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By Online Submission

April 13, 2011

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN No. 3038-AD09 – Core Principles and Other Requirements for Designated Contract Markets

Dear Mr. Stawick:

I am writing to comment on the proposed regulations for Core Principle 9, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The Commission proposes to require the delisting of a contract that fails to maintain an average trading volume through the centralized market of at least 85%. The Commission indicates that this requirement is necessary to protect the price discovery function in the centralized market. For the reasons listed below, I am concerned that such a numerical requirement might work against the ultimate public policy objective of liquid, transparent futures markets.

I should first establish that I am writing solely as an individual and not in the capacity as a partner in my advisory firm, Offit Capital, or as a public director of NYSELiffeUS, the National Futures Association, or the Futures Industry Association. I am drawing on almost 30 years of futures market experience to reach my conclusions. Offit Capital serves both institutional and individual investors, many of whom rely on the public markets for both price discovery and risk management. My bias today is to promote rules that enhance those public markets in a world where there is increasing pressure from major financial institutions to do more business in off-exchange structured products.

The idea of having a high percentage of an exchange's activity executed in the competitive central market to promote transparency and liquidity is unassailable on the surface. However, by setting a specific numeric standard, and then causing any contracts that fail to meet that standard to be delisted or moved to a SEF, the proposed regulations could work to remove listed products that the public relies on.

But the reality is more complicated than that. Long experience has shown that open interest that is put onto the exchange through EFPs or other forms of off-exchange transactions such as block trades are often traded around or completely liquidated in the competitive auction market. The irony here is that, especially in the early stages of building open interest, block trades can be ultimately liquidity and transparency enhancing.

A further concern with the proposal involves the implications of a contract potentially changing status on the basis of any numerical standard. Investors hate this kind of uncertainty and will likely avoid any contracts that are even close to falling victim to the rule's terms. As unpleasant as it is to contemplate, it is also possible that a numerical rule could give certain institutions an incentive to create block trades over the limit for the express purpose of pushing the contract off the exchange. Allowing this to happen would serve no public policy goal.

Since the dynamic of every market has unique features, it is highly unlikely that any particular numeric rule can be formulated that meets the needs of each contract market or avoids the challenges mentioned above. It is far preferable to advance the principles of liquid, transparent markets and then mandate the exchanges to create trading rules tailored to each market consistent with such principles. Regular rule reviews and cooperation between the Commission and the exchanges should be all that is needed to promote the public policy goals.

I appreciate the Commission considering the above comments. The regulated futures markets are a vital resource for a wide range of investors. As important as SEFs are likely to become, they will never offer all of the competitive, beneficial features of futures. Moving forward with the proposal as outlined may unintentionally subvert many of the markets the Commission works so hard to protect.

Respectfully submitted,

Todd E. Petzel
Partner and Chief Investment Officer