BLACKROCK

June 3, 2011

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

RE: Opening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest – RIN 3038-AD01

Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant" - RIN 3038-AD06 / RIN 3235-AK65

Core Principles and Other Requirements for Swap Execution Facilities - RIN 3038-AD18

Risk Management Requirements for Derivatives Clearing Organizations – RIN 3038-AC98

Dear Mr. Stawick:

BlackRock, Inc.[1] submits these comments in response to the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Federal Register release entitled "Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act," 76 Fed. Reg. 25274 (May 4, 2011). In this release, the Commission reopens or extends comment periods for certain rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act. ("Dodd-Frank Act") The Commission has solicited comment both on the proposed regulatory framework for swaps and the order in which the final rules should be considered for adoption and implemented. BlackRock appreciates this opportunity to comment on these areas of importance to our business and clients.

BlackRock supports the Dodd-Frank Act's objectives of creating a regulatory framework for swaps that will reduce systemic risk, increase price transparency, and promote market integrity while maintaining liquidity. As the voice of and a fiduciary for our clients, BlackRock has a vested interest in the development of a sustainable and fair regulatory regime. In this comment letter,

[1] BlackRock is one of the world's leading asset management firms. We manage over $3.6 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.

we confirm our support for certain proposed rules, identify proposed rules we believe the CFTC should revisit, and express our views on the proper sequence for implementing the Dodd-Frank Act.

I. BlackRock supports several of the CFTC's proposed rules.

Today, most swaps transact outside the scope of CFTC regulation in the over-the-counter ("OTC") bilateral market. Once the Dodd-Frank Act takes effect, however, swaps will be comprehensively regulated and subject to the jurisdiction of the CFTC and/or SEC. Many standardized swaps will need to be cleared through a derivatives clearing organization ("DCO") and executed on either a designated contract market ("DCM") or swap execution facility ("SEF"). BlackRock believes this transition must be managed carefully to avoid disruption of the swap markets and to encourage market participants to continue using swaps in their businesses. Several of the CFTC's proposed regulations would help to achieve this transition while maintaining liquidity in the swap markets; we support those proposals.

A. BlackRock believes clearing of standardized swaps will mitigate risk and supports the Commission's efforts to protect customer collateral.

The Dodd-Frank Act's clearing mandate will contribute to the safety and soundness of the U.S. financial markets and BlackRock supports the CFTC's efforts to promote clearing of standardized swaps. The central counterparty clearinghouse system ("CCP") that has developed in the futures market mutualizes the risk of a particular transaction across all of a DCO's clearing members and effectively eliminates systemic risk. The CCP framework has functioned well, even in times of acute market stress, including during the financial crisis of 2008. BlackRock believes the widespread clearing of swaps would have similar salutary effects on the swap markets.

However, we believe that salient differences between the risk profiles of futures and OTC swaps counsel against replicating the CCP model of customer collateral protection for swaps. Under the current CCP structure, when a futures commission merchant ("FCM") defaults, the collateral posted by that FCM's clients may be depleted. Put differently, customers of a clearing member may incur losses if another customer defaults. We note that the CFTC has recently proposed rules that would eliminate this "fellow customer risk." We believe eliminating this fellow customer risk will help to alleviate major concerns that surround moving swaps onto a futures-style clearing model. The Commission's innovative and thorough thinking on this customer protection issue is most commendable.[2]

B. BlackRock believes permitting various trade execution methods on SEFs will assist in migrating swaps to new trading platforms.

BlackRock supports flexible regulation that would allow cleared swap markets to develop naturally in response to market forces. Today, asset managers like BlackRock confidently execute swaps in the OTC market, where we consistently receive quotations for products

[2] BlackRock intends to submit a comment letter specifically addressing the strengths and weaknesses of the CFTC's proposal once it is published in the Federal Register. We have reviewed the publicly available unofficial copy of the proposal and support the general direction of the CFTC's proposed rulemaking, namely that DCOs should be allowed to offer customers alternatives for collateral protection.

we wish to trade from a range of liquidity providers. If regulatory mandates are imposed on swaps before the market is ready, the required migration of swaps from the OTC market to the cleared and exchange-traded market could undermine the usefulness of the swap market.

BlackRock commends the CFTC for its efforts to adopt flexible regulation in order to minimize swap market disruption that may occur as a result of the Dodd-Frank Act. For example, swap markets may be disrupted if the CFTC fails to balance properly the goals of increasing pre-trade price transparency and enhancing liquidity in the swap market. We believe the CFTC's proposal to permit flexible trade execution methods on SEFs will help strike the appropriate balance by allowing less liquid swaps to transact on request for quote platforms while more liquid swaps can transact through an order book.[3]

C. The Commission correctly determines that asset managers should not qualify as Major Swap Participants.

Overbroad regulation may also cause market disruption. For example, persons who qualify as major swap participants ("MSP") will need to register with the CFTC and adhere to a panoply of business conduct standards not applicable to other market participants. Complying with some of these requirements will be costly – perhaps even prohibitive for smaller entities – and BlackRock believes the MSP definition should be limited to capture only those non-swap dealer entities whose swap activities render them systemically important.

Asset managers do not meet this description and we support the CFTC's proposal not to treat asset managers as MSPs. Asset managers invest money for clients, typically in funds or separate accounts. The advised fund or account bears the credit risk associated with any swap positions it holds. In the unlikely event that a fund or account defaults, counterparties do not have recourse to the asset manager's assets. The Commission and the SEC have correctly determined the swap positions of the funds and accounts asset managers advise should not render asset managers MSPs.[4]

D. The Commission properly encourages a wide range of entities to participate in the governance of swap markets.

BlackRock believes the swap markets will benefit if a broad spectrum of swap users participate alongside swap dealers in the development and governance of the swap markets. BlackRock supports proposed CFTC rules that encourage a wide range of entities to participate meaningfully in the governance of swap markets.

In particular, we support Proposed Rule 39.13(g)(3), which would guarantee that at least 10% of seats on a DCO's risk management committee ("RMC") are held by customers of

---

[3] *See* BlackRock Comment Letter, dated March 8, 2011, "CFTC Notice of Proposed Rulemaking on Core Principles and Other Requirements for Swap Execution Facilities (RIN 3038–AD18)," at 4.

[4] *See* BlackRock Comment Letter, dated February 22, 2011, "Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant, (RIN 3038-AD06)," at 3, 12.

clearing members.[5] The RMC would determine products eligible for clearing, set standards and requirements for initial and continuing clearing membership eligibility, and advise the Board of Directors on the relevant DCO's risk model and default procedures. In other words, decisions of the RMC will have profound and immediate impacts on all DCO constituencies, including customers. In our view, all DCO constituencies should participate in these decisions and Proposed Rule 39.13(g)(3) would help guarantee such participation.

We believe that strong governance requirements and effectively mitigating conflicts of interest will serve both our clients' interests and the interests of the U.S. financial system.[6] Including buy-side viewpoints on RMCs would bring much-needed balance and expertise to the decision-making process. Buy-side representation, in turn, will increase the transparency of that process, mitigate the conflicts of interest inherent in the process, and create a better prospect for such conflicts to be resolved. As holders of vulnerable stakes in DCOs, buy-side participants have real incentives to ensure that prudent risk management practices exist and are observed. In addition, as a major group of intended users of cleared products, buy-side participants would be able to explain why a particular product would be useful and whether the risks associated with such a product could be prudently managed in a cleared environment.[7]

BlackRock also supports Proposed Rules 39.12(a)(1) and (2), which would prevent a DCO from adopting participation requirements that unreasonably restrict any market participant from becoming a clearing member. By allowing a diverse group of entities to become clearing members, this rule will increase competition, promote more inclusive DCO participation requirements and lower costs to customers of clearing members.[8] In short, Proposed Rules 39.12(a)(1) and (2) will enhance swap market efficiency.

II. BlackRock has concerns about the CFTC's proposal to treat Swap Dealers and Major Swap Participants as virtually identical parties.

BlackRock supports the efforts of Congress and the Commission to address systemic risk through regulatory oversight of those entities whose exposure to swaps and security-based swaps could threaten the country's financial integrity. As we expressed in our prior comment letters, however, we are concerned that these goals are not best served by treating swap dealers and major swap participants as identical parties. Congress has acknowledged the different roles SDs and MSPs play in the swaps marketplace. Indeed, Congress defined an MSP

---

[5] *See* BlackRock Comment Letter, dated November 16, 2010, "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest" ; BlackRock Comment Letter, dated March 7, 2011, "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)."

[6] We recognize that the Commission has proposed another rule, Proposed Rule 39.26, which would impose a requirement that DCO Boards of Directors to require that at least 10% of directors be customer representatives. Although BlackRock does not oppose this requirement, Board representation is **not** a substitute for operating committee representation.

[7] We also support other proposed rules that would prevent one class of interest from dominating the decision-making bodies of SEFs and DCMs. For example, we support the proposed rules that would require public director representation on the Boards of Directors and certain board committees for SEFs and DCMs. However, we believe these rules would be more effective by requiring customer representation on the Boards of Directors and all operating committees of DCMs and SEFs.

[8] *See* BlackRock Comment Letter, Risk Management Requirements for Derivatives Clearing Organizations 17 CFR Part 39 (RIN3038–AC98) at 2.

as "any person who is not a swap dealer" and maintains outstanding swap positions exceeding specified thresholds. As a result of this definition, SDs represent the "sell-side" of swap transactions with MSPs representing the "buy-side." They are, in short, very different parties with divergent interests.

The Dodd-Frank Act prescribes that SDs and MSPs must establish "robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant." New CEA § 4s(j)(2). The statute provides the CFTC with broad discretion to implement risk management systems. Nonetheless, the CFTC's proposed rules would subject both SDs and MSPs to an identical requirement that the entity "establish and maintain a risk management unit with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the risk management program" of the SD or MSP. *See* Proposed Rule 23.600. This decision effectively requires MSPs, many of which are entities with few employees, to create an entire unit that must be segregated from several other parts of the MSP (such as the business trading unit). This will, in many cases, create unnecessary cost that is disproportionate to the systemic risk posed by MSPs. At a minimum, we believe the CFTC should reconsider the major swap participant thresholds to exclude those entities that would not be systemically significant.[9]

Similarly, the CFTC has proposed rules subjecting MSPs to business conduct standards beyond those imposed in the Dodd-Frank Act that, in effect, would require MSPs to protect the interest of SDs. Proposed Rule 23.402(c)(2) would require SDs and MSPs to gather facts necessary to "effectively service the counterparty . . . [and] [e]valuate the previous swaps experience, financial wherewithal and flexibility, trading objectives and purposes of the counterparty." We do not believe that Congress intended to require smaller entities to look out for the interests of their larger counterparties.

III. BlackRock Supports Flexibility on Block Trading, Real-Time Reporting and Swap Execution Facilities.

As the Commission well knows, inefficient trade execution methods will increase costs to our clients and those of other asset managers. BlackRock appreciates that the Commission does not intend to disrupt existing swap market liquidity as a by-product of its rulemaking process and is attempting to facilitate the appropriate evolution of swap execution practices, including trading systems where warranted. In our view, the Commission's final regulatory judgments in the areas of block trading, real-time reporting and SEFs will be vital to achieving these mutually desired policy outcomes. We would urge the Commission to permit flexibility in swap execution protocols because market mechanisms will serve the public interest better if allowed to evolve and mature more naturally. Block trades should be acceptable at levels well below the proposed 95% standard, especially when tied to market liquidity in a particular swap. Real-time reporting is important so long as the requirement to report does not harm investors' interests and distort market performance or prices. SEFs should be allowed to structure their RFQ platforms on whatever basis the SEF believes will serve its clients' interests, whether one-to-one or one –to-five. In these and other areas, we urge the Commission to

[9] *See* BlackRock Comment Letter, dated February 22, 2011, "Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant, (RIN 3038-AD06)," at 5.

adopt flexible and pragmatic standards – consistent with those adopted by the SEC – in its final implementing regulations.

IV. BlackRock supports public disclosure of sequencing plans and provision effective dates.

We believe that there is considerable uncertainty with respect to which provisions of the Dodd-Frank Act will become effective on July 15, 2011 and request that the CFTC publish a list of provisions that will be effective on July 15 as soon as possible. This would enable BlackRock and other market participants to better manage their responsibilities with respect to Dodd-Frank compliance.

As discussed in our letter (filed simultaneously with this one) BlackRock supports the proposal that the CFTC publish a proposed sequencing plan illustrating the sequence for adopting as well as implementing final rules. In that letter, we also provide an overview of what we believe would be the most fair and effective sequence for implementing final rules.

We thank the Commission for the opportunity to comment on the Dodd-Frank rulemaking process. We appreciate the Commission's efforts and appreciate the opportunity to work with the CFTC to develop sustainable swap regulation. If you have any questions or would like further information, please contact either of us.

Sincerely,

Joanne Medero
Richard Prager