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October 7, 2011

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

COMMENT

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

Dear Mr. Stawick:

Wells Fargo Securities, LLC¹ (WFS) is pleased to submit these comments and recommendations to the Commodity Futures Trading Commission (Commission) in response to the above-referenced proposed rules (Proposed Rules) regarding documentation between futures commission merchants (FCMs) and their clearing customers and the timing of acceptance or rejection of trades to be executed on swap execution facilities (SEFs) or designated contract markets (DCMs) and cleared by a derivatives clearing organization (DCO). For the reasons set forth below, we believe that our comments and recommendations are fully consistent with the purposes and intent of the Commodity Exchange Act (CEA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

We respectfully urge the Commission to fulfill the objectives of Dodd-Frank as outlined in the Proposed Rules by revising and implementing the Proposed Rules in a manner that:

(a) fosters the development of technology-driven solutions to achieving real time trade acceptance or rejection for the benefit of our clearing customers in a manner that moves market participants away from reliance on documentation-driven solutions,² including the Tri-party arrangements the Commission seeks to restrict in the Proposed Rules;

(b) allows DCOs and clearing members to screen trades against applicable product eligibility and credit criteria before accepting or rejecting them; and

¹ WFS is a CFTC-registered futures commission merchant and SEC-registered broker dealer and is a subsidiary of Wells Fargo & Company, a diversified financial services company with \$1.2 trillion in assets that provides banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. WFS provides clearing services to liquidity providers and liquidity takers.

² In the absence of technological solutions, WFS expects its customers to rely on bilateral execution agreements without WFS becoming a party to the Tri-party annexes criticized in the Proposed Rules.

(c) in recognition of the technological limitations of markets in cleared swaps as they exist today, gives DCOs and their clearing members sufficient time to leverage existing technologies to develop more advanced credit filtering capabilities that will be needed for markets that could soon be trading and clearing across multiple SEFs and DCOs.

Support for a Technological Approach

We support the Commission's efforts to establish a framework in which swaps that are required or eligible to be cleared will be accepted or rejected for clearing in real time when the requisite systems are in place. As a futures commission merchant, WFS is a portal for our customers to gain access to DCOs, and we play a key risk management role in the clearing process while serving our customers' clearing needs. Real time acceptance or rejection of trades will benefit our clearing customers and reduce their trade execution risks. We believe that these benefits can best be accomplished with technology-driven solutions, which we hope can avoid the inefficiencies and costs associated with relying on document intensive approaches used by market participants today.

Accordingly, we would be prepared to support real time acceptance or rejection of swaps to be cleared by uploading our credit limits for our customers to each DCO of which we are a member (including bulk limits for those asset managers acting for customers where post-trade allocation has been approved). Uploading limits to DCOs is a necessary first step to facilitating real time acceptance by DCOs and could accommodate pre-trade clearance (for block trades, trades executed through a request for quote or voice execution) or real-time post trade acceptance or rejection (for electronic trading).

With credit limits held at the DCO, our customers would be certain that their trades are within limits set by us as a FCM, and the DCO will be certain that trades accepted for clearing are within limits set by the DCO for us and our customers. Holding credit limits at the DCO avoids the cost of requiring a FCM to split credit limits for a customer across multiple SEFs or DCMs, which could limit the customer's ability to trade or achieve best execution.³

Importantly, this approach also reduces risk to us as a FCM by reducing the number of entities with which we must communicate in order to reduce, in real time, limits to a customer that is in excess, default or distress. Given the dynamic nature of markets, WFS as a FCM must be able to change credit limits to a customer in as close to real time as possible, and adoption of this approach in a rule would reduce our operational risk and costs involved with communicating changes to multiple SEFs and DCMs. We believe that maintaining credit limits with DCOs, as opposed to SEFs and DCMs, is a more efficient way of facilitating real time clearing and reducing risks for customers and their FCMs.

Support for a Collaborative Solution and Effective Date

Although we support the Commission's efforts to establish time limits for screening trades, we note that current systems designed for vertically-integrated platforms would need to be upgraded to accommodate the multiple DCO, SEF and DCM market structure contemplated by Dodd-Frank. Our

³ The key to the success of this process is having DCOs provide open access and integration across multiple SEFs. If a DCO does not have or does not provide the technology to support a single credit control for a customer regardless of a trade's origin, then each SEF may ask an FCM for a guarantee of its customers. In that case, we would need to provide a limit to the SEF on the amount of transactions in which our customer could engage. The rules should be flexible enough to support this outcome.

customers expect to clear a wide array of swaps and security-based swaps on different DCOs, depending upon which products or asset classes they trade and how they manage their position and credit limits with various DCOs and FCMs, including limits we establish as their FCM. Without upgraded systems, screening times are expected to be greater for customers who clear on multiple DCOs, since advanced credit filtering technology for this type of market structure does not yet exist, and cross checks need to be processed manually today.

Even if we could upgrade our systems to provide this functionality today, our customers would still be at risk whenever they trade with a counterparty whose FCM lacks the requisite systems capability to screen trades “as quickly as would be technologically practicable if fully automated systems were used” (the Commission’s Acceptance Standard). Since the Proposed Rules call upon FCMs, DCOs and clearing members that are swap dealers (SDs) or major swap participants (MSPs) to work together cooperatively to establish the requisite systems, and given the fact that a FCM faces losing customers if it falls outside of acceptable parameters, we believe that the industry will have a strong incentive to develop the technologies and systems needed to meet this standard.

In addition, the Acceptance Standard could be construed as establishing a performance level that is equivalent to actually having automated systems. Given the subjective nature of this standard and how the Commission describes it as ranging from milliseconds to a few minutes (depending upon the product or market, without providing further guidance), this would suggest that installing fully automated systems may be the only way for a DCO or FCM to have legal certainty that it is in compliance with the rule.

To address these issues, we urge the Commission to give due consideration to the time needed for FCMs, DCOs, and SD/MSP clearing members to develop and install the systems or upgrades needed to meet the Acceptance Standard, and provide for a process for establishing an effective date for the Acceptance Standard. In view of the cooperative nature of the Proposed Rules where one’s own compliance is dependent in part on the compliance of others, we believe it would be appropriate for the Commission to make a determination on a future date, after a public hearing on the matter, that the required systems for screening trades in a particular type or category of swaps to be cleared have been implemented widely enough across relevant DCOs and FCMs for the Acceptance Standard to become effective for that type or category.

Establishing an effective date in this manner would address the practical realities of moving swaps into a real time acceptance framework, while recognizing that clearing readiness and implementation will not happen all at once across all of the types and categories of swaps and security-based swaps that will be required or eligible to be cleared.

Support for Phasing in Market Structure

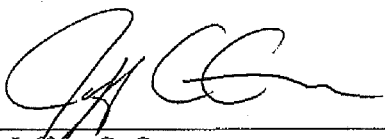
Given the relatively tight timeframes imposed on the Commission by the statute, implementation of Title VII of Dodd-Frank is akin to constructing a skyscraper while simultaneously drafting the blueprints (i.e., rules). As the Commission is aware, this has resulted in phasing in different requirements pursuant to an implementation timeline that has been revised and updated to take into account the realities of writing rules while the necessary infrastructure and functionality are developed to meet the new clearing and trade execution requirements. For this reason, we believe that implementation of the Acceptance Standard must take into account what is actually feasible before it becomes effective.

Because the realities of Title VII make it impractical to implement its requirements in the manner of a “big bang” where everything goes into effect on one effective date, we believe that the Acceptance Standard should be one of many building blocks of an overall plan to phase in Title VII where (1) required clearing becomes effective first, (2) the reporting infrastructure follows, and (3) various trading mandates come into effect thereafter. These are orderly, constructive steps that an architect would design into building plans. Otherwise, the Commission will be attempting to transform swaps markets into what futures markets are today without properly weighing the costs and risks of moving too quickly to that type of model. Although implementation of Title VII will not take nearly as long, we note that regulated futures markets as we know them today were many decades in the making, and straight through processing of futures didn't exist even 10 years ago.

If the primary goal of Dodd-Frank is systemic risk reduction through mandatory clearing and the management and disclosure of risk positions, the Commission should start there. This could afford the market with the ability to develop appropriate technologies to trade swaps in a manner similar to futures as we better understand what it takes to move swaps onto multiple DCOs, SEFs and DCMs that will not all be vertically integrated, where trading will be less liquid and where overall credit utilization could be much larger given the ability to trade the long end of the curve.

We appreciate the opportunity to provide our comments and suggestions to the Commission on these important issues and welcome the opportunity to answer any questions, which may be directed to our legal counsel, Barry Taylor-Brill at (704) 383-0606, or to the undersigned at (704) 715-0528.

Sincerely,
Wells Fargo Securities, LLC

By: 
Name: Jeffrey G. Gore
Managing Director
Head of Derivatives Clearing Services