

September 30, 2011

Via E-mail (www.comments.cftc.gov)

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

Re: Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 FR 45730 (August 1, 2011) (RIN 3038-AD51)

Dear Mr. Stawick:

The undersigned firms¹ appreciate the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed rules on customer clearing documentation and timing of acceptance for clearing ("Proposed Rulemaking").² We support transparent, competitive, and well-regulated markets and regulatory measures that support these goals. We, therefore, support the Commission's efforts to implement those provisions of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")³ designed to bring much needed regulation, transparency and oversight to the over-the-counter derivatives market. As discussed further below, we support the Commission's proposals regarding:

- **Real Time Acceptance for Clearing** because it is an essential element of expanding and diversifying the liquidity providers with access to swaps markets;
- **Customer Clearing Documentation** that prohibits the disclosure of a counterparty's identity because such disclosure would undermine Dodd-Frank Act's goal of more open, competitive access to the cleared swaps market.

I. Introduction

The undersigned firms trade their own capital in the exchange-traded and cleared derivatives markets. These firms engage in manual, automated and hybrid methods of trading and are active in cash and derivatives in a variety of asset classes, such as equities, foreign exchange, commodities and fixed income.

¹ These firms include: Atlantic Trading USA LLC; Belvedere Trading; Bluefin Trading, LLC; Chopper Trading LLC; CTC Trading Group, LLC; DRW Holdings, LLC; Eagle Seven, LLC; Endeavor Trading, LLC; Flow Traders US LLC; Geneva Trading USA, LLC; GETCO; Hard Eight Futures; HTG Capital Partners; IMC Financial Markets; Infinium Capital Management LLC; Kottke Associates, LLC; Marquette Partners, LP; Nico Holdings LLC; Optiver US LLC; RGM Advisors, LLC; Templar Securities, LLC; Tower Research Capital LLC; TradeForecaster Global Markets LLC; Traditum Group, LLC; WH Trading LLC; XR Trading LLC.

² Notice of Proposed Rulemaking, Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 FR 45730 (August 1, 2011).

³ Public Law 111-203, 124 Stat. 1376 (2010).

We are active participants in the exchange-traded markets and many of us are also active in trading certain cleared derivatives products, including energy contracts currently executed in the bi-lateral over-the-counter markets and cleared by a Derivatives Clearing Organization (DCO), such as CME Clearport, or cleared through the Intercontinental Exchange's ICE Clear. We generally do not solicit counterparties for these transactions and never hold customer funds.

We are a critical source of liquidity in the markets in which we trade, enabling those who use these markets, including commercial end-users, to manage their business risks and to enter and exit the markets efficiently. Consistent with our current trading activities, many of the undersigned firms expect to trade cleared swaps. Our participation will support the changes to the swaps markets envisioned by the Dodd-Frank Act by providing additional sources of liquidity and diversifying the number and types of counterparties, which will reduce systemic risk and benefit end-users.

Our ability to participate in these markets will depend upon a number of factors. Most important among these factors is access to the market for cleared swaps. We support the Commission's proposals to require fair and open access to DCOs. These proposals provide that a broader number of participants would be allowed direct access to swaps clearing. While more fair and open criteria for direct access to clearing is critical, it is also critical that market participants that are not direct members of DCOs be able to indirectly access the swaps market through their clearing firms. We understand that the Commission's proposals are designed to facilitate this indirect access and we support this goal.

II. The Proposed Rules

A. Real Time Acceptance for Clearing

The Proposed Rulemaking would require DCOs and their clearing members to establish systems to accept or reject trades as quickly as would be technologically practicable if fully automated systems were used.⁴ The undersigned firms support this requirement. Not only is such real time acceptance important to the risk reducing goals of the Dodd-Frank Act, but it also supports the goal of a more open, transparent and competitive market for swaps.

The time between execution and clearing introduces credit risk that any prudent counterparty must consider in determining with whom to trade. Only by eliminating (or minimizing) this time gap can a market participant place primary importance on the quality of the execution in considering with whom to trade and allows a broader range of counterparties to compete. In this way, real time acceptance into clearing creates an open and level competitive playing field for execution, improves pricing, and maximizes access to liquidity for all participants.

The undersigned firms are all liquidity providers. We believe that our liquidity can provide important competition in the cleared swaps market, improving pricing and liquidity for end users. Without real time acceptance into clearing of swaps, there will be no effective competition from new liquidity providers such as the undersigned.

Finally, while some have claimed that a long delay in trade confirmation is essential to facilitate multi-account allocation, the reality is that such allocation is commonplace in the futures markets, and similar processes could be applied to the cleared swaps market.

⁴ Proposed Part 1, § 1.74, Part 21, § 23.610, and Part 39, § 39.12(1)(1)(vi).

B. Customer Clearing Documentation

The Proposed Rulemaking would prohibit an FCM providing customer clearing, or a swap dealer or major swap participant (MSP) trading with an FCM customer, from entering into arrangements that, among other things discloses the identity of a customer's swap counterparty, limits the number of counterparties with which a customer may trade, or restricts the size of position with any one counterparty, separate from an overall limit.⁵

The undersigned firms do not generally believe it is appropriate for government regulation to prescribe or prohibit contractual terms between private parties. In an open, competitive market, such regulation would be unnecessary. However, the current swaps market is not open and competitive; instead it is concentrated in a few large dealers and "too big to fail" banks. For this reason, we believe there is the potential for industry practices, such as the use of standard agreements, to impair the ability of alternative liquidity providers, such as the undersigned, to participate in the swaps market by indirectly accessing DCOs.

In the Proposed Rule, the Commission discusses the June 2011 FIA-ISDA Cleared Derivatives Execution Agreement, which was offered as a template for use by swaps market participants in negotiating agreements with counterparties to swaps that are intended to be cleared. We appreciate FIA's and ISDA's efforts to clarify the responsibilities of the various parties involved in these transactions. However, we do not believe that any agreement that discloses the identity of counterparties to each other or that discloses the identity of a counterparty to the other counterparty's clearing firm is needed. Cleared swaps are or will be executed in one of the following ways:

- Trades on Designated Contract Markets or Swap Execution Facilities. Participants on an exchange do not have agreements with each other and do not know the identity of the counterparty to a trade that is executed on such exchange. Similarly, participants in swaps trading platforms, such as designated contract markets (DCMs) or swap execution facilities (SEFs) would not need agreements with each other. Instead, the DCM or SEF would submit the trade to a clearing organization for clearing and preserve the anonymity of trading counterparties.
- Bilateral Swaps Submitted for Clearing. In the current cleared swaps market no agreement exists or is needed that discloses to a counterparty's clearing firm the identity of the other counterparty to a trade. Only the name of a counterparty's clearing firm (not the counterparty itself) is disclosed to the other counterparty's clearing firm.
- Executing Broker Representation. A customer may hire a third party execution firm to act on the customer's behalf in finding a counterparty. Standard execution agreement templates have been developed by industry groups in the past, such as the *International Uniform Brokerage Execution Services Agreement*, that govern the relationship between the customer, its executing broker and its clearing firm. We agree that some modifications to this agreement are needed to apply to a cleared swap. The customer's counterparty to the trade, however, does not need to be a party to the agreement, nor disclosed to the customer's clearing firm.

⁵ Proposed Part 1, § 1.72 and Part 21, § 23.608.

The illustrations above show that in a cleared market, the identity of a customer's trade counterparty need not be disclosed to such customer's clearing firm and, when a trade is executed through an electronic platform the identities of the counterparties are not disclosed to each other. Because disclosure of a counterparty's identity could undermine the goals of Dodd-Frank to establish a more open, competitive swaps market, we support the CFTC's proposal.

It is important to note that once put in place, historically these types agreements have become *de facto* standards for the industry and can be extremely difficult to amend or replace. While standard agreements are technically voluntary, customers may be forced to use such agreements because dealer FCMs insist on worse terms in the absence of the standard agreement. Any standard industry agreements for cleared swaps, even on a temporary basis, should not undermine the goals of the Dodd-Frank Act. We believe it is appropriate for the Commission to use its authority to ensure that industry practices are consistent with the principles under the Dodd-Frank Act.

The undersigned firms appreciate the opportunity to provide comments to the Commission regarding customer clearing documentation and timing of acceptance for clearing.

Sincerely,

Atlantic Trading USA LLC

By: /s/ Matt Joyce, Managing Member

Belvedere Trading

By: /s/ Owen O'Neill, Managing Partner

Bluefin Trading, LLC

By: /s/ Arthur Duquette, Partner

Chopper Trading LLC

By: /s/ Adam Garchik, COO

CTC Trading Group, LLC

By: /s/ Eric Chern, CEO

DRW Holdings, LLC

By: /s/ Donald R. Wilson, Jr., CEO

Eagle Seven, LLC

By: /s/ Chris Lorenzen, CEO

Endeavor Trading, LLC

By: /s/ Mark Dixon, COO

Flow Traders USA LLC

By: /s/ Wouter Buitenhuis, COO

Geneva Trading USA, LLC

By: /s/ Robert S. Creamer, President

GETCO

By: /s/ Stephen Schuler, Co-Founder and CEO

Hard Eight Futures

By: /s/ Francis Wisniewski, Managing Director

HTG Capital Partners

By: /s/ William McNeill, Managing Director

IMC Financial Markets

By: /s/ Robin Van Boxsel, Managing Director

Infinium Capital Management LLC

By: /s/ Charles Whitman, CEO

Kottke Associates, LLC

By: /s/ J. Michael Crouch, Vice-President

Marquette Partners, LP

By: /s/ James F. Heinz, Jr., Managing Partner

Nico Holdings LLC

By: /s/ Peter J. Meyer, CEO

Optiver US LLC

By: /s/ Sebastiaan Koeling, Managing Director

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By: /s/ Michael Creadon, CEO

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XR Trading LLC

By: /s/ Matthew Haraburda, President