and CTAs to hedge exchange rate risk would be contrary to the purposes of the Dodd-Frank Act and arguably detrimental to investors, including retail investors in public pools. Further, such limitations would deprive investors in commodity pools of participating in certain currency markets, which are among the most liquid markets in the world.

Some have argued that the effect of these changes described above will not be so drastic because, under CEA Section 2(c)(2)(E) as amended by the Dodd-Frank Act, a non-ECP may engage in OTC FX transactions with a counterparty that fits within certain categories, including but not limited to, U.S. financial institutions, broker-dealers, futures commission merchants, financial holding companies and retail foreign exchange dealers. However, on a practical level, commodity pools are unlikely to be able to avail themselves of this provision, because this section of the CEA further states that these entities may enter into OTC FX transactions with non-ECPs only pursuant to, and in accordance with, regulations promulgated by such entities' respective federal regulators. While such regulations do exist for dealing with counterparties that are FCMs and RFEDs and rules for U.S. national banks and their subsidiaries have been proposed, this option is a far cry from the far more efficient markets currently in place and, because of their very limited nature, it is expected to be significantly more costly to pools and their investors. Thus, this limited exception does not exist as a viable alternative to a system that was not broken to begin with.

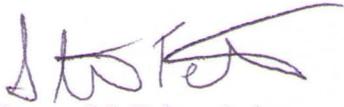
### Recommendations

While we appreciate the efforts of regulators to strengthen and regulate the markets, we believe the Proposed Rules neither strengthen nor appropriately regulate the FX OTC markets, which we believe are of great value in terms of access to markets, diversification potential, liquidity and ability to hedge to commodity pools and investors in those commodity pools. We strongly recommend that the final rules at the very least:

- permit commodity pools to qualify as \$10 Million Entity ECPs without the application of any look-through provision;
- minimize the effect of the Look Through Provision rather than exacerbate that effect with respect to regulated/registered CPOs;
- subject to statutory limitations, provide that a commodity pool should qualify as an ECP, regardless of assets levels and certainly if the commodity pool has \$5 million in assets, if the pool is operated by a CPO or advised by a CTA subject to regulation by the CFTC or a comparable foreign regulator; and
- provide that a commodity pool should qualify as an ECP, regardless of asset levels, if the pool's assets are comprised solely of investments by a CPO, CTA and their respective principals or employees.

We appreciate the Commissions' consideration with regard to the foregoing comments and would be happy to discuss our recommendations with the Commissions at any time. We support the efforts of the Commissions to maintain the integrity of the markets we trade and we support the implementation of rules to accomplish such goals in as sensible manner as is feasible under the circumstances. Thank you for your consideration of our comments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'S. Felsenthal', with a long horizontal flourish extending to the right.

Steven M. Felsenthal  
General Counsel and Chief Compliance Officer