

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

31 December 2010

Dear Mr Stawick,

RE: RIN 3038 AD07, “Provisions Common to Registered Entities”

The LCH.Clearnet Group (“LCH.Clearnet”) is pleased to respond to the request for comment issued by the Commodity Futures Trading Commission (the “CFTC” or “Commission”) on RIN 3038 AD07, “Provisions Common to Registered Entities.”

The Group appreciates the careful thought and consideration that the Commission has given to the rulemaking process and the open way in which it has consulted with market participants and other interested parties throughout.

LCH.Clearnet strongly supports the policy goals underpinned both by the Proposing Release and by the statutory provisions contained in Sections 745 and 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

Section 745 of the Dodd-Frank Act amends Section 5c of the Commodity Exchange Act (“Act”) to provide for new rule, rule amendment and product certification and approval procedures, which are applicable to Derivatives Clearing Organizations (“DCOs”) and other registered entities. Section 806(e)(1) of the Dodd-Frank Act requires that a systemically important DCO (“SIDCO”) provide the Commission with 60 days advance notice of any proposed changes to rules, procedures or operations that could materially affect the nature or level of risk presented by a SIDCO.

The Group believes that the regulations set out in the Proposing Release are consistent with the Congressional requirements set forth in Sections 745 and 806(e)(1) of the Dodd-Frank Act. LCH.Clearnet is fully supportive of the proposals set forth by the Commission and believes that these proposed rules will help establish a comprehensive regulatory framework to reduce risk, increase transparency and promote market integrity within the financial system.

The Commission has requested input on the regulations contained in the Commission’s Proposing Release and LCH.Clearnet appreciates the opportunity to comment on these important issues. Its comments are set out in detail overleaf.

40.2 “Listing and accepting products for trading or clearing by certification”

In proposed regulation 40.2, the Commission sets forth the requirements that a DCO and other registered entities would have to fulfil before listing and accepting a product for trading or clearing.

Under 40.2(a), a DCO would be required to file a notice including the information set out in Rule 40.2(a)(3), if it intends to clear any product that is not listed or traded on a designated contract market, a swap execution facility, or cleared by another DCO. Further, regulation 40.6 would require a DCO to self-certify all other substantive rules and rule amendments with the Commission.

LCH.Clearnet supports all the requirements set forth under 40.2 and 40.6, however it would caution that a consequence of this rule is that a clearing organization based outside the United States, but registered with and regulated by the Commission as a DCO, could be required to submit for Commission review all products it clears, irrespective of where these products are traded, and or whether they are regulated by the Commission. All other rules relating to these products would thus also be required to be filed with the Commission for review.

It would not be unusual for a clearing organization based outside the United States, but regulated as a DCO by the Commission, to clear a range of products that are not regulated by the Commission.

For instance the Group’s London-based clearing organization, LCH.Clearnet Limited, clears for a range of non-US equity exchanges, derivatives exchanges and or Multilateral Trading Facilities (MTFs); it also clears cash government bonds and repo or repurchase agreements, amongst other products. The Group believes that exclusion for such products and related rules would be reasonable in such instances.

The purpose of the drafting suggested below is to exempt such overseas DCOs from the requirement to file rules with the Commission regarding products to be cleared if either: (1) the product is listed for trading on a foreign board of trade; or (2) the product is not required to be cleared by a DCO registered with the Commission.

1. Proposed Rule 40.2 is revised by adding a new paragraph (d) as follows:

- (d) *Exception for derivatives clearing organizations organized outside of the United States.* A Derivatives Clearing Organization that is organized under the laws of a jurisdiction located outside of the United States, its territories or possessions and that is subject to supervision and regulation as a clearing organization by the appropriate governmental authorities in its home country is not required to comply with the requirements of paragraph (a) of this section before accepting for clearing a product that is listed for trading on a foreign board of trade, as defined in §48.2 of this chapter, or is not otherwise required to be cleared by a derivatives clearing organization registered with the Commission.

40.10 “Special certification procedures for submission of rules by SIDCOs”

Under proposed rule 40.10, the Commission lays out the special certification procedures for submission of rules by systemically important DCOs (“SIDCOs”).

The Group concurs with the requirements set forth in this section of the Proposing Release and believes that the Commission has correctly identified both the nature and level of risks that should be subject to such a review, as well as the information required under the notice.

The Group believes that by allowing a SIDCO to implement “Emergency changes”, as set out under 40.10(h), the Commission has ensured that such organizations retain the flexibility, *in extremis*, to act quickly and as necessary to ensure the safeguards of the system. LCH.Clearnet believes it is also wholly appropriate that SIDCOs be accountable for such actions and should therefore be required to provide notice of any emergency changes as set out in the Proposing Release under 40.10(h), subparagraphs 1 and 2.

In 40.10(h)(3) the proposed regulation states that the Commission “may require modification or rescission” of the emergency change if it finds that the change is not consistent with the Act or the Commission’s regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act.

The Group believes it is entirely appropriate that the Commission should be able to exercise such authority and supports its proposed language. In order to ensure that there is full legal certainty for SIDCOs, their members and members’ clients, however, the Group would request that the Commission insert a final clause into subparagraph 40.10(h)(3).

The proposed amendment, as laid out below, is analogous to Section 739 of the Dodd-Frank Act, which provides legal certainty for swaps.

2. Proposed Rule 40.10(h)(3) is revised, by adding a new clause as follows:

“... However, no modification or rescission shall retroactively affect the enforceability of any power exercised by the SIDCO, nor shall any agreement, contract or transaction entered into by the SIDCO or its counterparty pursuant to the exercise by such SIDCO of any emergency change, be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover, any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law.”

LCH.Clearnet recognizes the hard work undertaken by the Commission in order to develop these rules.

We appreciate the opportunity to comment on these important issues and would be pleased to enter into a further dialogue with the Commission and its staff. Please contact Simon Wheatley at (+44) 207 426 7622 regarding any questions raised by this letter, or to discuss any of the issues raised in greater detail.

Yours sincerely,



Roger Liddell

Chief Executive