BETTER MARKETS
TRANSPARENCY · ACCOUNTABILITY · OVERSIGHT

February 7, 2011

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

Re: Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (CFTC RIN 3038-AC96)

Dear Mr. Stawick:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rules (the "Proposed Rules") of the Commodity Futures Trading Commission ("CFTC"), the purpose of which are to set forth certain duties of swap dealers ("SDs") and major swap participants ("MSPs") with regard to reporting and recordkeeping requirements and daily trading records requirements pursuant to provisions of the Dodd-Frank Financial Services Reform Act (the "Dodd-Frank Act").

Introduction

The Proposed Rules provide a comprehensive and effective set of standards for reporting and recordkeeping by SDs and MSPs. The Dodd-Frank Act establishes market transparency as a central goal. Complete and accessible records are an essential factor in achieving this goal and the Proposed Rules effectively address this need.

Our comments are limited to a single topic: high frequency and algorithmic trading ("HFT"). In our comment letter on the CFTC's proposed Rules on anti-disruptive practices authority ("January 3 Letter"), we outlined the inherent risks of market disruption related to these practices.[2] We have attached a copy of this letter for your convenience. It is axiomatic that orders, cancellations and trades employed in connection with HFT are largely unimportant individually. Each is part of a unified strategy which pursues a trading objective. To make

1 Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

2 Comment Letter, Better Markets, Inc., January 3, 2011, Regarding Antidisruptive Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFTC RIN 3038-AD26).

sense of them, one must understand the strategy and view the orders, cancellations and trades as a group and in sequence.

The "Flash Crash" that occurred earlier this year provides many lessons, some of which are outlined in the January 3 letter. One of the lessons is that the forensic analysis of a market event can be tremendously cumbersome in the context of HFT. The issue is not only the number of market actions involved, but their relationship based on strategies.

In the January 3 letter, we proposed that certain HFT practices be regulated by a modest "speed limit" provision:

> The CFTC should start with requiring that bids be for minimum durations and that positions be held for minimum durations... For instance, these rules might vary depending on asset class and market structure, but the variation should range between 5 and 10 seconds at a minimum. Legitimate algorithmically driven trading strategies can be implemented in this environment; but high-frequency volume, which benefits only the trader adds minimal value to the marketplace and subjects the market to tremendous risks would be curbed.

Such a minimal limit would impact only some HFT's activity and it would be done in advance. However, the Proposed Rules here must now address the issue of transparency of all such trading activity from the perspective of recordkeeping.

Recordation of HFT Strategies

The solution is quite simple: each SD and MSP must maintain records of each HFT strategy employed including a description of the strategy and its objectives and the algorithms employed. Every order, cancellation and trade that occurs in the implementation of such a strategy must be indexed to the electronic record of the strategy description and properly time stamped. Regulators that must perform forensic analysis of a market occurrence will be able to follow the progression of the implementation of an individual HFT strategy and its consequences. They will be able to understand the orders, cancellations and trades in proper context.

Every SD and MSP that engages in HFT is technologically sophisticated. It is virtually certain that all of them maintain this information already, i.e., for evaluation, validation, modification, etc. However, standards for access to data organized in groupings based on their strategic relationships and ready access to the processes and objectives behind each HFT strategy will speed the regulatory review of market dynamics when this is necessary.

Conclusion

HFT, if it is to be an element of the derivatives markets, poses many challenges. An important one is the difficulty of meaningfully and quickly analyzing market events on a retrospective basis. These events simply cannot be understood without understanding the relationships between orders, cancellations and trades based on objectives and processes.

We hope that our suggestions are helpful.

Sincerely,

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President & CEO

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