

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
United States
www.cftc.gov

Chris Barnard
Germany

19 May 2011

- **17 CFR Parts 1, 21 and 39**
- **RIN Number 3038-AC98**
- **Information Management Requirements for Derivatives Clearing Organizations**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Information Management Requirements for Derivatives Clearing Organizations.

You are proposing regulations to implement certain core principles for derivatives clearing organizations (DCOs) as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The proposed regulations would establish standards for compliance with DCO Core Principles J (Reporting), K (Recordkeeping), L (Public Information), and M (Information Sharing). Additionally, the CFTC is proposing technical amendments to parts 1 and 21 in connection with the proposed regulations. Finally, the CFTC is also proposing now to delegate to the Director of the Division of Clearing and Intermediary Oversight the CFTC's authority to perform certain functions in connection with the proposed regulations.

I support the proposed regulations that will apply to all DCOs. They strike the right balance between a principle-based and a rules-based approach. I agree that some bright-line regulations are necessary to facilitate DCO compliance, promote consistency between DCOs, ensure a more transparent market and ultimately to protect the integrity of the US clearing system. I hope that the following comments will be helpful to you.

Decrease in financial resources

§ 39.19 concerns reporting. I agree with the broad and detailed requirement here. For me the most critical is under § 39.19(c)(4)(i) Decrease in financial resources, which requires a DCO to report a 10% decrease in the value of the financial resources required under § 39.11(a) or, as applicable, § 39.29(a), either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day. I think we should improve on this in order to provide a better monitoring mechanism for regulatory oversight. The types of financial resources that are available to a DCO to meet its financial obligations to its clearing members include: (1) margins; (2) the DCO's own capital; (3) guaranty funds; (4) various insurances. These financial resources are not equivalent. I would argue that (2) and (3) above are more critical, as these represent robust measures, whereas (1) for example changes with market conditions and business exposures and is directly related to risk taken on. I would suggest splitting the financial resources into two classes for this particular reporting purpose. Class A would consist of robust items such as (2) and (3) and Class B would consist of exposure (market or risk) related items such as (1). I would recommend that the "Decrease in financial resources" reporting requirement should be applied on both classes of financial resources separately, as well as in total.

I would also recommend that a DCO should calculate and publish its Solvency Ratio, which is [Available Financial Resources / Financial Resources Requirements]. I would recommend that a reduction of 5% or more in this Solvency Ratio should also trigger an Event-specific reporting requirement under § 39.19(c)(4).

Recordkeeping

§ 39.20 established the Recordkeeping requirements. I would recommend that records should be required to be kept indefinitely rather than the general five years proposed here. Original documents should be scanned after five years. There is no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future analytical purposes.¹

Public information

§ 39.21 covers the provision of information to market participants and the public. Concerning Public disclosure under § 39.21(c), I would recommend that § 39.21(c)(2) should specifically refer to all explicit and implicit costs, fees and subsidies in order to promote greater transparency here.

In general I would also recommend the publication of all items of public interest, such as Event-specific items under § 39.19(c)(4). Only business-specific confidential issues should be exempted from this general condition.

¹ These comments are similar to my comment letter on your notice of proposed rulemaking: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, RIN 3038-AC96, CFTC, December 2010.

Summary

The proposed regulations are sufficient for implementing the required compliance with DCO core principles J, K, L and M. However I would strongly recommend that you should amend the proposed regulations in order to strengthen some of the reporting requirements and disclosures. I would specifically recommend a more detailed reporting of any Decrease in financial resources split by type of resources, and also the calculation and reporting of a DCO's Solvency Margin, including the reporting of any decrease of 5% or more in this measure.

Yours sincerely

Chris Barnard