

From: John Rapa <jjr@tellefsen.com>
Sent: Tuesday, August 10, 2010 4:22 PM
To: BCDR <BCDR@CFTC.gov>
Subject: Business Continuity and Disaster Recovery
Attach: CFTC BC-DR Rulemaking Comment Letter 0810.pdf

Dear Mr. Stawick:

We are pleased to provide you with our comments and perspectives about the CFTC's pending rulemaking changes to business continuity and disaster recovery preparedness for designated contract markets and derivatives clearing organizations. We look forward to hearing back from you.

Sincerely yours,

John Rapa

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August 10, 2010

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

Re: Proposed Rulemaking on Business Continuity and Disaster Recovery

Dear Mr. Stawick:

We are pleased to provide you with our comments and perspectives about the CFTC's pending rulemaking changes to business continuity and disaster recovery ("BC/DR") preparedness for designated contract markets ("DCMs") and/or derivatives clearing organizations ("DCOs").

The enclosed comments and perspectives are our own and do not necessarily reflect the views of major U.S. futures DCMs or DCOs or industry organizations.

Background:

Tellefsen and Company, L.L.C. ("TCL") is a boutique management consulting firm founded by Jerry Tellefsen. Since 1984, the firm has been exclusively focused in the global capital markets, derivatives and financial services industries.

Over the years, our firm has worked for all major U.S. equity, options and futures exchanges, futures commission merchants, securities broker-dealers, investment banks, proprietary trading and asset management firms.

Two of our major, relevant practice areas include market structure consulting and business continuity management ("BCM").

In the business continuity management practice area, we have consulted to the major U.S. DCMs and DCOs in regards to their business continuity strategies and plans, technology and network architectures and set ups for key, mission critical systems (i.e., electronic trading, order management, market data dissemination, price reporting, clearance and settlement, risk management).

Additionally, we have been actively involved with the Futures Industry Association ("FIA") over the last 15+ years and have been members of the FIA Information Technology Division. In this capacity, John Rapa has chaired the FIA's Business Continuity Committee and coordinated the annual industry DR testing since 2003.

Business Continuity Management is analogous to Operational Risk Management. From our perspectives, most of these organizations do an excellent job in this area and have been diligent in their BC/DR planning and implementations for many years. To wit:

- As DCMs and DCOs have introduced new systems, applications, products and system functions, their internal IT staffs have conducted regular system testing, regression testing, stress testing, failover testing etc., to ensure their availability, capacity, resilience and readiness
- These organizations regularly augment IT testing with other BCM exercises (e.g., they conduct annual BC/DR plan updates, building evacuation drills, business disruption scenario planning workshops, etc.)
- In addition, all the U.S. DCMs and DCOs have participated in the planning and execution of the annual DR test initiative conducted and coordinated by the FIA's IT Division.

From our direct working knowledge of the major DCMs and DCOs, they have built out and evolved their technology infrastructures and networks in the last 3-5 years and have designed resiliency, redundancy and fail over capabilities into their mission critical system architectures.

They have learned valuable lessons from the September 11, 2001 disasters, the Northeast blackout of 2003, Hurricanes Rita and Katrina and become sensitive to the potentials for physical threats, terrorist attacks, acts of God/nature, cyber terrorism, software worms, spoofing, pandemics etc.

The DCMs and DCOs have refined their strategies, plans and tactics accordingly via regular testing and enhancements to processes and procedures. The backdrop of this has been commensurate with:

- The growth of electronic trading / reduction in open outcry trading
- Introduction of new products, new systems, new business lines
- Globalization of trading and clearing constituents
- Growth and introduction of proximity hosting (aka "co-location"), algorithmic trading, high frequency trading, direct market access
- The availability of new system and network technologies and tools that are faster, cheaper and better than their previous generations
- New technologies and tools that can identify/isolate network and/or system faults, facilitate system failover/roll back capabilities

- Modern tools and technologies that allow them to remotely manage data centers, systems, servers and networks, failover/roll back systems, load balance systems and networks – with limited technical staffs
- Technologies that have redundant hardware components and/or software tools to ease back up and recovery capabilities.

Proposed Rulemaking:

At present, the Commission seeks to establish standards for the recovery and resumption of mission-critical trading and clearing functions by DCMs and DCOs. These are those organizations which would be deemed “critical” financial markets or core clearing organizations by the Commission – in the event that a wide-scale, significant business disruption (“SBD”) impacts their operations.

In this regard, the Commission seeks to have the designated DCMs and DCOs establish a same-day recovery time objective (“RTO”) and to maintain a to-be-defined geographic dispersal of their infrastructure and personnel, so that they can achieve the same-day RTO in the event of a *wide-scale SBD*.

The Commission also seeks to require DCMs and DCOs to conduct adequate, regular testing and review of their automated trading and clearing systems to ensure proper system functioning, adequate capacity and security.

Areas of Concern:

We have read the proposed BC/DR rulemaking as it would apply to DCMs and DCOs and have several comments and concerns for the Commission.

Given the above background, it remains to be seen as to the depth and extent of the human capital pool and skill sets that exist in DCMs/DCOs in their primary and back up site locations.

In today’s economic times, it is not practical to have all key job functions fully duplicated, geographically dispersed and housed in both locations (e.g., clearing house operations, compliance, finance, risk management, etc.), nor is it economically feasible for these organizations to hire, train and retain such redundant staffs. The Commission’s proposed rulemaking also stops short in a few areas, namely:

- While the proposed rulemaking seeks enhanced BCM standards for DCMs and DCOs, there is no mention of a same day RTO for their major constituents (e.g., liquidity providers, futures commission merchants, global clearing firms etc.). What is the expectation for these market constituents?
- If the Commission expects that if DCMs and DCOs will achieve a same day RTO, will their “significant” liquidity providers and clearing firms also be required to have this capability ? (Note: a general 80-20 rule of thumb might be that 20% of firms typically supply 80% of the order flow, liquidity or clearing capability on a daily basis).

- What is the expectation of a DCM or DCO if a SBD occurs during the latter part of the business day (e.g., 2:00 PM)? Would they be expected to recover that same day? Given the amount of transactions that may have been done, failover and recovery of executed transaction files could conceivably take longer than if it occurred earlier in the day, thus cascading past the close of the market.
- Once a DCM or DCO is deemed "critical" by the Commission, how quickly will they be required to comply with the new standards, implement, test and demonstrate same?

Going Forward:

In our professional opinion, most/all have the technology and network infrastructure in place to evolve to achieve a same day RTO.

However, the general rule of thumb in BCM is that one size does not fit all. The Commission should implement a workable approach, commensurate with the respective Core Principles applicable to DCMs and DCOs, and consider how each respective DCM or DCO is set up and organized to achieve them.

We suggest the Commission look to the exchanges and clearing houses for their feedback about the quantity and quality of their labor pool and how they are staffed and organized with the capacity to recover from a SBD.

If rushed to implement, a broad based approach to these new standards may only be as good as the weakest link that exists – the slowest, least capitalized organization that is the last one to have this capability in place.

Regular and varied testing will be key to corroborating industry readiness going forward.

Our best counsel to the Commission is to analyze the feedback from the comment period, and assess the time frames that the major DCMs and DCOs indicate that they can adopt the new standards.

We would be pleased to be available for any follow up questions or to discuss the state of industry sound practices in this area.

Very truly yours,

John J. Rapa

John J. Rapa, CBCP
President/Chief Executive Officer

TELLEFSEN AND COMPANY, L.L.C.