

# J.P.Morgan

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

June 3, 2011

**Re: RIN 3038–AC96 - Proposed Rules 1.71 and 23.605 Related to the Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants, Introducing Brokers, Swaps Dealers, and Major Swap Participants<sup>1</sup>**

We welcome the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC”) with respect to the proposed rules referred to above.

J.P. Morgan is committed to clearing OTC transactions and in fact we have been clearing dealer to dealer OTC transactions for a decade. We have made significant investments in our client clearing franchise and we employ several hundred people in support of our client clearing service.

With respect to the rules referred to above, we agree with the positions articulated by the Futures Industry Association, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association, in their January 18, 2011 comment letter on this topic (the “**Industry letter**”).<sup>2</sup> For the sake of brevity, we will not restate the points made in the Industry Letter. We submit to the attention of the Commission the following additional comments, which are related to the relationship between a Swap Dealer/Major Swap Participant (“SD/MSP”) and its clearing member affiliate<sup>3</sup> with respect to the provision of clearing services.

**A Swap Dealer or Major Swap Participant (i) should not be permitted to pressure a clearing member to refuse access to clearing for one or more clients, but (ii) should be permitted to make a case with its clearing member affiliate to facilitate a client’s access to clearing services**

It seems to us that the primary concern that the proposed regulations intend to address is that the execution desk of a SD/MSP may attempt to pressure its affiliated clearing member with a view to restrict open access to clearing services. Clearly that is not our intention, and in our view the Act contains clear anti-avoidance provisions. We support such anti-avoidance provisions. We believe it would be appropriate for the CFTC to issue rules prohibiting any activity intended

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<sup>1</sup> 17 CFR Part 1 Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers 75 FR 70152; and 17 CFR Part 23 Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants 75 FR 71391, the comment period for each as reopened by 17 CFR Chapter 1 Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) 76 FR 25274.

<sup>2</sup> <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27167&SearchText=>

<sup>3</sup> By “clearing member affiliate,” we refer to clearing members that are directly or indirectly under the same control as the SD/MSP.

to restrict open access to clearing, such as a SD/MSP pressuring the clearing member to not extend clearing services to clients. Importantly, however, we believe a SD/MSP should be permitted to work and share information with its clearing member affiliate to promote and facilitate a client's access to clearing services or to define the parameters pursuant to which clearing services will be offered.

As noted in the Industry Letter, we recognize the importance of respecting a client's right to privacy, and for this reason we support a requirement that SD/MSPs and clearing members have compliance policies in place preventing trading desk personnel from gaining information relating to swaps executed by an independent executing broker. The current compliance policies adopted by responsible prime brokerage businesses are a suitable precedent for this type of activity. Compliance with these policies should be audited both internally and by regulators.

We believe the foregoing proposal would appropriately address the CFTC's primary concerns and fulfill Congress's intent to address activity that could lead to biased judgment or any other activity that would contravene the core principles of open access and the business conduct standards described in the Act.

Thank you for the opportunity to comment publicly on these important matters. Please contact J.P. Morgan should you wish to discuss these matters in greater detail.

Sincerely,



Alessandro Cocco  
Managing Director  
J.P. Morgan

Honorable Gary Gensler, Chairman  
Honorable Michael Dunn, Commissioner  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott O'Malia, Commissioner

Honorable Mary L. Schapiro, Chairman  
Honorable Elisse B. Walter, Commissioner  
Honorable Kathleen L. Casey, Commissioner  
Honorable Luis A. Aguilar, Commissioner  
Honorable Troy A. Paredes, Commissioner