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VIA ELECTRONIC MAIL

September 2, 2011

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038-AD18, Notice of Proposed Rulemaking "Core Principles and Other Requirements for Swap Execution Facilities"

To limit disruption for market participants as much as possible, DCMs must be eligible for temporary grandfather relief from SEF registration, if final DCM Core Principle 9 regulations force futures contracts to move to SEFs and trade as swaps

Dear Mr. Stawick:

NYSE Liffe U.S. LLC ("NYSE Liffe U.S."), a Designated Contract Market ("DCM") regulated by the Commodity Futures Trading Commission ("Commission") supports increased transparency through the migration of OTC derivatives to central counterparties and regulated execution venues as contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). However, NYSE Liffe U.S. is concerned that the above referenced proposal establishing requirements for, among other things, the registration of swap execution facilities ("SEFs") may not properly consider the implications of a separate regulation proposed by the Commission which will force the trading of certain futures contracts to move from DCMs to SEFs.

Futures contracts listed on DCMs performed flawlessly during the financial crisis and DCMs were often referenced as examples of venues providing the type of transparency sought for OTC transactions. Such discussions eventually led Congress to develop SEFs. Certainly, the goal of the legislation was not to create rules governing this new type of trade execution venue which would disadvantage DCMs after which SEFs are largely modeled. To date, the Commission has proposed regulations establishing the manner in which both SEFs and DCMs must comply with the core principles of the Commodity Exchange Act. While each of these proposals was crafted independently, NYSE Liffe U.S. offers comments on the need to

coordinate such regulations to avoid market disruption in the already well-functioning futures market.

By letter dated February 22, 2011, NYSE Liffe U.S. submitted comments on the Commission's proposed regulations for DCM compliance with the core principles and other requirements as proposed on December 22, 2011. Among other comments, NYSE Liffe U.S. opposed adoption of proposed regulation § 38.502 which provides that, to protect the price discovery process of trading in a DCM's centralized market under DCM Core Principle 9, a DCM may not continue to list for trading any contract, unless an average of 85 percent or greater of the total volume of such contract is traded on the DCM's centralized market. If a contract fails to meet this minimum centralized market trading requirement, the DCM, within 90 days following the centralized market trading percentage calculation,[1] must: (i) delist the contract from the designated contract market and transfer open positions in the contract to a SEF that it operates; (ii) delist the contract from the designated contract market and transfer all open positions in the contract to another SEF that will accept the contract; or (iii) liquidate the contract. The DCM may only allow trading in such contract to continue until all open positions are liquidated.

For the reasons explained in the previous letter, NYSE Liffe U.S. stated that "the determination as to whether the price discovery function in the centralized market is being protected and what requirements may be necessary to protect the price discovery process, should be based on a case-by-case balancing of all of the qualities and features of the particular contract, the commodity involved and related markets, as opposed to a single-minded focus on a contract's price discovery function." NYSE Liffe U.S. reaffirms this position, and accordingly remains firmly opposed to proposed regulation § 38.502.

If the Commission nonetheless promulgates regulation § 38.502 as proposed (or adopts any similarly rigid regulation), NYSE Liffe U.S. will likely be required to delist certain futures contracts currently trading on the DCM. NYSE Liffe U.S. anticipates that it would elect to transfer such contracts to a SEF that it would operate. However, NYSE Liffe U.S. would be unfairly disadvantaged when compared to others attempting to register as SEFs because it does not meet the proposed conditions to qualify for "temporary grandfather relief from registration" outlined in §37.3 of the proposed regulation.[2] Specifically, none of the contracts NYSE Liffe U.S. currently lists for trading are considered swaps.[3] These contracts would

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[1] For contracts and contract months listed as of the effective date of the final rule, such an initial calculation must occur within 30 days of the effective date. This calculation shall include trading volume during the immediately preceding 12 month period. If the contract has not yet been listed for 12 months the initial calculation is based upon the trading volume during the period since the contract was initially listed. Thereafter, the calculation must be updated and provided to the Commission within 30 days of the 12 month anniversary of the initial calculation. See Proposed Rule at 75 FR 80616.

[2] 76 FR 1238

[3] As proposed, an applicant seeking to operate with temporary grandfather relief (while their SEF registration application is pending) must provide transaction data substantiating that the execution or

only become swaps if and when they are forced to be delisted under the Commission's separately proposed regulation § 38.502 which ultimately requires futures contracts to become swaps or face liquidation.

Based upon the narrative accompanying the proposed regulation, it appears that the Commission is attempting to ensure the continuity of business operations for existing entities that may be obliged to register as SEFs. However, the narrative only acknowledges entities operating pursuant to exemptions or exclusions previously provided under the Commodity Exchange Act and fails to note that DCMs may also be forced to register as SEFs in an attempt to continue listing certain contracts.[4] NYSE Liffe U.S. does not operate an exempt commercial market (ECM) or exempt boards of trade (EBOT), nor does it operate pursuant to any other exemption or exclusion provided to electronic trading facilities under Sections 2(d)(2) and 2(e) of the Commodity Exchange Act (as in existence prior to modification by the Dodd-Frank Act). NYSE Liffe U.S. could qualify for "temporary grandfather relief from registration" by establishing such a facility and offering one or more swaps for trading before the end of the year. However, in the absence of an immediate regulatory or business need, there is no reason why NYSE Liffe U.S. should be required to undertake this financial and operational burden.

If the Commission elects to adopt some form of proposed regulation § 38.502, requiring the potential delisting and transfer of contracts from a DCM to a SEF we ask the Commission to adopt one or both of the following two options for allowing a DCM to qualify for "temporary grandfather relief from registration":

- Modify proposed regulation § 37.3(b) to allow a DCM to operate a SEF under the provisional terms of "temporary grandfather relief from registration" during the period for which such relief is extended to other SEF registrants provided it (i) has formed the SEF and has filed an application for registration as a SEF (ii) notifies the Commission, at the time of its submission of the application, of its interest in operating under the temporary relief; and (iii) certifies that it believes that its operation on a temporary basis will meet the requirements of Part 37, as adopted by the Commission.

- Add a provision to proposed regulation § 37.3(b) that allows for "temporary grandfather relief from registration" to remain available to DCMs on an ongoing basis (beyond a specified date after the effectiveness of the final regulation establishing core principle compliance criteria for SEFs) so that a DCM required under Core Principle 9 to delist a futures contract at any point in the future would be allowed to seek temporary relief from registration as a SEF provided it (i) has formed the SEF and has filed an application for registration as a SEF within the 90-day period provided in § 38.502(c) (or such longer period as the final regulation may provide); (ii) notifies the

trading of swaps has occurred and continues to occur on their trading system or platform at the time application for such relief is submitted. See Proposed Rule 76 FR 1238.

[4] 76 FR 1216

Commission, at the time of its submission of the application, of its interest in operating under the temporary relief; and (iii) certifies that it believes that its operation on a temporary basis will meet the requirements of Part 37, as adopted by the Commission.

This requested relief for DCMs is consistent with the purposes of the relief proposed for other applicants that are required to register with the Commission as SEFs, which is to "avoid undue market disruption as well as ensure continuity of the business operations of an existing entity that, at the time . . . is providing a marketplace for the trading of swaps."[5] Providing DCMs with temporary grandfather relief from SEF registration will provide a similar continuity for futures contracts required to be transferred to a SEF and traded as swaps. The requested relief would provide the Commission sufficient time to fully review a DCM's SEF registration application. Each DCM affiliated SEF that qualifies for temporary relief would be subject to Section 5h of the Act and related regulations during the period in which the Commission is reviewing the SEF's application for registration.

Without the requested relief, market participants with hedging and other commercially important trading needs would be left without access to important risk management tools during the period that the futures contract was being delisted on a DCM, and the DCM's SEF registration application was approved. The threat of DCM contracts facing delisting without a clear migration path may cause market participants to lose confidence in the stability of these contracts.

The regulations governing newly created SEFs are certainly expected to transform the swap market. However, the unintended impact of such regulations on the futures market cannot be ignored, especially when considered in conjunction with proposed regulation § 38.502. While NYSE Liffe U.S continues to oppose regulation § 38.502, the comments contained herein provide remedies to ensure that any DCM facing potential contract delisting is not unfairly disadvantaged and that members of the public using such contracts for risk management purposes are the least harmed. More specifically, a DCM forced to transfer contracts to a SEF should receive an allowance for temporary provisional registration similar to that being offered to other existing trading venues.

Respectfully submitted,

Janet McGinness

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[5] 76 FR 1216