CFE
CBOE FUTURES EXCHANGE

March 7, 2011

**Via Electronic Submission**

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

Re: Comment Letter on Proposed Rulemaking Relating to Additional Requirements Regarding the Mitigation of Conflicts of Interest; RIN 3038-AD01, 76 FR 722 (January 6, 2011)

Dear Mr. Stawick:

CBOE Futures Exchange, LLC ("CFE") appreciates the opportunity to provide its comments to the Commodity Futures Trading Commission ("CFTC") with respect to the CFTC's proposals in the above-referenced release ("Release"). The Release proposes to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") by setting forth additional proposed regulations applicable to derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs"), and swap execution facilities ("SEFs") regarding the mitigation of conflicts of interest.

The CFTC Should Clarify that Only Non-Member Market Participants with the Ability to Enter Orders Directly into a DCM's Trade Matching System Are Required to Consent to the DCM's Jurisdiction

The CFTC should clarify that the only non-member market participants that must agree to become subject to the jurisdiction of a DCM under Proposed § 38.801(e) are those non-members of a DCM that have the ability to enter orders directly into a DCM's trade matching system for execution. CFE believes that this clarification is consistent with the language of Proposed § 38.801(e). Specifically, Proposed § 38.801(e) provides that:

> As a condition of access, members and non-member market participants must agree to become subject to the jurisdiction of the designated contract market.

Since the consent to jurisdiction requirement in Proposed § 38.801(e) is conditioned upon having access to the DCM, the requirement should not be applicable to non-members of a DCM that do not have direct access to the DCM. In particular, CFE does not believe that Proposed § 38.801(e) should apply to customers whose orders pass through a DCM member's system before receipt by a DCM because in that instance the customer order is being received by the DCM from the member.

If the consent to jurisdiction requirement in Proposed § 38.801(e) were to be interpreted to apply to all customers (and not just to those customers with direct electronic access to the

DCM), it would greatly expand a DCM's regulatory responsibilities to those over which it has no direct relationship or connection and greatly increase the costs to DCMs without discussion or justification of this result in the Release. It would also be very difficult for a DCM to conduct examination and other regulatory responsibilities that are applicable to a DCM member with respect to customers that do not have a direct relationship or connection with the DCM.

The CFTC Should Clarify the Types of Significant Decisions that a DCM Must Make Public and Readily Accessible

The CFTC should clarify the types of significant decisions that a DCM is required to make publicly available and readily accessible under Proposed § 40.9(d). Proposed § 40.9(d)(vii)(A) states that such significant decisions shall include all decisions relating to access, membership, and disciplinary procedures, and Proposed § 40.9(d)(vii)(C)(2) requires this information to be readily accessible (such as on a DCM's website). CFE interprets this language to apply to significant decisions relating to a DCM's access procedures, membership procedures, and disciplinary procedures. Accordingly, CFE believes that a DCM would be able to comply with Proposed § 40.9(d)(vii)(A) by making publicly available and readily accessible (i) whether or not non-member market participants may obtain direct access to the DCM's trade matching system, and if so, the procedures in the DCM's rules for doing so; (ii) the membership application and approval procedures in the DCM's rules; (iii) the DCM's disciplinary rules; and (iv) any significant decisions of the DCM that modify or elaborate upon the procedures set forth in the foregoing rules.

Since Proposed § 40.9(d)(vii)(A) speaks in terms of significant decisions relating to specific types of procedures, CFE does not interpret Proposed § 40.9(d)(vii)(A) to require a DCM to make publicly available and readily accessible on its website its decisions that apply those procedures to individual situations (such as a decision regarding whether to approve or disapprove an individual membership application). However, if the CFTC interprets Proposed § 40.9(d)(vii)(A) differently, the CFTC should make clear the specific types of decisions that would need to be made publicly available and readily accessible by a DCM beyond what CFE has identified above.

The Same Governance and Transparency Requirements Should Apply to Both DCMs and SEFs

The CFTC should apply all of the same governance and transparency requirements to SEFs as are to be applied to DCMs. SEFs, like DCMs, are required to fulfill self-regulatory obligations under the Commodity Exchange Act ("CEA") and the Dodd-Frank Act. Therefore, it is important to hold SEFs to the same governance and transparency requirements that are applicable to DCMs to ensure that SEFs appropriately prioritize their self-regulatory obligations. Additionally, the Dodd-Frank Act contemplates that both DCMs and SEFs may list swap contracts and thus compete with one another. Accordingly, it is crucial that there be a level playing field between both DCMs and SEFs and that there be no regulatory disparities that would make it more advantageous to list a swap on a SEF as opposed to a DCM. Otherwise, the result will be regulatory arbitrage and the goal of promoting competition between DCMs and SEFs will not be realized.

Moreover, in the Release, the CFTC notes that it has recognized the value of transparency in maintaining market integrity and public trust with respect to DCMs and states that such a rationale would appear to also apply to SEFs. This recognition is further support making DCMs and SEFs subject to the same transparency requirements.

For these reasons, CFE believes that the DCM governance fitness standards in Proposed § 38.801 and the provisions of Proposed § 38.901 relating to DCM consideration of market participant views and transparency should also be made applicable to SEFs. For the same reasons that it is appropriate for the CFTC to require under Proposed § 38.801 that DCM directors and disciplinary panel and committee members not be individuals who may be denied registration under CEA Section 8a(2) or who have a significant history of serious disciplinary offenses, it is equally appropriate for the CFTC to impose the same requirements with respect to SEF directors and disciplinary panel and committee members. Otherwise, a SEF could have a director or disciplinary panel or committee member with significant regulatory issues. Similarly, the same rationale for requiring DCMs to have a transparent process for considering the views of market participants under Proposed § 38.901 is equally applicable to SEFs. Given the breadth with which the CFTC has interpreted DCM Core Principle 16 and SEF Core Principle 12 under the CEA relating to conflicts of interest, SEF Core Principle 12 is certainly broad enough to encompass these requirements.

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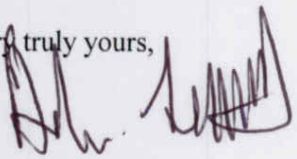
CFE is available to provide any further input desired by the CFTC regarding these issues and to work cooperatively with the CFTC to address them. Please contact Arthur Reinstein in our Legal Division at (312) 786-7570 if you have any questions regarding our comments.

Very truly yours,



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