

TO: Comment File – RIN 3038-AC98
76 FR 3698 (Jan. 20, 2011)
76 FR 13101 (Mar. 10, 2011)

Comment File – RIN 3038-AD00
75 FR 67277 (Nov. 2, 2010)

Comment File – RIN 3038 AD-99
75 FR 75162 (Dec. 2, 2010)

FROM: Phyllis Dietz, Division of Clearing and Intermediary Oversight

RE: Comments on Proposed Risk Management Requirements for Derivatives Clearing Organizations; Processing, Clearing, and Transfer of Customer Positions; and Implementation and Sequencing of Final Rules

On April 15, 2011, at 1:00 p.m. EDT, Chairman Gensler and Commission staff participated in a meeting with representatives of Blue Mountain Capital Management LLC, Citadel, D. E. Shaw Group, Delta Strategy Group, DRW Trading Group, and Tudor Investment Corporation. Topics discussed included implementation and sequencing of Dodd-Frank final rules, open access to derivatives clearing organizations, straight-through processing for cleared swaps, margin requirements for cleared swaps, segregation of collateral for cleared swap positions, and the process for mandatory clearing determinations. Industry representatives provided several documents (attached to this memorandum).

Present at the meeting:

David Rubenstein, Blue Mountain Capital Management LLC
Adam Cooper, Citadel
Randall Costa, Citadel (by phone)
Scott Parsons, Delta Strategy Group
Darcy Bradbury, D. E. Shaw Group (by phone)
Jeffrey Levoff, DRW Trading Group
John Macfarlane, III, Tudor Investment Corporation

CFTC

Chairman Gary Gensler
Phyllis Dietz
Sarah Josephson
John Lawton
Amanda Olear
Kevin Walek
Robert Wasserman

Attachments



March 24, 2011

The Hon. Gary Gensler
Chairman of the Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler,

Managed Funds Association wants to thank you for recently meeting with our members to discuss our priorities for implementing OTC derivatives market reforms of the Dodd-Frank Act. As investors that manage assets for thousands of institutions and longstanding OTC derivatives customers, we appreciate your willingness to listen to our perspective. Throughout the legislative and regulatory processes, we advocated for reform of the OTC derivatives markets. In this spirit, we are following up with our recommendations to facilitate prompt implementation and move closer to our shared goal of reduced systemic risk and enhanced efficiency.

During our meeting, we expressed concern with the overall implementation process and emphasized that our objective is not to ask you to slow down implementation of these reforms. On the contrary, we believe it is possible to modify the process and move expeditiously. We believe that by properly ordering priorities, establishing a series of defined milestones and implementing reforms in a practical manner that focuses on the ultimate goal (*i.e.*, reducing the risk to the global financial system), the OTC derivatives market could achieve substantial progress towards key regulatory reforms, including central clearing, sooner rather than later.

The reform process currently underway runs the risk of stalling because many of the proposed regulations are too focused on achieving 100% reform, and because there is no clear blueprint of interim milestones for industry participants to meet the key reform objectives. Let's start working on things that can be achieved now, in 2011. With the infrastructure and industry efforts in place, we are certain there is a way forward that is consistent with broad, timely implementation of the Dodd-Frank Act.

To that end, we believe the first two priorities should be: (i) expanding the use of central clearing for liquid ("clearable") contracts; and (ii) having trade repositories receive data on both cleared and bilateral swaps. These changes would provide substantial benefits to the markets by enhancing price transparency and competition for the most liquid swap transactions. In addition, reforms, such as broad industry clearing and trade repository data, will lay the groundwork for future reforms (*e.g.*, electronic trading and trade transparency) that will provide regulators the data they need (*e.g.*, regarding liquidity and pricing) to promulgate effective rules, oversee the markets and monitor for market risks.

What steps are necessary to implement key reform objectives, including central clearing?
Attached to this letter are two documents that serve as a roadmap.

The first is the "Framework for the Open Items List from Buy-Side Participants of Actions Required for Buy-Side Access to Clearing", which was sent to all regulators, including the Commission, in March of 2010 as part of the New York Fed-sponsored ISDA Industry Governance Committee ("IIGC") process. This document provides a list of key impediments to buy-side clearing. Sadly, in our opinion, with the exception of item #4, little or no progress has been made on these commitments over the past year. The IIGC working group, which achieved notable progress several years ago in standardizing contracts and trade compression, stopped functioning effectively and was not held accountable for achieving the goals stated in the letter. As we hope to have made clear to you in our meeting, we are prepared to reengage, whether through the IIGC process or a new set of industry and regulatory initiatives, to restart progress. Indeed, we have submitted comments to IIGC in the hope of agreeing on a new commitment letter.

The second is a summary of MFA's recommended timeline for adoption and implementation of all rules related to OTC derivatives reform as well as a timeline that articulates clear, practical, measurable milestones for all stakeholders to move clearing forward decisively. Our approach is to establish milestones for clearing access and voluntary clearing with a phase-in period before clearing becomes mandatory. We recommend regular meetings that include buy-side firms, sell-side firms, clearinghouses and regulators to ensure that timely progress is being made.

Most of our members are ready, willing and able to clear both current and future "clearable" swaps once certain basic impediments are addressed. However, as described in the first attachment, there are currently substantial structural and economic barriers to full buy-side participation in central clearing. If implemented effectively, recently proposed Dodd-Frank rulemakings promise to address many of these barriers. In addition, if all parties work together, we believe that within a matter of months, voluntary clearing by buy-side firms could expand substantially in both the broad-based index credit default swaps ("CDS") and interest rate markets. With that beginning, we believe that clearing of single-name CDS that are index constituents would follow shortly thereafter and other single names would follow subsequently. During the voluntary phase, progressively higher targets for all buy-side firms could be met as traditional asset managers and other end-users resolve their unique implementation issues, and over time, all remaining assets classes could also move towards increased central clearing.

We look forward to working with the Commission and other industry participants.

Sincerely,

/s/ Richard H. Baker

Richard H. Baker
President & Chief Executive Officer

Attachments (2)



MFA RECOMMENDED TIMELINE FOR ADOPTION AND IMPLEMENTATION OF FINAL RULES PURSUANT TO TITLE VII OF THE DODD-FRANK ACT

March 24, 2011

This document memorializes the views of Managed Funds Association (“MFA”) with respect to the appropriate timeline for adoption and implementation of final rules related to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”). As investors, customers and longstanding market participants, we strongly support the strengthening of our nation’s financial regulatory system as envisioned, including implementing changes in the derivatives markets to reduce systemic risk, increase transparency, implement mandatory central clearing and promote open and competitive markets. Moreover, our members uniformly agree that rule adoption and implementation should move forward as soon as possible and in a logical, thoughtful manner.

I. Timeline and Sequencing for Adopting Rules

MFA believes that it is important to ensure that the adoption of Title VII rulemakings proceeds in a manner that strengthens the derivatives markets and does not impair market participants’ ability to mitigate risk through swaps. In our view, the solution is for regulators to proceed with rules for which the infrastructure already exists (*e.g.*, mandatory central clearing) and to consider delaying certain rules in favor of obtaining market data or allowing time for the build out of necessary systems prior to adoption (*e.g.*, position limits and real-time reporting). Annex A sets forth our recommended ordering of priorities for all rulemakings that reflects these principles and Annex B sets forth our recommended timetable for achieving specific industry milestones necessary for compliance with the Dodd-Frank Act clearing requirements. We believe that regulators should adopt and implement the first and second tier rules set forth in Annex A before adopting rules for the third and fourth tier priorities in order to leverage systems or obtain data that will result from implementation of the first and second tier rules.

II. Timeline and Sequencing for Implementing Rules

As a general matter, we do not support a “big bang” approach to implementation where all rules go into effect simultaneously and almost immediately after adopted as final. We think this approach could greatly strain the structure and resources of the financial markets, might overwhelm the staff and financial resources of regulators and could become a barrier to overall progress on reform. We are mindful of ensuring that regulation proceeds without resulting in market participants or regulators (especially given regulators’ limited resources) incurring unnecessary, excess costs. Thus, we would hope that regulators would implement rules in the order of our enumerated priorities using a phase-in approach. For example, with respect to central clearing, we would expect derivatives clearing organizations to make the most liquid and

standardized classes of products available for clearing first.¹ At the time that a class of products is ready for clearing, all market participants (including buy-side participants) should be permitted (but not required) to clear those products, while confirming that they intend to be operationally ready to comply with the mandate when it comes into force. Then, there should be a phase-in period before clearing of that product becomes mandatory to give sufficient time for market participants to resolve outstanding documentation or structural issues and for the infrastructure to prove that it is ready for clearing at scale.

Please do not hesitate to call Stuart J. Kaswell or Carlotta King at (202) 730-2600 with any questions on the foregoing or the Annexes below.

¹ We would expect that, with respect to each category of rulemaking, the markets for more liquid and standardized classes of products (*e.g.*, interest rate swaps and the most liquid credit default swaps instruments) will develop faster than illiquid classes of products. We would expect this staggered development to be the case for clearing, exchange trading and reporting and we emphasize that there will need to be a phase-in period for each class of products.

ANNEX A

TITLE VII RULEMAKING AND IMPLEMENTATION PRIORITIES

| Priority | Rulemaking Area | Rationale |
|----------|----------------------------------|---|
| First | Definitions ² | Definitions are key to many different rules and must be addressed first in order to, among other things: (i) understand who and which products will be subject to mandatory clearing; (ii) allow time for hedge funds to conduct calculations to determine if they are MSPs; and (iii) eliminate market uncertainty. |
| | | |
| Second | Clearing ³ | Barriers to effective buy-side participation in clearing must be eliminated to enable buy-side participants to clear voluntarily at the same time as dealers (<i>i.e.</i> , not dealer-to-dealer clearing first), but with a phase-in period before clearing is mandatory. Clearing (1) is a pre-condition to, or (2) at the very least would contribute to a more efficient/effective formulation of rules related to SEF trading, real-time reporting, etc. In fact, once participants begin widespread clearing their swaps, comparatively lower barriers to entry for execution platforms and the publication of prices by CCPs may result in achievement of some transparency goals. Implementation of clearing will require a sequenced phase-in period for preparedness, onboarding and testing (<i>i.e.</i> , negotiations of legal documentation, build out of technology and operational infrastructure, etc.) because of the industry's need to first accomplish certain material pre-clearing milestones (see <u>Annex B</u>). Phase-in for clearing by product and sub-product type would be the preferred implementation plan. |
| | MSP/SD Requirements ⁴ | SD and MSP registration and business conduct rules will likely need a phase-in period before full implementation because of the need for operational infrastructure, policies, procedures, etc. Within this group of rules, registration will need to take place first, followed by business conduct rules and |

² The definitions include definitions of swap, mixed swap, major swap participant, swap dealer and eligible contract participant. However, it is not necessary to have full definitions for "swaps" prior to proceeding with the second priority rules.

³ Clearing rules include, without limitation, the following: (i) DCO governance, (ii) DCO registration, core principles and financial resources; (iii) DCO/DCM/SEF conflicts of interest; (iv) documentation; (v) process for mandatory clearing; (vi) segregation of collateral for cleared swaps; and (vii) clearing, processing and transfer of customer positions.

⁴ MSP/SD requirements include, without limitation, MSP/SD registration, internal business conduct requirements, business conduct standards with counterparties, capital and margin requirements and MSP/SD recordkeeping requirements.

| Priority | Rulemaking Area | Rationale |
|----------|--|--|
| | Reporting to SDRs and Regulators ⁵ (excludes real-time/public reporting) | capital/margin requirements. Prior to adopting many rules that are intended to increase transparency, regulators need to have more market data (e.g., reporting of swaps data to SDRs and regulators should commence prior to SEF implementation in order to allow regulators to monitor the system for risk) and complete extensive discussions with the industry. These steps are necessary to ensure that rules related to transparency are calibrated to achieve their goals without impairing liquidity. Comprehensive reporting to SDRs and regulators will not only support this process, but also will allow regulators to monitor systemic risk and individual risk concentrations much more effectively, and intervene specifically as necessary. |
| | | |
| Third | SEFs ⁶ (including block trade definition) | Rules requiring use of SEFs should come before real-time reporting because SEFs will assist regulators with crafting real-time reporting rules that are optimal for the marketplace. In addition, SEFs can be an efficient mechanism to facilitate real-time reporting. Block trade levels should initially be set low, until regulators have data to determine what levels are appropriate. |
| | Segregation for Uncleared Swaps | Segregation of uncleared swap initial margin should be prioritized in order to reduce risk in the system for products that remain in the bilateral market and to line up with the changes in the cleared market. |
| Fourth | Real-Time/Public Reporting ⁷ | Real-time reporting is dependent upon the establishment and proper functioning of SEFs and more extensive analysis of the impact of reporting on liquidity for the generally less liquid trades that would be the subject of this requirement. |

⁵ Reporting to regulators and SDRs include, without limitation, registration of SDRs, SDR core principles, recordkeeping, SD/MSP reporting and non-SD/MSP reporting.

⁶ SEF-related rulemakings include the definition of “block trade” as well as the SEF definition, core principles and registration.

⁷ Real-time and public reporting includes, without limitation, a study to define “block trade”, post-trade and pre-trade reporting to SDRs, interdealer reporting, public dissemination of reported data, etc.

| Priority | Rulemaking Area | Rationale |
|----------|--------------------------------|---|
| | Other Rulemakings ⁸ | These rules either depend on regulators first collecting market data or are not as crucial in order to address systemic risk and transparency concerns. Where the rules include thresholds, regulators should initially set the thresholds to have the least impact, until they have data to determine what threshold level is appropriate, at which point regulators could progressively adjust thresholds to be more restrictive. |

⁸ Other rulemakings include, without limitation, anti-fraud and market manipulation, position limits, algorithmic/computer readable data, confirmation, portfolio reconciliation and portfolio compression.

ANNEX B

TIMETABLE OF MILESTONES AND COMMITMENTS FOR
INDUSTRY COMPLIANCE WITH THE DODD-FRANK ACT CLEARING REQUIREMENTS

| Milestone | Responsible Party | Milestone Date | Industry Commitment Needed to Reach Milestone |
|--|--|------------------------------------|---|
| <p>1. Complete industry documentation templates for:</p> <ul style="list-style-type: none"> - Clearing Agreement Addendum - Execution Agreement | <ul style="list-style-type: none"> ▪ Buy-side ▪ Dealers ▪ Clearing members ▪ FIA | <p>June 1, 2011</p> | <p>Buy-side / Dealers / CCPs / DCOs :</p> <ul style="list-style-type: none"> ▪ Work in good faith to standardize and streamline documentation to reduce barriers to entry and operational complexities in moving to a cleared model. ▪ Current indications are that the date for final rules with clearing relevance will possibly be June 1, 2011 but no later than July 15, 2011, and the documentation process is already well underway. If that date is delayed, and there are any aspects to the rules that would affect documentation, this date might need to move ▪ We recognize that templates may evolve over time, but this should not impact the completion of this milestone. |
| <p>2. CFTC and SEC rules related to clearing are finalized</p> <p>Publication of the Mandatory Clearing Date [indicatively March 1/July 1, depending on the product set]</p> | <ul style="list-style-type: none"> ▪ CFTC ▪ SEC | <p>No later than July 15, 2011</p> | <p>Final Dodd-Frank rule promulgation date is July 15, 2011, but current indications are that the date for final rules with clearing relevance will possibly be June 1, 2011 (e.g., (i) CCP risk management, (ii) clearing, processing and transfer of customer positions, (iii) customer segregation, (iv) margining, (v) end-user exemptions, and (vi) governance).</p> <p>Also allows time for finalization of rules with aspects that could impact the clearing model and trade flows (e.g., swaps data repository rules and rules on portfolio commingling and margining).</p> <p>Dates for promulgation could be sooner or later, which would shift overall timetable forward.</p> |
| <p>3. CCP Implementation Period – end goal: CCPs</p> | <ul style="list-style-type: none"> ▪ CCPs | <p>July 15, 2011 – December 1,</p> | <p>CCPs:</p> |

| Milestone | Responsible Party | Milestone Date | Industry Commitment Needed to Reach Milestone |
|---|---|----------------------------------|--|
| fully compliant with CFTC/SEC rules, and ready to clear in compliant model | | 2011 | <ul style="list-style-type: none"> ▪ 180-day maximum timeframe for implementation of clearing rules and any required trade flow/process changes from promulgation under current draft CCP risk rules. Some CCPs are already largely in compliance, most have indicated intention to comply much more quickly. ▪ Completion of risk committee steps required to implement rules. |
| 4. Publication of the Phase 1 Mandatory Cleared Products for the Mandatory Clearing Date – additional products may be added as they are certified | <ul style="list-style-type: none"> ▪ CFTC ▪ SEC | September 1, 2011 | Buy-side / Dealers / DCOs / CCPs: <ul style="list-style-type: none"> ▪ Work in good faith with each regulator to assist in defining the Phase 1 mandatory cleared product set, with the end goal of maximizing the product set and reducing systemic and counterparty risk in OTC derivatives. ▪ September is outside date. CCPs are expected to certify products with the SEC and CFTC as soon as rules relating to clearing are formally effective, with approval under the Dodd-Frank Act of 90 days from application. |
| 5. Preparation for Mandatory Clearing – end goal: comprehensive readiness for production clearing, all buy-side participants | <ul style="list-style-type: none"> ▪ Buy-side ▪ Dealers ▪ Clearing members ▪ CCPs | June 1, 2011 – December 31, 2011 | Buy-side: <ul style="list-style-type: none"> ▪ Identify at least 1 approved clearing member ▪ Entered into all required legal document with clearing members and CCPs ▪ Work with clearing members and CCPs in becoming 100% ready to clear product Dealers / clearing members: <ul style="list-style-type: none"> ▪ Entered into all required legal document with clients ▪ Work with clients and CCPs in proving readiness to clear product (in scale) For many participants, particularly larger ones, this process is already underway and will advance rapidly as clearing members establish their offerings. June 1, 2011 is indicated as start date to allow completion of standardized documentation, but this need not delay a wide range of |

| Milestone | Responsible Party | Milestone Date | Industry Commitment Needed to Reach Milestone |
|---|---|--|---|
| | | | <p>onboarding workstreams.</p> <p>This timetable allows 6 months for the industry as a whole to be connected and tested.</p> |
| <p>6. Voluntary Period – objective: at least one production trade by direct and indirect clearing participants, plus phased voluntary targets to confirm scale readiness for conversion to mandatory clearing</p> | <ul style="list-style-type: none"> ▪ Buy-side ▪ Dealers ▪ Clearing members ▪ CCPs | <p>December 31, 2011 (date for relevant participants to clear one trade)</p> <p>January 1, 2012 – March 1/July 1, 2012 (phase-in period)</p> | <p>Buy-side / Dealers / clearing members:</p> <p>Each direct and indirect clearing participant (buy-side and sell-side) complete at least one trade in production</p> <p>Buy-side / Dealers / clearing members:</p> <ul style="list-style-type: none"> ▪ Ramp-up % of cleared volume in mandatory products through achievement of volume targets – commitment format TBD (see notes below). <p>Phase-in period should reflect the complexity of the product, with the voluntary period for the simpler instruments running through March 1, 2012 and the voluntary period for more complex instruments (<i>e.g.</i>, credit) extending until July 1, 2012.</p> |
| <p>7. Mandatory Clearing for first phase of products</p> | <ul style="list-style-type: none"> ▪ Buy-side ▪ Dealers ▪ Clearing members ▪ CCPs | <p>No earlier than March 1/July 1, 2012</p> | <p>100% of trades subject to mandatory clearing and are cleared going forward.</p> <p>The alternative deadlines would reflect and follow on the heels of the two phase-in periods.</p> |
| <p>8. Voluntary Backloading Phase</p> | <ul style="list-style-type: none"> ▪ Buy-side ▪ Dealers ▪ Clearing members | <p>Begin immediately following onset of mandatory requirement with goal to be</p> | <p>Progressive industry targets to backload eligible trades, to achieve further compression and to reduce systemic counterparty risk.</p> |

| Milestone | Responsible Party | Milestone Date | Industry Commitment Needed to Reach Milestone |
|-----------|-------------------|----------------------------|---|
| | ▪ CCPs | completed within 3 months. | |

NOTES

- Milestone dates are indicative, keyed particularly off finalization of relevant SEC and CFTC rules.
- Timetable applies only to eligible interest rate swaps and appropriate, liquid credit default swaps that are subject to the first phase mandatory clearing requirements.
- Timetable is not exclusive, meaning that new products or other products not yet identified as subject to mandatory clearing could be made available for clearing at any time. A timetable for a second phase of products subject to mandatory clearing may overlap with this timetable or additional products subject to mandatory clearing could potentially be added to the Phase 1 product set.
- For each milestone, particularly milestones 6 and 7, there should also be industry-level metrics for completing the steps identified, compiled each month to chart progress.
 - Metrics for an increased volume of current trades could be set by looking at DTCC data, which would measure open interest and number of trades by product segment and market participant. Milestones would scale up over time, with initial targets phasing in small, medium and large buy-side firms as a percentage of their overall activity in a given product and/or with a given dealer. All dealers must be included in the metrics, both due to their responsibilities as clearing members and as part of their preparation to comply with the mandate as direct derivatives market participants.
 - Economic considerations could play a factor in the willingness of market participants to accept targets during the voluntary period. As the time approaches, broader industry discussion of these considerations should explore ways to mitigate these considerations. On the other hand, the interests of clearing members and CCPs in attracting utilization, especially in the voluntary period, will potentially lead to competition and incentives and will help offset the differential in cost between cleared and uncleared settlement.

- Compression and tear-ups would not count toward relevant targets. Treatment of backloading toward targets to be determined.
- CCPs will also play a key role in measuring build-up of volume and fulfillment of target commitments. CCPs could define, monitor and report metrics against aggregate metrics accessed by the regulatory agencies via swap data repositories.
- For long-only, asset manager, investor accounts, such as municipal accounts, with extensive approval requirements that cannot be completed by certain of the milestone dates set out in the chart, exceptions may be established such that the timetable for target commitments and effectiveness of the mandate is adjusted to allow for completion of these approval steps.

Framework for the Open Items List from Buy-side Participants of Actions Required for Buy-side Access to Clearing - March 1 Industry Letter – Annex C, Section 3(a):

The initiation of buy-side CDS clearing access on December 15, 2009 represented an important milestone, but buy-side clearing remains in a preliminary test phase. There is further substantial work required to reach full buy-side clearing access, to be accomplished jointly by the CCPs, CMs, buy-side firms, and regulators. Full buy-side clearing access is defined to include:

1. Each dealer that provides customer clearing services in the ordinary course of its business is prepared to onboard buy-side market participants who seek access to clearing, provided that such clients are deemed suitable on the basis of reasonable objective criteria which that dealer uses in evaluating customer creditworthiness generally. Each dealer is further prepared to provide clearing services to its onboarded customers on reasonable commercial terms which shall include but not be limited to the option to clear at each CCP where such dealer is a clearing member.
2. Open interest caps at CCPs are removed and there is a reasonable cohort of initial products available for clearing and a detailed cleared product roll-out schedule, agreed to by CCPs and CMs, including firm date commitments on the roll-out of each specific product set. Each product offered by each CCP to dealers should also concurrently be made available by CCPs and CMs to buy-side firms.
3. CCPs that are clearing buy-side transactions have a robust, transparent, and efficient margin mechanism, well defined and understood default waterfalls, efficient and robust trade processing and reporting that can handle block trading and allocations, effective and efficient risk compression, proven segregation of customer funds and pre- and post-default portability of positions, clear legal documentation of give-up agreements and trade confirmations, and appropriate buy-side representation on governance boards.
4. Regulatory uncertainty is removed relating to U.S. and non-U.S. bankruptcy treatment of cleared OTC derivatives, the 4d and 17f6 orders, and the SEC and FINRA exemptions.

The completion of these items, and the prerequisite steps to the completion of these items, should be included in the open items lists submitted by the dealer signatories and the CCPs in respect of Annex C, Section 3(a) of the March 1 commitment letter.

We look forward to working with the dealer signatories and the CCPs to 1) prepare a unified list of open items, 2) confirm together with the CCPs, dealer signatories and supervisors that appropriate responsible parties and target resolution dates for each impediment have been established; and 3) on an ongoing basis, track progress on closure of the tasks required to eliminate impediments, and work collaboratively to resolve impediments where the buy-side is a part of the relevant workstream.

We further set out in the tables below, in respect of each CCP, impediments to full buy-side clearing access as described above that are of particular concern to the buy-side, and indicate where we believe the buy-side has a collaborative role to play in the resolution of these impediments.¹

¹ The tables relate to buy-side clearing of CDS on North American reference entities only for each CCP currently clearing North American reference entities.

LIST OF IMPEDIMENTS

CME: Open items

| <u>Category</u> | <u>Open item</u> | <u>Buy-Side Has a Role</u> |
|--------------------|---|--------------------------------|
| Risk | Finalize margin methodology for currently cleared products to remove open interest caps | |
| | Finalize CME Rules and related CME governance documents to remove open interest caps | |
| | Finalize margin methodology for yet to be cleared products, completed in stages, focusing on resolving open items for most liquid and highest volume CDS first – tie to CME product roll-out schedule | |
| Operational | Establish connectivity to and complete testing of front-end trade entry vendors (e.g., Clearport, Migration, TBF, Bloomberg, MarkitWire, ICELink) Connectivity and testing is needed between CCP and vendor, CM and vendor, buy-side firm and vendor, and buy-side firm and CM | X |
| | CMs and buy-side firms to complete end-to-end production testing of front-, middle-, and back-office processing to enable streamlined processing of trade information, cash flows, and reports – tie to overarching operations roll-out plan | X |
| | End-to-end testing of backloading facility | X |
| | End-to-end systems flow, including fallback processing | X |
| | Clarification of post default portability rules pertaining to risk waterfall process, including outline of process, timeline, coverage and description of scenario where all clients except one have been able to port their positions (i.e. is the Net Client Omnibus Margin Amount calculation based on client list at time of default or after some clients have ported their positions) | |
| | Outline of process for price challenges protocol on a daily basis for the CM and their clients, including price challenge protocol in cases where different CCPs price same swap differently. | |
| | Clarification and outline of the credit event process | |
| | Outline and define Financial Disclosure Requirements for buy-side firms | X |
| | Define the clearing and commission fee processing at the trade level to confirm inclusion in the trade cost basis | X |
| | | |
| Legal | Finalization and standardization of trading annex and default rules | X |
| | Clarification of trade confirmation protocol | X |
| | Clarification of operation of give up process, including timing, description of legal relationship of buy-side firms to other parties at each step, trade rejection rights and protocol at CCPs and CMs and rights of executing broker to break non-accepted trades | X |
| | Increased transparency of default waterfall in the event of customer and CM defaults for futures and CDS books | |
| | Buy-side representation on governance boards to ensure market participant balance and properly reflect actual or potential risk to buy-side participants as a whole | X |
| | | |

| | | |
|-------------------|--|--|
| | Margin segregation issues related to registered investment companies and other regulated entities required by law or regulation to segregate collateral at its own custodian | |
| Regulatory | Approved 4d order | |
| | Approved 17f6 order | |
| | Clarified treatment of cleared CME CDS for Basel I capital requirements for banks, and for bank holding companies within FCMs acting as CDS CMs | |
| | Increased certainty of the treatment of CDS as “commodity contracts” under CFTC rules through modification of the bankruptcy code | |
| | Permanent SEC exemption | |
| | Permanent FINRA margin exemption | |

ICE: Open items

| <u>Category</u> | <u>Open item</u> | <u>Buy-Side Has a Role</u> | |
|---|---|---|---|
| Risk | Finalize margin methodology for yet to be cleared products, completed in stages, focusing on resolving open items for most liquid and highest volume CDS first – tie to ICE product roll-out schedule | | |
| | Increase transparency of margin regime to enable 3 rd parties to replicate margin requirements | | |
| Operational | Establish connectivity to and complete testing of front-end trade entry vendors (e.g., Bloomberg, MarkitWire, ICELink) Connectivity and testing is needed between CCP and vendor, CM and vendor, buy-side firm and vendor, and buy-side firm and CM | X | |
| | CMs and buy-side firms to complete end-to-end production testing of front-, middle-, and back-office processing to enable streamlined processing of trade information, cash flows, and reports – tie to overarching operations roll-out plan | X | |
| | End-to-end testing of backloading facility | X | |
| | Enable trade date clearing for trades executed with any party with a relationship with a CM (not just if at least one side is an ICE CM) | | |
| | Streamlined netting process for a buy-side firm’s CDS book facing the same CM | | |
| | End-to-end systems flow, including fallback processing | X | |
| | Clarification of post default portability rules pertaining to risk waterfall process, including outline of process, timeline, coverage and description of scenario where all clients except one have been able to port their positions (i.e. is the Net Client Omnibus Margin Amount calculation based on client list at time of default or after some clients have ported their positions) | | |
| | Outline of process for price challenges protocol on a daily basis for the CM and their clients, including price challenge protocol in cases where different CCPs price same swap differently. | | |
| | Clarification and outline of the credit event process | | |
| | Outline and define Financial Disclosure Requirements for buy-side firms | X | |
| | Define the clearing and commission fee processing at the trade level to confirm inclusion in the trade cost basis | X | |
| | Legal | Finalization and standardization of trading annex and default rules | X |
| | | Clarification of trade confirmation protocol | X |
| Clarification of operation of give up process, including timing, description of legal relationship of buy-side firms to other parties at each step, trade rejection rights and protocol at CCPs and CMs and rights of executing broker to break non-accepted trades | | X | |
| Buy-side representation on governance boards to ensure market participant balance and properly reflect actual or potential risk to buy-side participants as a whole | | X | |
| Finalization of segregation framework, including consideration of alternative margin segregation schemes | | X | |
| Margin segregation issues related to registered investment companies and other regulated entities required by law or regulation to segregate collateral at its own custodian | | | |

| | | |
|-------------------|---|--|
| | Compatibility of margin scheme with title transfer regimes (e.g., under English law CSAs) | |
| Regulatory | Increased certainty of segregation of customer margin and positions and portability in the event of a CM default for all applicable CMs jurisdictions | |
| | Approved 17f6 order | |
| | Permanent SEC exemption | |
| | Increased certainty regarding role of US banking regulators in insolvency of US bank CM | |
| | Legal certainty on enforceability of default rules under non-US bankruptcy laws and portability of margin upon a non-US CM's default | |
| | Legal certainty on enforcement of security interests | |