

October 31, 2011

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

Re: Comments on Proposed Rules Related to Customer Clearing Documentation and Timing of Acceptance for Clearing (RIN 3038-AD51)

Deutsche Bank AG (together with its affiliates, "**Deutsche Bank**") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") with respect to the proposal ("**Proposed Rules**") regarding customer clearing documentation and timing of acceptance for clearing. The Proposed Rules were issued under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").

We fully support the development of appropriate market infrastructure and documentation to facilitate customer access to clearing while ensuring effective risk management. Consequently, we are concerned that the prohibition in the Proposed Rules against the use of the optional trilateral execution arrangement (the "**Trilateral Arrangement**")¹ may unintentionally hinder the development of effective risk management practices.

Section 723(a)(3) of the Dodd-Frank Act specifically provides that "[i]t shall be **unlawful** for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization ("**DCO**") that is registered under this Act or a DCO that is exempt from registration under this Act if the swap is required to be cleared." Although the statutory language appears to contemplate each party to the swap submitting the swap independently of the other to the DCO for clearing, in practice the swap is submitted to the DCO for clearing only once and it is not submitted (or the submission is not complete) until each futures commission

¹ The Trilateral Arrangement is set out in the form of annexes to the FIA-ISDA Cleared Derivatives Execution Agreement, which was jointly proposed by The International Swaps and Derivatives Association, Inc. ("**ISDA**") and the Futures Industry Association ("**FIA**") in consultation with market participants. The annexes incorporate additional terms and provisions that are intended to further mitigate certain risk management concerns that are not fully addressed by the base agreement.

merchant (“FCM”) clearing on behalf of the each of the parties has accepted the swap. As such, if the swap is not accepted (or not accepted in a timely manner) by the relevant FCM(s), then uncertainty arises as to whether the swap has been submitted for clearing to the DCO in accordance with the statutory language. The use of the Trilateral Arrangement would address this concern by providing visibility to both parties to the swap of the conditions under which the swap would be accepted by the relevant FCM(s) and submitted to the DCO. Under the Trilateral Arrangement, each relevant FCM would specify the conditions (which may include any limits on transaction types or position/credit limits as it considers appropriate) under which it will be contractually bound to accept and submit to the DCO for clearing as well as the timing of any such acceptance. In this way, each party to a swap that is required to be submitted to the DCO for clearing has greater certainty that such a swap will in fact be submitted for clearing to the DCO. In our view, a strict prohibition on the use of the Trilateral Arrangement would unnecessarily deprive market participants of a means of ensuring compliance with the statutory language.

Prohibiting the use of the Trilateral Arrangement would also result in uncertainty as to whether a swap falls within the customer’s overall position or credit limit with its FCM and whether a swap that is intended to be cleared by the parties will actually be cleared. This presents significant challenges for swap dealers in implementing their risk management programs. Pursuant to the Commission’s proposed rule regarding the Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, 75 Fed. Reg. 71397 (November 23, 2010), swap dealers will be required to monitor risk exposures with respect to both cleared and uncleared swap positions. If it is unknown at the time of execution whether a swap will actually be submitted to the DCO for clearing, it will be unclear to the swap dealer whether it should apply risk filters that take account of the swap as a cleared transaction or as a bilateral, uncleared transaction. Without more certainty prior to execution, it will be extremely difficult for a swap dealer (i) to manage and monitor its risk exposures because at the time of execution it will not know whether its risk exposures are to the DCO or the customer, and (ii) to adopt appropriate risk management procedures with respect to its swap positions. Furthermore, if such a swap is not cleared, practical issues will arise as to whether and how the affected swap dealer will be able to comply with the Commission’s rules governing uncleared swaps² in a timely manner.

We believe that it is important for the Commission to further examine these issues with market participants and support Commissioner O’Malia’s suggestion that the Commission host a public roundtable³ prior to finalizing the Proposed Rules.

² See CFTC Proposed Rules, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (April 28, 2011); Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 6715 (February 8, 2011); and Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy 75 Fed. Reg. 75432 (December 3, 2010).

³ As suggested by Commissioner O’Malia at the Commission hearing adopting the Proposed Rule on July 19, 2011.

Deutsche Bank would be pleased to provide further assistance and work with the Commission in developing appropriate market infrastructure.

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Deutsche Bank appreciates the opportunity to provide the Commission with the foregoing comments and recommendations regarding the Proposed Rules.

Respectfully submitted,



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