BLACKROCK

March 21, 2011

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

Re: Risk Management Requirements for Derivatives Clearing Organizations 17 CFR Part 39 (RIN 3038-AC98)

Dear Mr. Stawick:

BlackRock, Inc. submits these comments on the Commodity Futures Trading Commission's (the "Commission") Notice of Proposed Rulemaking entitled "Risk Management Requirements for Derivatives Clearing Organizations" (the "Proposed Rule").[1] In the Proposed Rule, the Commission proposes regulation to implement six Derivatives Clearing Organization ("DCO") Core Principles, which include Core Principles C (Participant and Product Eligibility), D (Risk Management), E (Settlement Procedures), F (Treatment of Funds), G (Default Rules and Procedures), and I (System Safeguards).

BlackRock is one of the world's leading asset management firms. We manage over $3.54 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, third-party mutual funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world.

As an asset manager representing many different types of clients, investment vehicles, and separate accounts we offer these comments to assist the Commission in adopting final rules that benefit all market participants, including our clients, by mitigating risk in DCOs and promoting the success of cleared derivatives as they migrate from the OTC bilateral market.

BlackRock fully supports the objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to establish a comprehensive regulatory framework that would reduce risk and promote market integrity. We understand that Core Principles are generally supposed to be flexible regulatory objectives that each DCO has discretion to implement in a manner than best fits the operations of its markets, subject to CFTC oversight.

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[1] *See* 76 Fed. Reg. 3698 (Jan. 20, 2011).

BlackRock agrees with the Commission that each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework[2] while recognizing the need for certain regulations in order to facilitate DCO compliance with a given core principle to ultimately protect the integrity of the U.S. clearing system.

Our comments address certain aspects of the CFTC's proposed implementation of Core Principles C (Participant and Product Eligibility), D (Risk Management) and F (Treatment of Funds). Specifically, we support the CFTC's proposal to limit a DCO's ability to adopt restrictive criteria for clearing membership when less restrictive alternatives are available. We also encourage the CFTC not to treat swaps executed on swap execution facilities ("SEFs") differently from those executed on designated contract markets ("DCMs"), for purposes of a DCO's margin calculation. Lastly, we recommend that the Commission allow DCOs to eliminate the customer omnibus account as the sole method of safeguarding customer funds.

I. Core Principle C: Participant and Product Eligibility

BlackRock strongly supports the mandate in proposed Section 39.12 that a DCO not adopt participation requirements that unreasonably restrict any market participant from becoming a clearing member. Core Principle C, which requires that a DCO's admission and continuing eligibility standards for clearing members be objective and publicly disclosed, will increase competition by allowing more entities to become clearing members. To achieve the fair and open access mandated by Core Principle C, Proposed Rule 39.12(a)(1)(i) would prohibit a DCO from adopting a particular restrictive participation requirement if the DCO could adopt a less restrictive alternative that would not materially increase risk to the DCO or its clearing members. The Commission's proposal will promote more inclusive DCO participation requirements, which will benefit the markets by reducing DCO concentration risk, increasing diversity of market participants involved in DCO governance, enhancing competition, and lowering costs for customers of clearing members.[3] We recommend that the final rule include this least restrictive alternative requirement.

II. Core Principle D: Risk Management

BlackRock strongly supports the proposed requirement that each DCO set margin requirements for its clearing members that are risk-based and subject to regular review. However, we believe the following aspect of the Proposed Rule goes further than necessary and creates tension with the objectives of the Dodd-Frank Act.

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[2] The Proposed Rule illustrates the importance of operating committees, such as risk management committees at DCOs, who are charged with managing the day-to-day affairs of a DCO's business to reduce risk and promote market integrity. BlackRock reiterates the importance of buy-side representation on committees responsible for the day-to-day activities of DCOs where there are no mandated rules, but rather flexible regulatory objectives that each DCO has discretion to implement in a manner than best fits their operations. *See* BlackRock comment letter filed March 7, 2011 entitled "Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest" 17 CFR Parts 1, 37, 38, 39, and 40 (RIN 3038-AD01), *see also* BlackRock comment letter filed November 15, 2010 entitled "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest" 17 CFR Parts 1, 37, 38, 39, and 40 (RIN 3038-AD01)

[3] Proposed Rule at 3700-02.

Minimum Liquidation Time

In prior comment letters BlackRock has stated that artificial restrictions on the ability of buy-side participants to select the best means to execute their transactions, whether on DCMs, SEFs or bi-lateral systems should be avoided.[4] Proposed Rule 39.13(g)(2)(ii) would require that a DCO's margin model use a liquidation time of at least one business day for cleared swaps that are executed on a DCM and at least five business days for all other cleared swaps, even if they are executed on a SEF. In our view, this requirement would raise the cost of executing swaps on SEFs, undermine the competitiveness of SEFs, and restrict artificially the ability of market participants, including asset managers, to select the best means of execution for their swap transactions.

Promoting trade executions on SEFs was one of the goals of the Dodd-Frank Act and, as indicated in a prior comment letter[5], BlackRock would urge the CFTC to adopt final rules that facilitate the development of a successful SEF marketplace to the benefit of all market participants. Proposed Rule 39.13(g)(2)(ii) appears to be inconsistent with this legislative goal and with certain provisions of the Commodity Exchange Act ("CEA"). For example, by requiring a DCO to factor the venue of execution into its margin requirement for a particular swap, the Commission would frustrate the intent of CEA section 2(h)(1)(B)(ii), which requires a DCO to provide for non-discriminatory clearing of swaps executed bilaterally or on or subject to the rules of an unaffiliated DCM or SEF.[6]

The CFTC has provided no rationale for the distinction in Proposed Rule 39.13(g)(2)(ii) and this will result in unnecessary, onerous administrative costs on DCOs and their clearing members, who will have to manage margin calls and netting based on the execution platform rather than the economic terms or liquidity of the swap. Any such additional costs will be borne by the customers of such clearing members.

While we agree that margin should "be sufficient to cover potential exposures in normal market conditions," [7] imposing margin requirements in excess of risk exposure will adversely affect market liquidity and will not promote a model that is intended to incentivize clearing. We recommend that the Commission require that a DCO's margin model use a consistent liquidation time for cleared swaps without regard to whether that swap is executed on a SEF or DCM.

III. Core Principle F: Treatment of Funds

Core Principle F, among other things, imposes an affirmative burden on DCOs to protect the funds and assets that clearing members post to secure their positions, including customer

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[4] *See* BlackRock Comment Letter dated February 22, 2011 entitled "Core Principles and Other Requirements for Designated Contract Markets; Proposed Rule; 75 Fed. Reg. 80,572; RIN 3038-AD09" 17 CFR Parts 1, 16 and 38

[5] *See* BlackRock Comment Letter dated March 8, 2011 entitled "CFTC Notice of Proposed Rulemaking on Core Principles and Other Requirements for Swap Execution Facilities (RIN 3038-AD18) " 17 CFR Part 37 (observing that Section 733 of the Dodd-Frank Act, New CEA § 5h(e) states that a goal of the Dodd-Frank Act is to "promote the trading of swaps on swap execution facilities and to promote the pre-trade price transparency in the swaps market. ")

[6] Proposed Rule 39.13(g)(2)(ii) also appears inconsistent with Proposed Rule 39.12(b)(2), which repeats the statutory language in CEA Section 2(h)(1)(B)(ii).

[7] Proposed Rule 39.13(g).

assets in a clearing member's customer account. Proposed Rule 39.15(b)(1) would require a DCO to comply with the segregation requirements of section 4d of the CEA and any CFTC regulations relating to segregation of customer assets. In response to an earlier CFTC proposal, BlackRock recommended that the Commission should allow customers to choose among several different models of customer collateral protection.[8]

We reiterate that position today. The Dodd-Frank Act's clearing mandate will require that many swaps currently executed bilaterally will need to be cleared through an oligopoly of DCOs. Under the current DCO collateral protection framework, the margin posted by all customers of a clearing member is combined in a customer omnibus account. In the event that one customer defaults, the entire customer omnibus account is available to mitigate the impacts of that default. This "fellow customer" risk is absent in the OTC bilateral markets, where customers are free to negotiate collateral protection requirements with their counterparties. We believe that final rules on the protection of customer funds should not require customers of clearing members to assume fellow customer risk unless the customers choose to do so. We respectfully request that the Commission adopt rules that eliminate the current model of an omnibus customer segregation account as the sole solution for cleared OTC derivatives and allow DCOs enhanced flexibility in how they will protect customers and ensure financial integrity.

We thank the Commission for the opportunity to comment on the Proposed Rule. If you have any questions or would like further information, please contact either of us.

Sincerely,

Joanne Medero

Richard Prager

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[8] *See* BlackRock Comment Letter filed January 18, 2011 entitled "Advanced Notice of Proposed Rulemaking: Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies; RIN 3038-AD99" 17 CFR Part 190