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June 2, 2011,

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

Re: 17 CFR Part 39 Risk Management Requirements for Derivatives Clearing Organizations 76 Fed.Reg. 3698

RIN 3038-AC98

Dear Secretary Stawick:

We commend the Commission for its efforts under Dodd-Frank and the various Dodd Frank NOPRs to establish an open access market for swaps. However, we believe it will be difficult to achieve this objective with the closed access model remaining fully in place for listed futures and options. With DCOs potentially able to commingle listed futures, options and SEF-executed swaps under Proposed Reg. §39.15(b)(2)¹, a customer's ability to gain the portfolio margining benefits of such commingling will necessitate the customer to clear its swaps alongside the related futures and options.

As a result of the need under the proposed rule to have swaps cleared in the same DCO through which listed futures and options contracts are cleared in order to secure the significant economic benefit of portfolio or cross margining, competition among DCOs for swaps clearing will be limited because one DCO - the CME Group - trades and clears about 96% of listed contracts. By controlling the site of futures clearing, one entity can leverage that control to benefit a strong anti-competitive position in the clearing of swaps.

¹ Proposed Rule 39.15(b)(2) states in relevant part: "Commingling of futures, options on futures, and swaps positions — (i) Cleared swap account. In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options on futures, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter..."

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Pricing for clearing services for swaps will be set in this environment without the real benefit of competition for those services.

In order to overcome the likely impact on competition for open access DCO services, customers with positions in listed products at the CME need the ability to access their own open interest to be able to transfer positions to the DCO of their choosing in order to obtain the promised benefit of cross margining among listed and swap positions. In order for swap customers to be free to have meaningful DCO access, they must not only be free to execute where they wish, but also to transfer cleared futures to the same DCO where they clear swaps. Open access for clearing services requires both the ability to clear swap positions where their related futures reside, and to transfer futures positions for clearing where their related swaps reside.

Post-trade position transfers are necessary to regain competition in the listed futures and options space (and a 96% market share of one exchange suggests we do not have a competitive model now), but also to enact the open access provisions of Dodd Frank for clearing services for swap transactions. In our view, the purposes of Dodd-Frank in this regard cannot be fully effectuated without ensuring that end-users have the right to clear through the DCO that provides them with the greatest efficiency.

Two impediments which are easily overcome through regulatory action, stand in the way of this needed pro-competitive remedy: (1) finalizing the Exchange of Futures for Futures ("EFF") process (the last listed filing was on October 4, 2010) to require the CME to allow position transfers by customers who desire access to their own open interest; and (2) once compelled, overseeing the pricing for such EFFs to assure market access on fair and nondiscriminatory terms as compared to other EFRP transactions.

While understanding the difficult burden that Congress has placed on the CFTC to enact regulations to implement Dodd Frank, this request is not to put aside that burden to make an unrelated decision on EFFs, but rather to make the EFF decision in order to implement the provisions for open access in DCO services for swaps under the Dodd Frank legislation. The EFF transaction is a necessary component of the forthcoming regulatory scheme.

I will be pleased to respond to any questions.

Yours truly,

