COMMODITIES

March 21, 2011

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

RE: RIN 3038–AC98 – Notice of Proposed Rulemaking:
Risk Management Requirements for Derivatives Clearing Organizations (76 Fed. Reg. 3698)

Dear Mr. Stawick:

NASDAQ OMX Commodities Clearing Company ("NOCC") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") notice of proposed rulemaking ("NOPR") regarding Risk Management Requirements for Derivatives Clearing Organizations ("DCOs"). NOCC supports the goals of the Dodd-Frank Act and the Commission to reduce risk, increase transparency and promote market integrity within the financial system through enhancing guidance on risk management core principles for DCOs.

NOCC will provide its comments in three sections:

1. Background on NASDAQ OMX Group, Inc. "(NASDAQ OMX") and NOCC;
2. Discussion on accommodating DCO models tailored to markets with different risk attributes than traditional swaps or futures; and
3. Detailed comments on specific proposed rules.

1. Background on NASDAQ OMX and NOCC

NASDAQ OMX is the world's largest exchange company. It delivers trading, exchange technology and public company services across six continents, with more than 3,600 listed companies. NASDAQ OMX offers multiple capital raising solutions to companies around the globe, including its U.S. listed securities market, NASDAQ OMX Nordic, NASDAQ OMX Baltic, NASDAQ OMX First North, and the U.S. 144A securities sector. The company offers trading across multiple asset classes including equities, derivatives, debt, commodities, structured products and exchange-traded funds.

NASDAQ OMX technology supports the operations of over 70 exchanges, clearing organizations and central securities depositories in more than 50 countries.[1]

NASDAQ OMX Commodities is the brand name for the NASDAQ OMX Group's worldwide suite of commodity-related products and services. The NASDAQ OMX Commodities offerings include power, natural gas and carbon emission markets and clearing services.[2] NASDAQ OMX Stockholm AB clears 95% of the clearable swap volumes in Scandinavia's electricity market, the world's most mature and liquid electricity market. About half those cleared transactions are traded on the commodity derivatives exchange supporting NASDAQ OMX Oslo ASA, and the other half are traded over-the-counter ("OTC").

NOCC has extensive experience as a dealer in physical energy spot and forward transactions. NOCC is an eligible contract participant (and eligible commercial entity) as defined in the Commodity Exchange Act ("CEA").[3] It is a dealer in cash energy markets, where it transacts on a "riskless principal" basis as a means to manage its risk, both in physical electricity and physical natural gas spot transactions, and in transactions in those same commodities for deferred shipment or delivery (i.e., traditional commercial physical forward contracts that are excluded from regulation as futures contracts under the CEA). NOCC has received market-based rate authority from the Federal Energy Regulatory Commission ("FERC"),[4] which means it has the status of a power marketer, with authority to enter into market-based transactions in power with other commercial participants in the energy markets at competitive market rates. NOCC has one or more bilateral master agreements in place with each of its commercial trading counterparties, containing consistent language regarding such key terms as credit support, settlements, payments, events of default and termination events.[5]

[1] NASDAQ OMX Nordic and NASDAQ OMX Baltic are not legal entities but describe the common offering from NASDAQ OMX exchanges in Helsinki, Copenhagen, Stockholm, Iceland, Tallinn, Riga, and Vilnius. For more information about NASDAQ OMX, visit http://www.nasdaqomx.com.

[2] NASDAQ OMX Commodities is a trademark of NASDAQ OMX. NASDAQ OMX Commodities Europe is the trade name of NASDAQ OMX Oslo ASA, which is authorized as a commodity derivatives exchange by the Norwegian Ministry of Finance and supervised by the Norwegian Financial Supervisory Authority. All trades on NASDAQ OMX Commodities Europe are cleared through NASDAQ OMX Stockholm AB, which is authorized and supervised as a multi-asset clearinghouse by the Swedish Financial Supervisory Authority and is authorized to conduct clearing operations in Norway by the Norwegian Ministry of Finance. For more information, please visit www.nasdaqomxcommodities.com.

[3] See 7 U.S.C. 1a.

[4] Docket Nos. 912-ER10-000, ER10-913-000, and ER10-914-000, July 1, 2010.

[5] The primary agreement that NOCC uses with each of its trading counterparties is the International Swaps and Derivatives Association ("ISDA") Master Agreement (either the 1992 or the 2002 version) with Power and Gas Annexes as applicable to the particular counterparty. Certain customers, though, have instead entered into enabling agreements with NOCC utilizing the North American Energy Standards Board ("NAESB") form bi-lateral agreement for natural gas trades and the Edison Electric Institute ("EEI") Master Agreement for electric power trades.

NOCC intends to build on the expertise it has gained managing the risks of its trading activities by developing a clearinghouse that will apply for registration with the Commission as a DCO.[6] NOCC's differentiating product offering, and the main focus of these comments, will be commercial forward contracts which are generally outside the scope of regulation as futures contracts under the CEA[7] (but may be cleared through a CFTC-regulated DCO). The commercial forward contracts NOCC will clear, we believe, should also be excluded from regulation as "swaps" under the CEA under the exclusion from the definition of a swap for the sale of nonfinancial commodities for deferred shipment or delivery, where the transaction is intended to be physically settled. NOCC also intends to clear a specific type of financial forward contract that we believe will be classified as swaps. These financial forwards are widely used today by energy sector commercials because they are tailored to the commercial practices, payment flows and needs of the energy sector. Consequently, cash-settlement only occurs on post-delivery payment dates that are consistent with the post-delivery payment conventions under commercial forward contracts.[8]

NOCC's clearing services for financial forward products would be provided only to eligible contract participants (as defined in the CEA). To gain commercial acceptance, NOCC believes it is important for its DCO model to apply daily margining and settlement practices to the financial forwards described above which are consistent with current OTC practices for such contracts and for commercial forward contracts; indeed, NASDAQ OMX Stockholm AB's use of such practices has contributed greatly to its stellar success in attracting the high level of commercial participation that it has achieved.[9] While these financial forwards would fall within the definition of a "swap," they are not the typical daily cash settled swaps as currently supported by other major energy clearinghouses. Rather, the financial forwards have a risk profile more closely associated with that of commercial forwards than with that of standard daily cash settled swaps. Thus, appropriate DCO risk management practices for such financial forwards are closer to those applicable to commercial forwards than to those applicable to swaps where mark-to-market gains and losses are cash-settled daily.

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[6] NOCC is evaluating whether to operate the DCO as a separate legal entity.

[7] We use the term "commercial forward contracts" to refer to commercial deferred delivery contracts that are excluded from regulation as futures contracts under the CEA under the "forward contract exclusion." As interpreted by the Commission and courts, that exclusion covers bilateral contracts for the sale and physical delivery of a commodity between commercial counterparties that are capable of making or taking delivery of the commodity, and where the parties intend for delivery to occur but have deferred delivery for reasons of commercial convenience or necessity. Close out netting to terminate the delivery obligation is also permitted for reasons of commercial convenience or necessity. See the Commission's Statutory Interpretation Concerning Forward Transactions, 55 FR 39188, September 25, 1990.

[8] Today, commercial users typically prefer non-cleared financial forwards of the type that NOCC intends to clear over cleared financial forwards or other cleared cash-settled swaps because they are able to use letters of credit for collateral support, which reduce demands on working capital and bank charges associated with daily wires of cash. The non-cleared financial forwards also better match the hedge accounting and accrual accounting treatment employed by end users.

[9] The extensive lobbying from commercial interests in the energy industry for the end-user exception from mandatory clearing which is part of the Dodd-Frank Act reflects commercial concern that traditional futures-style clearing conflicts with the commercial realities that they face.

2. The CFTC should accommodate DCO models tailored to markets with different risk attributes than traditional swaps or futures

NOCC supports the Commission's belief that each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. NOCC recognizes the Commission's view that specific, bright-line regulations may also be necessary, though, in order to facilitate DCO compliance with a given core principle and, ultimately, to protect the integrity of the U.S. clearing system. NOCC recognizes and appreciates the Commission's endeavor to strike an appropriate balance between establishing general prudential standards and prescriptive requirements in developing the proposed regulations. However, NOCC is concerned that some of the standards and requirements prescribed in this proposed rulemaking could have the unintended consequence of limiting commercial participation on grounds other than risk. The proposed requirements prescribed are not designed to address the unique risks associated with commercial forward contracts, commercially-tailored financial forwards that NOCC intends to clear, products traded in organized electricity markets, or other commercial products traded among participants primarily regulated by the FERC. NOCC believes the best way to attract energy sector commercial participation to use clearing is to permit DCO risk management practices that are tailored to address risk concerns related to products, participants and the market being served. So long as the DCO's practices are risk-based, consistent with DCO core principles, and satisfy the intended objectives of Dodd-Frank, the Commission's rules should allow DCOs discretion in establishing appropriate risk management practices.

Forward contracts reduce cash liquidity risks for commercial hedgers.
Futures contracts and commercial forward contracts have different risk profiles. One important difference is funding liquidity risks associated with credit support and settlement payment. Futures contracts require daily transfers of cash to support variation margin and realized gains or losses as positions are closed out. For commercial users in the energy sector, realized gains or losses on commercial forward contracts are deferred, or accrued, throughout the delivery period and following the delivery period, consistent with cash market payment conventions. Utilities bill consumers on a monthly basis after they have received and consumed the energy, and payment conventions in wholesale power and natural gas markets are tied to such cash flows. Thus, payments between commercials for both power and natural gas delivered throughout a given month are due approximately 25 days after the end of the month.

Commercial credit and lending practices in the energy sector have been designed to support such commercial forward contracts and financial forwards following the same payment cycles. Such forward contracts, supported with non-cash collateral, reduce cash liquidity risks for commercial participants compared to futures and swaps currently cleared by major clearinghouses. Many energy market participants secure their credit lines for working capital and letters of credit with liens on assets that have 'right-way-risk' properties.[10] If a short position that a gas or power producer holds on an OTC

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[10] Chesapeake Energy recently described this at a CFTC-SEC Staff Roundtable. "[T]he way we've set it up is the right way risk model, meaning that if a trade that we have on an OTC derivative goes against us by $1, relationally, the collateral we've posted will go up by $1 so that they're moving in lockstep upwards. We think that model works fine. I'm speaking solely for the energy industry, where we have that benefit of

derivative moves up (against the producer) by $1, relationally, the collateral value of the physical asset used to secure the position will also go up by $1. The adverse market move in the producer's hedged OTC position is offset by the improvement in the pledged asset value.

Standard & Poor's notes that "[c]redit facilities and collateral postings that result in exposure in a rising price environment are useful in allowing speculative-grade credits to continue to hedge without incurring massive liquidity requirements and risk…. [If risks] are properly mitigated it is possible to structure a credit facility that can be rated higher than an issuer's corporate credit rating and even other first-lien debt ratings."[11]

Because realized gains or losses on commercial forward contracts and financial forwards following the same payment cycles are deferred until approximately three weeks after the delivery period, such contracts, secured by non-cash letters of credit which are in turn secured by a commercial hedger's assets, with right-way risk properties, reduce cash liquidity risks in the financial market.[12]

Accommodating multiple clearing models will achieve significantly greater use of clearing and help reduce systemic risk concerns.

A number of trade associations representing various sectors within the commercial energy industry have expressed concerns through filed comments to the Commission regarding how proposed rules could materially impact their ability to manage the commercial risks they face. EEI has noted that "the way in which the CFTC defines and interprets the key definitions will have a direct and substantial impact on how [its] members manage their commercial risk."[13] Electric Power Supply Association commented that its "members participate in energy markets that do not always lend themselves to standardized counterparty demands that can be easily matched with and hedged by complementary futures or options contracts."[14] The National Rural Electric

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the collateral matching the underlying OTC contract." Transcript of the CFTC-SEC Staff Roundtable On Capital And Margin For Swaps And Security-Based Swaps, Washington, D.C. Friday, December 10, 2010, p. 99.

[11] Standard & Poor's, "Right-Way Risk Can Enhance Hedging Capabilities Of Higher Risk U.S. Energy Companies," 2007 Global Project Finance Yearbook, October 2006, p. 44, http://www2.standardandpoors.com/spf/pdf/fixedincome/Project_Finance_2007.pdf.

[12] ISDA, Market Review of OTC Derivative Bilateral Collateralization; see Figure 9. Letters of credit represent only 1% of all asset types received as collateral in the bilateral OTC derivative markets. ISDA notes on page 6 the limited overall use of letters of credit by specific industries - "[o]ther markets, such as metals, energy and commodities use collateral selectively but may employ other forms of credit protection such as letters of credit instead". http://www.isda.org/c_and_a/pdf/Collateral-Market-Review.pdf

[13] Richard F. McMahon, EEI , Comment for rules proposed at 75 FR 51429, Comment No. 26193, September 20, 2010, p. 2, http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26193&SearchText=Edison%20Electric%20Institute.

[14] Daniel S.M. Dolan, Electric Power Supply Association (EPSA), Comment for rules proposed at 75 FR 4144, April 23, 2010, p. 8, http://www.epsa.org/forms/uploadFiles/1423E0000000C.filename.EPSA_Position_Limit_Comments_Final_Draft.pdf.

Cooperative Association, American Public Power Association, and Large Public Power Council jointly commented that energy markets "are comprehensively regulated, and any new regulatory structure must be carefully tailored so as not to conflict with existing regulatory structures."[15]

NOCC believes accommodating the clearing of commercial forwards and the commercially-tailored financial forwards we intend to clear will lead to a very high level use of clearing in the U.S. by commercials in the energy industry. Such a facility could build on that platform to clear futures and futures-equivalent swaps. Such a framework will reduce exposures and payment transfers through improved netting and provide greater transparency thereby reducing the potential for systemic risk.

Within the context of clearing, the above comments suggest a desire for the Commission to accommodate DCO models that are sensitive to commercial realities in the underlying market. Through such accommodation, DCOs would better be able to establish CPSS-IOSCO recommended participation requirements that are "objective and avoid limiting competition through unnecessarily restrictive criteria, thereby permitting fair and open access within the scope of services offered by the CCP." [16] NASDAQ OMX achieved its very high level of clearing use in the Scandinavian energy market by accommodating commercial forwards and a commercially sensitive financial forward market as well as the standard futures market.

DCOs can reduce risks in organized electricity markets.[17]

DCOs are potentially helpful in managing risks associated with products traded in organized electricity markets. FERC noted in a recent FERC rulemaking that "if a market participant files for bankruptcy protection, it may assert that the ability of the ISO/RTO to offset accounts receivable against accounts payable is not valid and seek a claim to amounts owed to the market participant by the ISO/RTO… To ensure that ISOs/RTOs are not left owing the market participant without the ability to net amounts owed by the market participant, there must be an adequate legal basis to protect the ISOs/RTOs in the bankruptcy context." [18]

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[15]Russell Wasson, National Rural Electric Cooperative Association, American Public Power Association, Large Public Power Council, Comment for rules proposed at 75 FR 67258, Comment No. 26626, December 2, 2010, p. 6, http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26626&SearchText=public%20power.

[16]Committee on Payment and Settlement Systems (CPSS), and Technical Committee of the International Organization of Securities Commissions Organization (IOSCO), Recommendations for Central Counterparties, November 2004, p. 16, http://www.bis.org/publ/cpss64.pdf.

[17] Organized electricity market "means an auction-based day ahead and real time wholesale market where a single entity receives offers to sell and bids to buy electric energy and/or ancillary services from multiple sellers and buyers and determines which sales and purchases are completed and at what prices, based on formal rules contained in Commission-approved [FERC] tariffs, and where the prices are used by a transmission organization for establishing transmission usage charges." 116 FERC ¶ 61,077, p. 20, http://www.ferc.gov/whats-new/comm-meet/072006/E-2.pdf.

[18] 133 FERC ¶ 61,060, Order No. 741, Credit Reforms in Organized Wholesale Electric Markets, October 21, 2010, http://www.ferc.gov/whats-new/comm-meet/2010/102110/E-3.pdf.

The ISOs/RTOs are seeking ways to reduce these mutualized risks for their members.[19] PJM, an RTO, recently formed a company and submitted changes to its tariffs filed with FERC with respect to transfer of title between sellers and buyers through PJM.[20] While this structure helps to mitigate credit and mutualized risks for its members trading PJM products, the RTO is limited by its regulatory purpose and thus unable to extend its credit support mechanisms and netting benefits to other ISOs/RTOs or with respect to other commodities such as natural gas.

A DCO could provide similar ISO/RTO specific benefits while also expanding netting benefits through clearing across multiple markets and commodities. However, in order to support such a clearing framework, a DCO for commercial energy transactions requires flexibility in its risk management framework to employ procedures tailored to the commercial markets it will serve and to satisfy the multi-jurisdictional responsibilities of the Commission and FERC. NOCC believes it can assist both regulators in supporting bright-line authorities around markets, products and participants through reporting and market monitoring.

NOCC believes the Commission has sufficient latitude within its statutory authority to allow a DCO flexibility in risk management and margining practices, provided the DCO can demonstrate to the Commission its ability to manage such risks through use of appropriate tools and procedures, consistent with the DCO core principles. By following that approach, the Commission would promote 'responsible economic and financial innovation, and fair competition.' CPSS-IOSCO has noted that:

> "In undertaking an assessment of a CCP, the assessor should first obtain a good overview of the market which it serves, including the characteristics of products cleared, the settlement cycle, product volumes and types of participants. The assessor should also seek to obtain an overall understanding of a CCP's risk management approach, including how the various risk management measures employed are intended to work in combination."[21]

By affording a DCO an appropriate level of discretion in determining how to operate its business within the statutory framework, the Commission would be administering its jurisdictional responsibilities in a manner consistent with the public interest.

3. Detailed Comments

NOCC cautions against a "one size fits all" approach to prescribing DCO risk management rules. Commercial energy markets may contribute less systemic risk to the financial system if their participants are allowed more than one type of cleared product risk management structure. Providing DCOs with discretion in

[19] 134 FERC ¶ 61,126, Order No. 741-A, Credit Reforms in Organized Wholesale Electric Markets, February 17, 2011, http://www.ferc.gov/whats-new/comm-meet/2011/021711/E-6.pdf.

[20] See PJM Settlement, Inc. Now Handling PJM Member Transactions, New subsidiary reduces members' credit risk, Jan. 5, 2011, http://www.pjm.com/~/media/about-pjm/newsroom/2011-releases/20110105-pjm-settlements-inc-goes-live.ashx.

[21] CPSS–IOSCO Recommendations, p. 2.

establishing their risk management framework will attract commercial users and achieve a situation similar to NASDAQ OMX's experience in Scandinavia in which 95% of the clearable swaps may be cleared.

To this end, we propose that the Commission adopt a rule which would allow it to permit such flexibility, such as the following:

> Section 39.13(h)(7) *Alternative risk management framework and risk control mechanisms*. The Commission may grant an exemption to a derivatives clearing organization from any of the foregoing requirements if the derivatives clearing organization can demonstrate that its alternative proposal is consistent with the core principles under the Act based on the risk profile of the products and markets cleared, including the characteristics of the products, the settlement cycle of the underlying cash market, product volumes and types of participants. This may be particularly appropriate when the risk profile of a certain class of products or market participants and associated commercial risk practices are materially different than those prescribed in this Subpart B, Compliance with Core Principles.

The scope and required timeframe for implementation of Title VII of the Dodd-Frank Act amendments to the CEA have been daunting. Given this situation, we believe the work of the Commission has been outstanding. As the Commission states in the NOPR, it "has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements." Given the speed with which the Commission is required to implement the Dodd-Frank amendments, a safety valve is appropriate where the otherwise applicable requirements might be too prescriptive. In Section 2 above, we described how the risk profiles of commercial and financial forward energy contracts NOCC intends to clear differ substantially from those of other instruments such that alternative margining and risk practices could achieve a comparable or better DCO risk level than the standard practice.

The Commission should also recognize that other suitable risk management frameworks and mechanisms may develop that neither market participants nor the Commission can currently envision. An exemptive rule as suggested above would provide a means to accommodate such innovation.

In the current proposal, for example, two proposed rules in particular would severely limit adaptations of the proven Scandinavian clearing model for the energy markets which has been so successful in gaining commercial acceptance because it is tailored to commercial needs and realities.

Prohibition Against Letters of Credit as Initial Margin.
Proposed Rule 39.15(c)(1) provides that "a derivatives clearing organization may not accept letters of credit as initial margin."

The recently proposed CCPS-IOSCO Principles for Financial Market Infrastructure do not prohibit any type of collateral. Rather, they provide that "[a]n FMI should generally limit the assets it (routinely) accepts as collateral to those with low credit, liquidity, and

market risks."[22] This approach is consistent with the Commission's basic guidance as well.

As noted in Section 2 above, normal cash settlement cycles of forward contracts in the energy industry do not present the same cash liquidity demands and risks for market participants or DCOs as the standard futures contract (or, we believe, standard cleared financial swap). Letters of credit are reliable sources of credit support and funding liquidity. Banks that provide these credit facilities receive guidance from their regulators on tools for measuring and managing liquidity risk including performing cash flow projections, identifying diversified funding sources, stress testing, maintaining a cushion of liquid assets, and establishing a formal well-developed contingency funding plan.[23] In the NOPR the Commission expressed concern about letters of credit because the "funds might be unavailable when most needed."[24] Letters of credit in the energy industry are drawn when a market participant defaults and such energy participant defaults are not typically correlated with major stresses in the financial industry.[25] The risk and capital efficiency impacts attributable to decreased voluntary clearing due to letter of credit prohibitions could increase systemic risk to a greater degree than allowing letters of credit as collateral on forward contracts.[26]

Settlement of Variation Margin.

Proposed Rule 39.14(a) provides in part that the word "settlement" means "(i) Payment and receipt of variation margin for futures, options and swap positions…" Additionally, proposed Rule 39.14(b) provides that "[a] derivatives clearing organization shall effect a settlement with each clearing member at least once each business day…"

NOCC fully supports adoption of Rule 39.14(b) for traditional futures and cleared swaps. In contrast, though, while mark-to-market gains and losses on commercial forward contracts and related financial forwards are calculated daily to insure that adequate non-

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[22] CPSS-IOSCO - Consultative Report on Principles for Financial Market Infrastructures, March 2011, p. 38. http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf.

[23] Interagency Policy Statement on Funding and Liquidity Risk Management, The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) in conjunction with the Conference of State Bank Supervisors (CSBS), March 17, 2010. http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006a1.pdf

[24] 76 FR 3710.

[25] We note that most of the major bankruptcies in the power industry over the last decade (e.g., PG&E, Enron, Mirant, NRG, Calpine) did not correlate with stresses in the financial industry so that funds were available as needed to backstop any outstanding credit facilities in the energy markets.

[26] On the same day, September 16, 2008, that Primary Reserve Fund 'broke the buck' in the presumably safe money markets (funds that would satisfy the Commission's proposed Rule § 39.15(d) for investing of cash collateral), Southern California Edison (SCE) was able to draw on nearly $1 billion from its revolving credit facility to support its cash management strategy during the Lehman systemic event. Thus, conventional credit facilities were more robust than cash markets during this time of financial stress. SCE Bond Prospectus, October 7, 2008, p S-3, http://www.edison.com/files/prospectus_sce_2008C.pdf.

cash collateral is present to cover any exposure for robust risk management, as noted in Section 2 above, such accrued gains and losses typically are not cash settled until final payment occurs approximately three weeks after the month in which the energy commodity is delivered. NOCC is concerned that proposed Rules 39.14(a) and (b) could be read to preclude those accepted and proven practices which are employed by commercials with respect to their non-cleared commercial forward contracts and commercially-tailored financial forwards.

The exemptive rule we propose would provide NOCC the ability to demonstrate more fully to the Commission that daily accrual settlement of variation margin is a sound practice appropriately tailored to the unique characteristics of the cash energy markets and market participants for which NOCC is seeking to provide the benefits of clearing. If the Commission's proposed requirements are rigidly applied, that will severely hinder NOCC's ability to attract commercials in the energy sector to clearing which we believe is contrary to the goals of Dodd-Frank.

Risk Practice Flexibility.
The Commission has demonstrated appropriate flexibility in focusing on over-all risk management objectives. For example, with respect to risk practices for new and low volume products the Commission shows a willingness to accept a lower standard of coverage. In connection with proposed Rule 39.13(g) the Commission cites the statement in the CPSS–IOSCO Recommendations that ''[m]argin requirements for new and low-volume products might be set at a lower coverage level [than the major products cleared by a CCP] if the potential losses resulting from such products are minimal.''[27] NOCC fully supports this approach which will allow DCOs to include more products and market participants by attracting them at an early stage without materially increasing the risk of the clearinghouse.

The concept of accommodating new and low-volume products should extend beyond setting initial margin levels to other aspects of risk management. For example, the Commission proposes certain frequencies for back testing and stress testing in Rules 39.13(g)(7) and 39.13(h)(3), respectively. NOCC believes that products, customers or spread credits should reach a specified volume or risk exposure level before being required to be back tested and stress tested with the proposed frequencies so long as the DCO can demonstrate it is meeting the core principle objectives underlying Rule 39.13(f).

Conclusion
In conclusion, NOCC believes that a "one size fits all" approach to DCO risk management rules will discourage participation by commercial end users, contrary to the policy goals of Dodd-Frank. The Commission should allow DCOs flexibility, pursuant to a rule allowing a DCO to seek an exemption from the requirements of the proposed Part 39 Rules, such as the exemptive rule we suggest above, where the DCO must demonstrate that its alternative features meet the DCO core principles. This approach should lead to greater market use of appropriate clearing models, higher capital efficiency and lower systemic risk.

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[27] CPSS–IOSCO Recommendations, p. 23.

NOCC appreciates the opportunity to provide this comment and stands ready to answer any questions the Commission may have.

Sincerely,

George Sladoje
Chief Executive Officer
NASDAQ OMX Commodities Clearing Company