

David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

17 February 2012

Dear Mr. Stawick:

**Re: RIN 3038-AC96, SD-MSP Conflicts of Interest and FCM-IB Conflicts of Interest**

LCH.Clearnet Group Limited (“LCH.Clearnet” or “The Group”) is pleased to respond to the request for comment on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) proposals on SD-MSP Conflicts of Interest and FCM-IB Conflicts of Interest (“Proposing Releases”).<sup>1</sup>

The Group strongly supports the policy goals underpinned by both the Proposing Releases and the statutory provisions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).

The Commission proposes to adopt rules implementing Sections 731 and 732 of Dodd-Frank. Among other things, the proposed rules address the relationship between swap dealers and affiliated futures commission merchants (FCMs) with regard to clearing activities. Proposed Rule 1.71(d)(2) provides that an FCM must create and maintain informational partitions prohibiting employees of an affiliated swap dealer from “participat[ing] in any way with the provision of clearing services and activities by the” FCM.

LCH.Clearnet is concerned that this proposed rule could have an unintended and negative impact on the ability of an FCM affiliated with a swap dealer to participate in the default management process. A DCO’s ability to manage successfully a clearing member default depends, to a great extent, on its ability to access the risk, technology and operations expertise of its clearing members as quickly and seamlessly as possible. In the event of another clearing member default, a clearing member may be required to submit a bid in the auction of the defaulting member’s positions and to hedge or liquidate any positions it receives as a result of the auction. Discharging these default management responsibilities depends on the clearing member having access to swap price and market information necessary to prepare an appropriate bid and to manage positions received through an auction. The most natural and efficient place for an FCM affiliated with a swap dealer to obtain this information is from its affiliated swap dealer. Prohibiting swap dealers from assisting affiliated FCMs in discharging their responsibilities to participate in the default management process is inconsistent with the approach of Rule 39.16(c)(2). Rule

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<sup>1</sup> 75 FR 71391 (November 23, 2010) and 75 FR 70152 (November 17, 2010).

39.12(c)(2) requires derivative clearing organizations (DCOs) to permit clearing members to outsource to a qualified third party, including a swap dealer, the authority to act in the clearing member's place in auctions or accepting allocations as part of the default management process. It would be anomalous and inefficient to prohibit FCMs from outsourcing their default management responsibilities to affiliated swap dealers while permitting them to outsource these responsibilities to non-affiliated swap dealers. Addressing the types of potential conflicts of interest that Section 731 and 732 seeks to address does not require this result. In order to preserve the ability of DCOs to manage clearing member defaults as efficiently and effectively as possible, LCH.Clearnet asks the Commission to make clear that proposed Rule 1.71(d)(2) does not prohibit FCMs from obtaining default management services from an affiliated swap dealer so long as Chinese walls and other appropriate measures to address potential conflicts of interest have been implemented by the affiliated swap dealer.

LCH.Clearnet appreciates the opportunity to share our views on the proposed rules concerning conflicts of interest between swap dealers and affiliated FCMs. We look forward to working with the Commission as it continues to implement the Dodd-Frank Act. Please do not hesitate to contact Lisa Rosen at +44 (0)207 426 7541 regarding any questions raised by this letter or to discuss these comments in greater detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Axe', written over a white background.

Ian Axe  
Chief Executive Officer