

By Commission Website

October 5, 2011

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

Re: **RIN 3038–AD51: Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 Fed. Reg. 45730 (August 1, 2011)**

Dear Mr. Stawick:

Jefferies & Company, Inc. (“Jefferies”) welcomes the opportunity to comment on the Commodity Futures Trading Commission’s (the “Commission”) proposed rules with regard to the timing of acceptance for clearing and customer clearing documentation, 76 Fed. Reg. 45730 (August 1, 2011).

Jefferies is a wholly-owned subsidiary of Jefferies Group, Inc. (“Jefferies Group”), a global securities and investment banking firm, which has served companies and investors for nearly 50 years. Jefferies Group is a publicly-traded company with a market capitalization of approximately \$3.3 billion and annual revenues of \$2.7 billion (latest twelve months ended August 31, 2011). We currently employ over 3,800 people in offices in more than 30 cities worldwide and our approximately 1,500 sales and trading professionals transact business as a principal to, and on behalf of, thousands of institutional investors in most major markets in the world today.

Jefferies has been registered with the Securities and Exchange Commission as a broker-dealer since 1969 and became registered with the Commission as a futures commission merchant (“FCM”) earlier this year. Jefferies Bache, LLC (f/k/a Prudential Bache Commodities, LLC) (“Jefferies Bache”), which Jefferies Group recently acquired, has been registered with the Commission as a FCM since 1982. Jefferies and/or Jefferies Bache expect to apply to become clearing members of the major derivatives clearing organizations (“DCOs”). Jefferies, Jefferies Bache and/or one or more of their affiliates also expect to act as an executing firm and a counterparty in the swaps market.

Proposed Rule with Regard to Real Time Trade Acceptance

Jefferies supports the Commission’s concept that trade acceptance into clearing by a DCO and its clearing members occur as soon as technologically practicable.

Jefferies agrees that the markets should aspire to real time trade acceptance, but not at the expense of solid FCM risk management practices. Straight through processing has worked well in the futures markets with FCMs setting limits on both the exchange and DCO level. For cleared swap transactions, the key to this effort will be the integration of the swap execution facilities (“SEFs”) into the DCOs. To

the extent DCOs are required to provide equal access and equal controls to all execution venues, the DCO will be able to apply any credit limits set by a customer's clearing member and either affirm or reject the trade to the SEF on a timely basis thus providing certainty to the clearing process.

As has been stated in other comment letters, each FCM's business model is unique. When engaging in swap transactions in which the parties intend the swap to clear, some counterparties may only want the trade if it is a cleared trade, while others may be willing to engage in a non-cleared swap if the trade is rejected by the DCO. As such, for the counterparty that does not intend to maintain a non-cleared trade, the timing of rejection becomes crucial.

An example of where this process occurs successfully today for swaps is in the CME's Clearport and ICE's WebICE energy markets. With these systems, the clearing member can place a daily limit on its customer. The trade is first executed, then submitted for clearing by the parties. If it is within the limits, the trade is accepted. If it is not, the trade is rejected.¹

If the trade is rejected, it is done so quickly (although not in real time) and the market convention is that the rejected trade is considered void. A market participant has certainty at that point and then can re-enter the market quickly to execute the same trade with a different counterparty if need be. Alternatively, if the parties wish to maintain a bi-lateral, non-cleared swap, that alternative remains available to the parties.

The credit limits in these examples are daily limits and thus require the clearing member to evaluate the customer's total available credit post-trade at the end of the day or, in the event of a request for an increase, during the day. This is a prudent practice which most clearing firms engage in today and by its nature it cannot occur in real time. As such, Jefferies supports the Clearport and WebICE solutions for swaps because they are flexible enough to permit clearing firms to accept certain trades within a set limit via straight-through processing but also allows the clearing firm to make a rational credit decision with respect to other, more complex trades such as blocks. Because these systems are currently utilized by clearing houses and clearing members in the energy swaps market, perhaps a similar system could be developed in other cleared swap contexts and provide the clearing certainty which is sought, albeit on a DCO by DCO basis.

Proposed Rule with Regard to Documentation

While Jefferies would not generally advocate rules which dictate the terms of a commercial contracts between parties, Jefferies is opposed to the optional annex to the FIA/ISDA Cleared Derivatives Execution Agreement. Jefferies cannot see a reason any DCO, FCM or swap dealer should seek to restrict the counterparties a customer may have to a cleared trade. We are concerned that counterparties may use such annexes to exclude certain customers or clearing firms from participation. Any credit concerns a clearing member may have extend only to its relationship with its customer, not to the customer's counterparties. If the counterparty has credit concerns with respect to any of its potential counterparties, it similarly may address them bilaterally.

Jefferies does not necessarily want the rulemaking process to determine contract terms between private parties. However, Jefferies supports broad principles which require DCOs, SEFs and exchanges to ensure that any requirements for participation in the cleared swap market are applied in a fair and non-

¹ The buyer, seller or broker can request that Clearport and WebICE contact a party's clearing member if it appears the available limit will not be sufficient. The clearing member can then choose to increase any such limit.

discriminatory manner to all FCMs and customers who wish to participate are appropriate. For the reasons set forth below, however, Jefferies does not support the rule in its entirety without clarification.

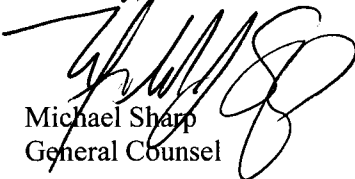
As has been discussed in other comment letters, in the futures markets a significant portion of trades are executed away from the customer's clearing firm. As discussed above, many DCOs provide their clearing members the ability to set credit limits for the products such clearing member is willing to accept on behalf of its customer. Where such technology is available, beyond the traditional trading risk limits (e.g. fat finger limits) there would be no need to set any limits at the point of execution as transactions would be accepted or rejected promptly at the DCO based on limits set by the clearing member. However, if an execution venue did not integrate its system with the DCO, or the DCO did not make such controls available, it is possible that the clearing member may be asked to guarantee acceptance of its customer's trade by the execution venue (or executing broker) to insure the certainty of clearing. In such cases, clearing members would need the flexibility to assign a limit to each execution venue as a portion of the customer's overall limit with such clearing member. But in no event would it need, nor should it be able, to set such limit at the counterparty level.

Recognizing that exchange traded futures markets operate differently from bi-lateral swaps markets, we nonetheless encourage the Commission to look to the existing futures and cleared swap markets, including the existing give-up process, for concepts and ideas which work.

Conclusion

Jefferies appreciates the opportunity to submit these comments on the proposed rules. If the Commission has any questions concerning the matters discussed in this letter, please contact the undersigned at (212) 707-6409.

Sincerely,



Michael Sharp
General Counsel