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State Street Corporation
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September 30, 2011

Via: http://comments.cftc.gov

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

Re: Notice of Proposed Rulemaking -- Customer Clearing Documentation and Timing of Acceptance for Clearing (RIN Number 3038–AD51)

Dear Mr. Stawick:

State Street Corporation[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission ("CFTC") Notice of Proposed Rulemaking ("NPR") on Customer Clearing Documentation and Timing of Acceptance for Clearing, published in the Federal Register on August 1, 2011.

State Street, which intends to offer a new derivatives clearing service for its clients, views the proposed rules related to documentation and acceptance of trades for clearing as critical to the successful implementation of Title VII of the Dodd-Frank Act. Overall, State Street strongly supports Dodd-Frank's mandate for open and nondiscriminatory access to the emerging marketplace for clearing services. We also support implementing regulations which encourage the highest possible levels of certainty for execution and clearing of centrally cleared swaps. Providing this certainty of clearing requires that there is no measurable time lag between execution and acceptance for clearing. For these reasons, we strongly support the pending NPR, as described below.

Timing of Acceptance for Clearing

State Street supports the clearing acceptance goal of the original CFTC trade acceptance proposal[2], which mandated immediate acceptance of trades for clearing for swaps traded on a swap execution facility ("SEF") or a derivatives contract market ("DCM"). We believe this model works well for existing futures

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[1] With over $22.8 trillion of assets under custody and administration and $2.1 trillion of assets under management* at June 30, 2011, State Street is a leading specialist in meeting the needs of institutional investors worldwide. Our customers include mutual funds, collective investment funds and other investment pools, corporate and public retirement plans, insurance companies, foundations, endowments and investment managers. Including the United States, we operate in 26 countries and more than 100 geographic markets worldwide.
*This AUM includes the assets of the SPDR Gold Trust (approx. $58 billion as of June 30, 2011), for which State Street Global Markets, LLC, an affiliate of State Street Global Advisors, serves as the marketing agent.

[2] 76 FR 13101 (March 10, 2011) (Requirements for Processing, Clearing, and Transfer of Customer Positions).

markets, and that it would, albeit with some changes to current industry practices, be workable and desirable for swaps submitted for clearing under the Dodd-Frank rules.

We understand, however, the concerns of some in the industry with an inflexible mandate for immediate acceptance, and support the CFTC's revised approach, which mandates acceptance or rejection "as quickly after execution as would be technologically practicable if fully automated systems were used." We agree with the CFTC that the use of such a performance based standard should result in derivatives clearing organization ("DCO") action "in a matter of milliseconds or seconds or, at most, a few minutes, not hours or days." Combined with the proposed restrictions on counterparty relationships (discussed further below), we believe the NPR's revised proposal for timing of acceptance for clearing can accomplish the goals of Dodd-Frank, while providing sufficient flexibility as industry practices and technology continue to emerge.

Under the NPR's proposed performance standard for timing of acceptance for clearing, we expect industry practices to focus on pre-trade check of the availability of credit, as dictated by the futures commission merchant ("FCM") or the DCO. This approach protects the integrity of the market by ensuring that (i) customers do not enter into positions that would exceed their credit allotment (which would result in market-disruptive trade cancellations), (ii) FCMs are not at risk of having their customers trade in excess of their allocated credit limit and violate FCMs' risk management processes, and (iii) DCOs are not at risk of having their FCM members exceed the DCO allocated credit limit.

This pre-screening approach is consistent with current practices with the exchange traded derivatives markets. In these markets, whether a client chooses to execute a trade through either a properly registered broker (such as an FCM or registered floor broker), or directly through FCM-sponsored direct market access, pre-trade review processes ensure that when a trade is accepted for execution, the trade will be accepted for clearing. We realize that certain current market practices for OTC swaps do not follow this model, but we believe such pre-trade screening is currently technologically feasible, and can essentially ensure certainty of clearing upon execution.

We also support the CFTC's revised proposal related to timing of acceptance for clearing for swaps not subject to mandatory clearing. Under its original proposal[3], the CFTC proposed to implement separate standards for acceptance for clearing for swaps subject to mandatory clearing under Dodd-Frank, and swaps voluntarily submitted for clearing. We agree with the CFTC's new proposal on this subject as described in the NPR, which treats these two classes of swaps identically with respect to timing for acceptance or rejection for clearing. We see no reason swaps cleared voluntarily should be denied the certainty provided by the CFTC's proposed approach for mandatorily cleared swaps, and believe the CFTC's revised proposal will result in greater efficiency and certainty for swap markets.

Finally, we urge the CFTC to clarify its rules to specifically allow for post-trade allocation of block trades. This practice is well established in existing futures markets, where clearinghouses accept blocks from executing FCMs, which are responsible for clearing the entire block subject to post-trade allocation between subaccounts and give-ups of the relevant allocated portions of such trade to clearing FCMs pursuant to industry standard give-up agreements We believe a similar process can be adopted for swaps, and will be an essential element to acceptance of central clearing by large institutional investors.

Customer Clearing Documentation

State Street supports the CFTC's proposal under the pending NPR to place restrictions on the types of provisions swap dealers, futures commission merchants, or derivatives clearing organizations may include

[3] 76 FR 13101 (March 10, 2011) (Requirements for Processing, Clearing, and Transfer of Customer Positions).

in their documentation for clearing swaps with customers that are a customer of a future commission merchant. Specifically, the CFTC has proposed to prohibit arrangements which (i) disclose the identity of the swap counterparty, (ii) limit the number of counterparties with whom a customer may enter a trade, (iii) restrict the size of a position a customer may take with any individual counterparty, (iv) impair customers' access to best execution of trades, or (v) prevent compliance with CFTC rules establishing timeframes for acceptance for clearing.

As noted in the NPR, the CFTC's documentation proposals are, at least in part, in response to a recently developed FIA/ISDA agreement template that provides for tri-party credit agreements between the customer, the customer's FCM and individual swap dealers. We agree with the CFTC view that such practices are inconsistent with the open access provisions of Dodd-Frank, would unnecessarily require disclosure of the identity of counterparties, and would create unneeded delays in the acceptance of trades for clearing. In addition, we note that the post-trade credit exposures these arrangements are intended to address are not an issue under approaches which provide immediate acceptance for clearing upon execution, such as the pre-trade screening model we mention above, particularly when combined with FCM establishment of customer trading limits at the SEF level. We strongly support a regulatory approach which seeks to use currently available technology to eliminate these credit exposures, rather than the use of unnecessary arrangements to work around weaknesses in current market practices.

Once again, State Street appreciates the opportunity to comment on the NPR. As noted above, we believe the proposed rules related to the timing of acceptance for clearing and restrictions on use of tri-party credit and similar arrangements are critical to the successful implementation to the Dodd-Frank Act, both to provide the mandated open and fair access for clearing services, and establish clearing and execution practices which will provide the certainty and confidence investors will demand in markets for centrally cleared swaps.

Sincerely,

C M. Lewis

Clifford M. Lewis
Executive Vice President
State Street Global Markets