

SPRING TRADING, INC.

25 DeForest Avenue, Suite 208
Summit, NJ 07901

September 30, 2011

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

**Re: RIN 3038-AD51: Customer Clearing Documentation and
Timing of Acceptance for Clearing**

Dear Mr. Stawick:

The Commodity Futures Trading Commission ("CFTC" or "Commission") has requested public comment on proposed rules published in the Federal Register ("the Proposal") that address: (1) the documentation between an OTC customer and a futures commission merchant ("FCM") that clears on behalf of the customer; and (2) the timing of acceptance or rejection of trades for clearing by derivatives clearing organizations and clearing members.

TeraExchange will offer a neutral and independent trade execution facility, with pre-trade credit checks, and revolutionary, proprietary technology to analyze and to trade OTC Cleared derivatives. TeraExchange is a service operated by Spring Trading, Inc. ("Spring Trading"). Spring Trading has filed notice with the Commission for operation as an exempt board of trade ("EBOT") and will submit a name change to shift EBOT status to TeraExchange. TeraExchange intends to apply to the CFTC for designation as a Swap Execution Facility ("SEF") and/or as a designated contract market ("DCM") and with the Securities and Exchange Commission as a security-based SEF. All derivative products to be listed on our platform must be cleared.

EXECUTIVE SUMMARY

The FIA/ISDA Agreement is not needed for trading on our platform (with its pre-trade risk screening) and indeed is simply irrelevant. While the main body of the Agreement may be necessary in relation to trading on platforms that do not offer the same level of efficiency as will our trading platform, we have grave concerns about use of the Tri-Party annexes that would make one or more clearing members a party to the Agreement. By effectively requiring identification of the counterparty in OTC transactions submitted for clearing, widespread imposition of the Agreement (with its requirement for disclosure of the counterparty) would kill off SEF platforms based upon anonymous trading. Accordingly, we strongly support the CFTC's proposed standards on customer documentation for OTC trades submitted for clearing.

BACKGROUND

Publication of the Proposal followed the issuance, on June 16, 2011, of a new document released jointly by the Futures Industry Association ("FIA") and the International Swap and Derivatives Association ("ISDA"). FIA and ISDA intend that this new document, the "Cleared Derivatives Execution Agreement" ("Agreement"), while voluntary in nature, nonetheless should serve as a template for broad use by swap market participants in negotiating execution-related agreements with counterparties to swaps that are intended to be cleared. Notably, the Agreement includes optional annexes that make the clearing member to one or both of the executing parties a party to the Agreement (the "Tri-Party Annexes").

As noted in the preamble of the Proposal, the Agreement includes provisions that would permit a customer's FCM acting as the carrying clearing member, in consultation with the swap dealer ("SD"), to establish specific credit limits for the customer's swap transactions with that swap dealer. As a result, the FCM could declare that with regard to

trades with that SD, the FCM would only accept for clearing those transactions that fall within these specific limits. The limits set for trades with the SD might be less than the overall limits set for the customer for all trades cleared through the FCM. The CFTC thus observed that the result would be to create a "sublimit" for the customer for trades with that swap dealer. The Commission further noted that some market participants have stated that the setting of such sublimits would result in restrictions of customer counterparties because, without such "sublimits," the customer could enter into transactions with whomever it chooses, up to its overall limit with the FCM. 71 FR 45730, 45731 (August 1, 2011).

TIMING OF ACCEPTANCE OR REJECTION FOR CLEARING

The second topic of the Proposal (on timing of acceptance for clearing) is straightforward and assists in providing context for the first topic on the documentation. Thus, we will begin by first addressing the timing of acceptance or rejection of a trade for clearing. On this subject, the CFTC is now proposing to make two amendments to a proposed rule (Rule 39.12(b)(7)) that it had recently proposed.

First, under that rule provision, the Commission is now proposing to require DCOs to coordinate with designated contract markets ("DCMs") and SEFs to facilitate accurate as well as prompt and efficient processing of trades. Second, as previously proposed, § 39.12(b)(7) required DCOs to accept "immediately" upon execution all transactions executed on a DCM or a SEF. Rather than prescribe a specific length of time, the Commission is now proposing a performance standard under which action must be taken "as quickly as would be technologically practicable if fully automated systems were used." This modification is intended to permit DCOs to screen trades against applicable product and credit criteria before accepting or rejecting them. We support an approach on coordination between DCOs and SEFs and DCMs that emphasizes accuracy as well as speed and efficiency. In addition, we support the use of a performance standard rather than mandating a specific duration of time.

Of particular interest to us was the following commentary provided in its preamble:

The Commission notes that from both a timing perspective and a risk perspective, the most efficient method would be to screen all orders using predetermined criteria established by the rules of the DCO and the provisions of the clearing documentation between the customer and its clearing member. In such a case all trades would be accepted for clearing upon execution because the clearing member and DCO would have already applied their credit and product filters. (71 FR 45730, 45732).

We find this commentary of interest because this is the same exact process to be followed on our own SEF platform. *TeraExchange* will only list products for trading that must be cleared and with terms that match exactly the product terms of the cleared specifications set forth by the applicable clearinghouse. Additionally, our process will require a credit check review of every bid and offer before it could be submitted into the platform (as well as a credit check in connection with block trades to be executed off the platform). Thus, one could reasonably consider a trade essentially final and firm following execution because the pre-trade credit check provides assurance that the trade will not be busted, leaving only the remaining step of electronic transmission to the relevant DCO, which should generally occur in a brief interval (perhaps a second or less) following execution.

PROPOSED CFTC STANDARDS ON OTC CUSTOMER CLEARING DOCUMENTATION

The FIA/ISDA Agreement is not needed for trading on our platform and indeed is simply irrelevant. While the main body of the Agreement may be necessary in relation to trading on platforms that do not offer the same level of efficiency as will our trading platform, as further discussed below, we have grave concerns about use of the Tri-Party annexes, which as noted would make one or more clearing members a party to the Agreement. In a memorandum accompanying the Agreement, FIA and ISDA set forth brief descriptions of the intentions of certain sections that are unique to the Agreement. However, as to use of the Tri-Party Annexes, this memorandum does not truly describe the intentions underlying the inclusion of such annexes as a part of the Agreement (albeit optional).

In the case of an FCM that is setting credit limits concerning an unaffiliated SD, we fail to see any benefit provided by the Tri-Party Annexes. Once an OTC transaction, such as for example a transaction between an SD and a buy-side client, has been submitted and accepted for clearing, that original transaction is novated, resulting in one OTC position of the buy-side client against the DCO and another OTC position of the SD against the DCO. Thus, the

extent of activity that a SD may have undertaken in relation to a particular customer has no relevance or value to the FCM or to the DCO from the standpoint of risk management.

In the case of an FCM that is setting credit limits concerning an SD that is in fact affiliated with the FCM, perhaps there is some focus by the FCM, not for its own interests but, rather in connection with the interests of the SD. More specifically, the FCM might be seeking to ensure that the SD affiliate does not take on undue exposure from a particular customer.

However, this interest resides at the SD level and is most appropriately taken up by the SD's own systems for risk management and other internal controls. When an FCM seeks to protect an affiliated SD even where the SD apparently is not willing to protect itself sufficiently in its own OTC trading activity, this adds no discernible benefit to clearing but instead only distorts and contorts the clearing process. This situation also highlights the critical need for strong and effective conflict of interest provisions to separate the business interests associated with the trading activities of an FCM (or of an affiliated SD) from the business interests represented by the clearing to be undertaken by the FCM.

Consequently, in its Proposal, the CFTC is setting forth proposed regulations that would prohibit arrangements involving FCMs, SDs, MSPs, or DCOs that would: (a) disclose to an FCM, SD, or MSP the identity of a customer's original executing counterparty; (b) limit the number of counterparties with whom a customer may enter into a trade; (c) restrict the size of the position a customer may take with any individual counterparty, apart from an overall credit limit for all positions held by the customer at the FCM; (d) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; and (e) prevent compliance with specified time frames for acceptance of trades into clearing.

We find no discernible benefit to the clearing process proposed in the ISDA-FIA Agreement and Tri-Party Annexes. Moreover, we applaud the Commission's proposal to prohibit arrangements designed to disclose counterparties, limit number of counterparties and position sizes, impair executions and prevent compliance with time frames for acceptance into clearing. Thus, we strongly support the Commission proposal establishing appropriate regulatory standards.

The one remaining question that we have is whether these proposed standards go far enough. In the opening paragraph of the FIA-ISDA Agreement, it comments merely that "[i]t is expected" that the execution of that agreement or the annexes thereto should not be considered by clearing members to be a condition to the clearing of transactions. We find this language remarkably muted, and we can easily envision scenarios where an FCM simply establishes a blanket policy where execution of the Agreement will be required across the board for all of its clearing customers. This result would be highly detrimental to entities such as *TeraExchange*.

Accordingly, suppose that one assumes *arguendo* that a particular SEF is successful in having several hundred firms go through its registration process to become market participants on its platform. *TeraExchange* intends to structure its business model on a central limit order book based on anonymous trading. For a future SEF such as *TeraExchange*, widespread imposition of the Agreement (with its requirement for disclosure of the counterparty) would unquestionably kill off that platform during the period of time until a critical mass of OTC products had been deemed to have been "made available" for trading.

Moreover, if a SEF is structured as an electronic RFQ platform with functionality to be able to transmit RFQ inquiries to the entire market, imposition of the Agreement would effectively throttle use of this broader market-wide functionality. This would be the case because, in the real world, a typical buy side client will be unwilling to undertake the considerable time and expense to execute the Agreement with all of the market participants on that RFQ platform.

By then, of course, it would be too late. We understand that some of the largest Wall Street firms would prefer to maintain the status quo for as long as possible. But there are over 7,000 OTC participants on the buy side that are more than ready for a new day and that are quite eager for the new levels of market transparency to be ushered in by the Dodd-Frank reforms.

We commend the Commission's strong and courageous stance in the Proposal to maintain open access to clearing. We have only one recommended change in the proposed language in light of the concerns that have been raised

anew about actions undertaken by an FCM to benefit an affiliated SD. Therefore, we suggest that, with regard to impairing a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available, these provisions should be revised to clarify that this refers to the best terms available "on any market regulated by the Commission." Such a change should effectively prohibit an FCM, for example, from establishing special hurdles for its clearing customers in order to trade on a particular SEF.

CONCLUSION

TeraExchange very much appreciates the diligence, insight, and hard work of the CFTC and its staff as the development of SEF regulation unfolds. TeraExchange agrees with and supports the Commission's proposals (noting our one recommendation on additional language). We look forward to working with the CFTC to achieve the Congressional objective of promoting swap trading on SEFs. If you have any comments or questions about our comment letter or the SEF issues generally, please contact me at lnuara@teraexchange.com or at (908) 273-8277.

Respectfully,



Leonard T. Nuara
President
Spring Trading, Inc.
d/b/a TeraExchange

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia