BY OVERNIGHT MAIL AND E-MAIL

April 17, 2012

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
secretary@cftc.gov

Re: Newedge Comment Letter Relating to ICE Clear Europe's Request for an Order Permitting Portfolio Margining of Cleared Swaps and Foreign Futures and Options/IF 12-004

Dear Mr. Stawick:

Newedge USA, LLC ("NUSA") is pleased to submit this comment letter on behalf of itself and its parent company, Newedge Group SA ("Newedge Group"), relating to ICE Clear Europe Limited's ("ICE Clear Europe") request for an Order pursuant to Section 4d(f) of the Commodity Exchange Act ("CEA") to permit commingling of customer funds in connection with energy-based cleared swaps and foreign futures contracts. Specifically, ICE Clear Europe is requesting CFTC approval to permit it and its clearing members to (a) hold in a cleared swap account subject to Section 4d(f) customer money, securities and property used to margin, secure or guarantee both cleared swaps and foreign futures and options, and (b) to provide for portfolio margining ("PM") of such cleared swaps, futures and options. NUSA, a US-registered broker-dealer ("BD") and futures commission merchant ("FCM") recently became a direct clearing member of ICE Clear Europe. NUSA and Newedge Group have been quite active over the years, both in the US and abroad, in working with regulators to develop rules and regulations designed to strengthen our financial markets, including rules relating to PM.

We strongly support ICE Clear Europe's request for the above-referenced commingling order. Among other things, granting this request will: (a) permit customers to obtain the benefit of margin off-sets between related swaps and futures cleared at ICE Clear Europe

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and thereby reduce their overall trading costs and be able to make more efficient use of their capital; (b) encourage market participants to invest their assets with FCMs – since they will be able to benefit from the energy-based PM opportunities at ICE Clear Europe – and thereby strengthen FCM financial positions and market share, and; (c) encourage participants in the energy markets to become more involved in the centralized clearing of OTC derivatives – a primary objective of Dodd Frank – since they will permitted to post less collateral to support their positions. Moreover, such customers' foreign futures and options-related assets (as well as their cleared swap related assets) will be adequately protected given that such assets will be subject to the requirements of Section 4d(f) and Parts 22 and 190 of the CFTC's regulations.

BACKGROUND

"Newedge" refers to Newedge Group, a 50%-50% joint venture between Societe Generale and Credit Agricole CIB, headquartered in Paris, France, and all of its worldwide branches, subsidiaries and other units. Newedge, which is one of the world's largest brokerage organizations, offers its customers clearing and execution facilities across multiple asset classes including futures, securities (fixed income and equities), options, FX and various OTC instruments. Newedge maintains offices in over 15 countries, and is a member of over 85 exchanges worldwide. As of December 31, 2011, Newedge had an estimated global market share in listed derivatives of 12.0% (clearing) and 11.3% (execution), and $48.3 billion of client assets on deposit.

NUSA is one of the leading BD/FCMs in the US. Indeed, according to CFTC statistics, as of January 2012, Newedge USA held the second largest pool of customer "segregated" and "secured" assets of all US-based FCMs. NUSA's primary function is that of a broker – i.e., to execute and clear customer transactions across multiple asset classes on either an agency or riskless principal basis. NUSA, which has been a joint BD/FCM since 1995, conducts only a very limited amount of proprietary trading, and then generally only to hedge positions acquired through customer facilitation. As a result, NUSA does not generally hold positions in inventory. NUSA personnel routinely sit on futures and securities industry committees and task forces, participate in industry conferences and seminars, and comment on proposed SEC, CFTC and self-regulatory organization rules.

NUSA has been an active proponent of PM over the years. For example, with respect to PM involving futures and securities, NUSA: (a) submitted a May 11, 2006 comment letter to the SEC voicing its support for the New York Stock Exchange's ("NYSE") and the Chicago Board Options Exchange's ("CBOE") proposals to expand the types of products available for PM under their respective rules; (b) became the first US BD to receive regulatory approval to offer its clients PM under the NYSE plan; (c) has become one of the leading PM BDs in the US since that time; (d) provided testimony at the September 2, 2009 SEC/CFTC Hearings on Rule Harmonization ("SEC/CFTC Hearings") in which it advocated strongly in favor of full PM; (e) submitted a September 14, 2009 comment letter as a follow-up to the SEC/CFTC Hearings in which it again advocated strongly the need for full PM; (f) submitted a February 8, 2010 comment letter to the US Government Accountability Office ("GAO") in response to the GAO's mandate

to assess the October 16, 2009 "Joint Report of the SEC and CFTC on Harmonization of Regulation" ("Joint Report"), in which it again argued for full PM; (g) submitted a comment letter to the CFTC on February 11, 2011 urging the CFTC and SEC to adopt rules, as required by Section 713 of Dodd Frank, to facilitate full PM for US BD/FCMs as soon as possible, and; (h) advocated for full PM at the recent CFTC/SEC Public Roundtable relating to the segregation of client assets. A copy of NUSA's February 11, 2011 comment letter is attached as Exhibit A. NUSA, and Newedge generally, have been equally strong proponents over the years of PM involving futures, options on futures and cleared swaps.

DISCUSSION

A. ICE Clear Europe Has Established a Strong Case for a Commingling Order

Under the CFTC's newly issued rules under Dodd Frank, a designated clearing organization ("DCO") that is seeking an Order to commingle futures and options on futures in a Section 4d(f) account must submit a petition to the CFTC that will respond to, at a minimum, the twelve enumerated requests for information identified in CFTC Rule 39.15(b)(2)(i)(A)-(L) (relating to, for example, the ability of the DCO to manage the risks associated with the requested commingling and the availability in the market of reliable pricing for the products in question).[1] Without addressing the adequacy of each of these individual responses in the petition at hand, we believe ICE Clear Europe has made a strong case for receiving the commingling order it requests. Among other things, we note, as does ICE Clear Europe in its petition, that: (a) ICE Clear Europe has been managing the risk of the contracts in question on a commingled, portfolio basis since the inception of clearing in these products; (b) the futures and swaps contracts at issue "have broadly similar risk profiles" and generally relate to "the same underlying energy reference asset[s];" (c) all of the products in question are traded actively on organized execution venues (ICE OTC Market and ICE Futures Europe), and thus, enjoy a transparent and liquid market; (d) ICE Clear Europe has adequate default management processes in place with respect to such products, and; (e) the futures and options on futures positions will be protected under Section 4d(f) and Parts 22 and 190 of the

[1] These factors include: (a) an identification of the futures, options on futures and cleared swaps that will be commingled; (b) an analysis of the risk characteristics of the eligible products; (c) a description of whether the swaps would be executed bilaterally and/or on a swap execution facility ("SEF") or designated contract market ("DCM"); (d) an analysis of the liquidity of the respective markets for such products, the ability of clearing members and DCO to offset or mitigate the risks of such products in a timely manner, and appropriate means for addressing insufficient liquidity; (e) an analysis of the availability of reliable prices for each of the eligible products; (f) a description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle the eligible products; (g) a description of the systems and procedures that would be used by the DCO to oversee such clearing members' risk management of the commingled positions; (h) a description of the financial resources of the DCO; (i) a description and analysis of the margin methodology that would be applied to the commingled products; (j) an analysis of the ability of the DCO to manage a potential default with respect to any of the commingled products; (k) a discussion of the procedures that the DCO would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted with respect to any of the commingled products, and; (l) a description of the arrangements for obtaining daily position data with respect to futures, options on futures and swaps carried in the account.

CFTC's rules. As an FCM and direct clearing member of ICE Clear Europe, the requirements, procedures and controls ICE Clear Europe has proposed or already has in place with respect to the commingled positions in question robust, reasonable, nondiscriminatory.[2]

We further note that the CFTC itself, in issuing the final version of Rule 39.15(b)(2), commented that to the extent "the complete legal segregation model [LSOC] is adopted for cleared swaps:"

> a DCO could more easily justify the approval of rules or the issuance of a 4d order allowing the commingling of futures, options, and swaps, since the impact of any different risk from the product being brought into the portfolio would be limited to the customer who chooses to trade that product.

76 Federal Register 69391, FN 189 (November 8, 2011). The CFTC further notes that to the extent LSOC is adopted for cleared swaps, "its specific concerns" with respect to granting commingling requests "may be minimized" to the extent that ultimately it may "revisit its ongoing need for all of the information listed in" Rule 39.15(b)(2)(i)(A)-(L). 76 Federal Register 69391, FN 189. The fact that LSOC was adopted for cleared swaps by the CFTC should, therefore, further support the petition at hand.

B. Strong Policy Reasons Exist for Granting ICE Clear Europe's Request

We believe that strong policy reasons exist for granting ICE Clear Europe's request for a commingling order. First, granting the request will enable customers who clear trades through ICE Clear Europe to obtain the benefit of margin off-sets between related energy swaps, futures and options and thereby reduce their overall trading costs and allow them to make more efficient use of their capital. Lowering customer trading costs could, in turn, increase overall trading on ICE Futures Europe and ICE OTC Market which further minimize the market and liquidity risks relating to such products. In addition, to the extent PM is not permitted in this market, we are concerned that some customers may forego executing certain hedging or other risk mitigation strategies (because of the greater costs involved), which would increase their risk, their FCM's and ICE Clear Europe's risk, and systemic risk. In fact, a decrease in hedging strategies due to increased trading costs could even result in an increase in energy prices due to commercial producers' diminished ability to manage their price risk.

Second, we believe that granting the Order will encourage market participants to conduct more business through FCMs – since they will be able to benefit from the PM opportunities at ICE Clear Europe – which will, in turn, strengthen FCMs' financial positions and market share globally. Given the low interest rates, increased commission

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[2] In particular, Newedge commends ICE Clear Europe for maintaining "separate Guaranty Funds in respect of its energy businesses, such that Guaranty Fund contributions of non-defaulting Clearing Members with respect to energy contracts cannot be used to cover losses on CDS contracts, and vice versa." See ICE Clear Europe Petition at 10. Newedge has consistently advocated that clearing members should not be liable for default fund contributions relating to products they do not clear.

competition and additional infrastructure and regulatory costs FCMs are facing today, any additional business they receive will be of significant value.

Third, granting the Order will help alleviate some of the significant capital pressure currently faced by FCMs that compute their minimum capital requirements based on the amount of segregated, secured and sequestered customer funds they receive since the PM requested will permit their customers to submit less collateral to support their positions. And, we do not believe that such a reduction in minimal capital requirements will increase customer, FCM, DCO or systemic risk since the positions will be fully margined on a portfolio basis (which takes into account extreme but plausible market risk).

Finally, granting ICE Clear Europe's request will encourage energy market participants to become more involved in cleared swaps, futures and options (as opposed to bilateral uncleared transactions) – a primary objective of Dodd Frank and Europe's equivalent legislation relating to the clearing of OTC derivatives (the European Market Infrastructure Regulation) – since they will have reduced trading costs when trading in the listed cleared market. Such increased involvement will assist in making the energy markets more liquid, stable and transparent.

C. The CFTC and SEC Should Facilitate PM Between Securities, Futures and Cleared Swaps

While not the subject of this petition, NUSA would like to take the opportunity to encourage the CFTC and SEC, as required by Dodd Frank, to take the steps necessary to implement full PM between futures, securities and cleared swaps as quickly as possible. Many of the same policy arguments set forth above also apply to PM involving futures, securities and cleared swaps products, including that such PM would: (a) enable customers to lower their transaction costs and make more efficient use of their capital; (b) increase the amount of business market participants conduct in US markets through joint BD/FCMs; (c) reduce customer, broker and market risk by more accurately aligning required margin levels to the degree of risk imposed by a particular customer's trading strategy; (d) encourage market participants to engage in cleared swaps, as opposed to bilateral uncleared swap transactions, and; (e) alleviate some of the capital pressure being felt by BD/FCMs that compute their capital requirements based on their customers' segregated, secured and sequestered funds – but without, for the reasons noted above, increasing the customer's, broker's or DCO's overall risk.[3]

While we appreciate the significant amount of work both Agencies have conducted thus far under Dodd Frank, we believe it is critical that they not lose sight of the significance full PM will have on reducing overall risk and increasing market liquidity, and thus, respectfully request that they address the topic promptly. Indeed, in our view, Section

[3] In this regard, we note that cleared swap products are likely to have margin requirements than traditional futures or securities products. Thus, holding such positions outright over a long term for customers will generate significant capital requirements for such BD/FCMs. However, full PM will allow brokers' clients to offset related securities, futures and cleared swap positions, thereby lowering their margin requirements and, consequently, their brokers' capital requirements.

713 of Dodd Frank – which requires the Agencies to issue rules providing for full portfolio margining – became effective on July 16, 2011, as it was a self-executing statutory provision that did not require additional rulemaking involving undefined terms such as swap or swap dealer (and therefore was not one of the self-executing provisions of Dodd Frank postponed pending issuance of the final definitional rules). Consequently, we believe the Agencies should have issued such rules prior to July 16, 2011, and therefore request that they do so now as soon as possible. NUSA would be happy to assist the Agencies in formulating the substantive rules required to implement full PM.[4]

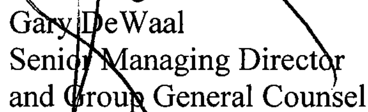
* * *

If you have any questions, please do not hesitate to contact the undersigned at (646) 557-8548, or John Nicholas, Global Head of New Regulation Monitoring and Implementation, at (646) 557-8516.

Sincerely,

Newedge USA, LLC

By



Gary DeWaal
Senior Managing Director
and Group General Counsel

[4] For a more complete discussion of the benefits of and need for PM between futures and securities, see NUSA's comment letter dated February 11, 2011 attached as Exhibit A.

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February 11, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
secretary@cftc.gov

Re: Newedge Comment Letter Relating to Portfolio Margining/RIN 3038-AC98

Dear Mr. Stawick:

Newedge USA, LLC ("NUSA") is pleased to submit this comment letter on behalf of itself and its parent company, Newedge Group SA ("Newedge Group"), relating to the above-referenced proposed rulemaking by the Commodity Futures Trading Commission ("CFTC") and, in particular, to those provisions relating to portfolio margining ("PM"). Indeed, NUSA is very pleased to take this opportunity to reiterate its view as to the importance of implementing "full" PM – i.e., maintaining futures products in securities PM accounts and/or vice versa -- in the US. NUSA, a US-registered broker-dealer ("BD") and futures commission merchant ("FCM"), and Newedge Group have been quite active over the years, both in the US and abroad, in working with regulators to develop rules and regulations designed to strengthen our financial markets, including rules relating to PM. It is one thing to mandate the centralized clearing of OTC swaps through legislation and rules; it is another thing to induce the centralized clearing of OTC swaps by encouraging the efficient use of end users' total collateral. Offering PM provides an inducement instead of a beating by a stick!

Without question, the Commodity Futures Trading Commission ("CFTC") – and the Securities and Exchange Commission ("SEC") (collectively, the "Agencies") – have conducted a significant amount of work over the past year or so in fulfilling Congress' mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Indeed, by last count, the CFTC has issued approximately 55 separate rule proposals and the SEC approximately 25 separate rule proposals pursuant to Dodd-Frank. That said, we are concerned that PM may

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not be getting the attention we feel it deserves in the current rulemaking process. Indeed, while much of the Agencies' time has been spent recently on the somewhat controversial topics of centralizing the execution and clearance of OTC derivatives and high frequency trading, we believe that implementing full PM will:

a. encourage investors to invest their funds in US markets because they will be able to benefit from the added leverage (and reduced use of capital) PM allows – and which has been offered by a number of overseas markets for years;

b. reduce customer, broker and market risk by more accurately aligning required margin levels to the degree of risk imposed by a particular customer's trading strategy;

c. encourage joint BD/FCMs that base their capital requirements on customer margin to become more involved in the clearing of OTC derivatives since full PM will lower their customers' margin requirements, and;

d. encourage market participants to become more involved in the centralized clearing of OTC derivatives since they will not be required to post as much collateral to clearinghouses as a result of PM.

In addition, contrary to the CFTC's statement contained in the instant rule proposal that "Dodd-Frank does not set a deadline" for implementation of full PM, we believe that, based on common principles of statutory construction, Congress unequivocally intended that rules to implement full PM be finalized by July 17, 2011. Specifically, Section 713 of Dodd-Frank does not identify the deadline for the implementation of full PM; however, virtually all other SEC and CFTC rulemakings mandated by Dodd-Frank are required to be issued within one year of enactment. There is no exception provided for the finalization of rules related to PM. Thus, in our view, by statutory implication, Congress intended that rules regarding full PM be finalized within one year of enactment (i.e., by July 17, 2011).

BACKGROUND

1. Newedge

"Newedge" refers to Newedge Group, a 50%-50% joint venture between Société Générale and Credit Agricole CIB, headquartered in Paris, France, and all of its worldwide branches, subsidiaries and other units. Newedge, which is one of the world's largest brokerage organizations, offers its customers clearing and execution facilities across multiple asset classes including futures, securities (fixed income and equities), options, FX and various OTC instruments. Newedge maintains offices in over 15 countries, and is a member of over 85 exchanges worldwide. As of June 30, 2010, Newedge had an estimated global market share in listed derivatives of 11.6% (clearing) and 12.4% (execution), and over $56.4 billion of client assets on deposit.

NUSA is one of the leading BD/FCMs in the US. Indeed, according to CFTC statistics, as of January 2011, Newedge USA held the largest pool of customer "segregated" and "secured" assets of all US-based FCMs. NUSA's primary function is that of a broker – i.e., to execute and clear customer transactions across multiple asset classes on either an agency or riskless principal basis. NUSA, which has been a joint BD/FCM since 1995, conducts only a very limited amount of proprietary trading, and then generally only to hedge positions acquired through customer facilitation. As a result, NUSA does not generally hold positions in inventory. NUSA personnel routinely sit on futures and securities industry committees and task forces, participate in industry conferences and seminars, and comment on proposed SEC, CFTC and self-regulatory organization rules.

NUSA has been active over the years with respect to PM. Among other things, NUSA: (a) submitted a May 11, 2006 comment letter to the SEC voicing its support for the New York Stock Exchange's ("NYSE") and the Chicago Board Options Exchange's ("CBOE") proposals to expand the types of products available for PM under their respective rules; (b) became the first US BD to receive regulatory approval to offer its clients PM under the NYSE plan; (c) has become one of the leading PM BDs in the US since that time; (d) provided testimony at the September 2, 2009 SEC/CFTC Hearings on Rule Harmonization ("SEC/CFTC Hearings") in which it advocated strongly in favor of full PM; (e) submitted a September 14, 2009 comment letter as a follow-up to the SEC/CFTC Hearings in which it again advocated strongly the need for full PM, and; (f) submitted a February 8, 2010 comment letter to the US Government Accountability Office ("GAO") in response to the GAO's mandate to assess the October 16, 2009 "Joint Report of the SEC and CFTC on Harmonization of Regulation" ("Joint Report"), in which it again argued for full PM.

2. The US Financial Industry Wants Full PM.

The Federal Reserve Board ("FRB"), the Obama Administration, various individual exchanges and self-regulatory organizations ("SRO"), Congress and many top industry experts have for some time sought the benefits of PM, as well as the cooperation of the SEC and CFTC necessary to bring about such risk-based margining.

a. The FRB and SEC.

As far back as 1997, the FRB, in connection with the 1997 amendments to Regulation T, adopted Section 220.1(b)(3)(i) in Regulation T, excluding from the scope of Regulation T "[f]inancial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules approved or amended by the SEC." This amendment "paved the way" for the SEC to permit registered securities exchanges and associations to develop PM programs – first on a pilot basis and then on a permanent basis – which have now been developed by the NYSE, the CBOE and the Financial Industry Regulatory Authority ("FINRA"). In addition, the FRB, in granting the Agencies the authority to establish margin levels for security futures in 2001, again noted its support of "more risk-sensitive, portfolio-based approaches to margining" (as opposed to traditional strategy-based margin requirements). The PM programs offered by the NYSE, CBOE and FINRA all permit the inclusion of futures products in PM accounts carried by joint BD/FCMs.

b. The Movement Toward Rule Harmonization.

As a result of the 2008 financial crises, President Obama called for the SEC and CFTC to work together to harmonize their rules in an effort to make the US financial markets safer, more transparent and more efficient. The September 2, 2009 SEC/CFTC Rule Harmonization Hearings – and subsequent Joint Report of the Agencies on rule harmonization – were direct results of that mandate. Further, at the SEC/CFTC Hearings, full PM (the "one-pot" approach) was identified by most panelists as an area in which the Agencies should harmonize their rules.[1] Indeed, many panelists recommended, given the importance of full PM, that the Agencies establish an advisory committee to work together to achieve the necessary rule changes in order implement full PM.[2] One of the key panelists to advocate for full PM was FINRA.[3]

As a result of the SEC/CFTC Hearings, the Agencies issued an October 16, 2009 Joint Report that was equally supportive of full PM.[4] Indeed, the Joint Report recommended the adoption of legislation: conferring upon customers the choice of PM in a single futures or securities account at a joint BD/FCM, and clarifying that (a) securities products may be held in a futures account and protected under the futures insolvency regime, and (b) futures products may be held in a securities account and protected under the Securities Investor Protection Act ("SIPA"). Toward this end, the Agencies noted that they would:

> work together to foster agreements among futures and options clearing houses that extend the benefits of portfolio margining to clearing house margin and, in that connection, will provide any appropriate exemptive relief ..... [and]
> [u]ndertake to review their existing customer protection, margin and any other relevant regulations to determine whether any rule changes or exemptive relief would be necessary to achieve the full benefits of risk-based portfolio margining.

Based on the recommendation of the Joint Report, a Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues ("Advisory Committee") was created to "serve as a vehicle for discussion and communication on regulatory issues of mutual concern" between the CFTC and SEC, and "develop clear and specific goals toward ..... furthering regulatory harmonization."

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[1] See Joint Report at 43 ("[p]anelists identified portfolio margining as a significant area for harmonization and agreed that portfolio margining is important to US competitiveness") and Joint Report at 5 ("[r]isk-based portfolio margining, i.e., the ability to cross-margin related instruments in one account, was cited by many panelists at the September Meeting as a significant area for reconciling the two regulatory regimes").

[2] See Joint Report at 43 ("In the long run, however, most panelists agreed that the agencies should create a new unified account regime that adopts the best of both systems and allows for futures and securities to be held in the same location. To this end, some panelists advocated creation of a jointly organized effort, such as an industry advisory committee, that would be tasked with recommending a solution").

[3] See Statement of Stephen Luparello, Vice Chairman, FINRA, SEC/CFTC Joint Meeting on Harmonization of Regulation, September 2, 2009 ("FINRA's portfolio margining rules were written to allow customers to base their margin charges on risk-based calculations that incorporate securities, futures and OTC derivatives. Our rules stand ready to allow portfolio margining for a single account holding securities and futures if the issues presented by the differences between SIPA and the segregated funds regime are resolved").

[4] See Joint Report at 86 (the Agencies recommend the adoption of "legislation to facilitate the holding of (i) futures products in an SRO securities portfolio margin account and (ii) securities options, SFPs, and certain other securities derivatives in a futures portfolio margin account").

See Charter at (3).[5] Although the Advisory Committee has met four times thus far (May 24, 2010, June 22, 2010, August 11, 2010 and November 5, 2010), it has not, according to the published minutes, discussed the implementation of full PM.[6]

c. Section 713 of Dodd-Frank

One of the basic purposes of Dodd-Frank was to encourage the cooperation of the SEC and the CFTC toward rule harmonization.[7] And, with respect to PM in particular, Section 713 of Dodd-Frank clearly established the basic groundwork necessary for the implementation of full PM. Specifically, Section 713(a) of Dodd-Frank amended Section 15(c)(3) of the Securities Exchange Act of 1934 ("Exchange Act") by providing that:

> cash and securities may be held by a [BD] registered pursuant to subsection (b)(1) and also registered as a [FCM] registered pursuant to 4f(a)(1) of the Commodity Exchange Act, in a [PM] account carried as a futures account.

Section 713(a) also stated that the "SEC shall consult with the [CFTC] to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products."

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[5] See also Joint Report at 93 ("[t]he committee would serve as a vehicle for discussion and communication on regulatory issues of mutual concerns affecting CFTC and SEC regulated markets, and the industry generally ….. [s]uch a [committee] would be a valuable resource for continuing to further the Administration's recommendation on harmonization").

[6] With respect to rule harmonization generally, we note, from our vantage point as a global broker, that we have long been struck with the unnecessary inconsistencies between the Agencies' rules. For example, currently a joint US BD and FCM could be required to decline a customer's request, based on FINRA suitability grounds, to by an ETF such as US Oil but be able to offer the same customer an opportunity to buy crude oil futures. Some US intermediaries, such as NUSA, have sought to resolve these inconsistencies by applying the more stringent set of standards to their activities, while other brokers, we believe, have sought to benefit from the inconsistencies through rule arbitrage.

In our view, for true and effective harmonization to prevail, regulators must begin to focus not on existing financial services categories – e.g., the names of things, such as "securities" or "futures" or "brokers" – that were put in place years ago by officials dealing with a vastly different marketplace, but rather look behind those "names" at the precise nature and function of the instruments, activities and registrants involved in today's markets. Taking down these artificial boundaries and seeing all financial products through a "time spectrum" will, we believe, allow regulators to see the many similarities between futures and securities which will assist in the harmonization process.

In our view, all financial products have essentially two key dates or series of dates: the delivery date and the dates before delivery. On the delivery date, financial products – of whatever type – are delivered (some futures products are settled through cash only, and there is no transfer of title related to the referenced product), and customers are expected to pay for or finance them. This is the case today whether the products are called securities (and thus either subject to full payment or financing under Regulation T and SRO rules) or futures (and likewise subject either to full payment or financing in whole or part). Before the delivery date, there is an agreement to buy or sell the financial product on the delivery date, and typically this agreement is "guaranteed" through the posting of a good faith deposit that is adjusted daily.

[7] See Statement of CFTC Commissioner Michael Dunn, dated August 11, 2010 ("I am also pleased that the Dodd-Frank Bill recognizes the importance of CFTC-SEC cooperation and mandates that we meet and work together to insure that both the commodities, securities and derivatives markets are stronger, more transparent, and more stable than in the past").

Similarly, Section 713(b) of Dodd-Frank amended Section 4d of the Commodity Exchange Act by providing that:

> a [registered] [FCM] that is ….. also registered as a [BD] ….. may, pursuant to a [PM] program approved by the [SEC] ….. hold in a [PM] account carried as a securities account ….. a contract for the purchase of sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract or accruing to a customer as the result of such a contract.

Section 713(b) of Dodd-Frank also provides that the CFTC shall "consult with the [SEC] to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products."

Section 713(c) of Dodd-Frank requires the CFTC to exercise its authority to ensure that securities held in a PM account carried as a futures account are "customer property" and the owners of those accounts are "customers" for the purposes of US Bankruptcy Code. In response, the CFTC has now proposed modifying Rules 190.01(k) and 190.08(a)(1)(i) to confirm that securities carried in a PM account carried as a futures account will be considered "customer property" and that the owners of such accounts will be considered "customers" for purposes of the US Bankruptcy Code. Finally, Dodd-Frank amended SIPA to confirm that futures held in a PM account carried as a securities account will be protected in a BD insolvency.

d. Full PM Will Provide Many Significant Benefits To US Markets and Market Participants.

Full PM will provide many important benefits to US markets and market participants. In short, PM provides "an accurate and realistic assessment of reasonable margin requirements" based on a customer's overall risk.[8] More specifically:

> [w]hen utilizing a portfolio margin methodology, offsets are fully realized, whereas under strategy or position-based methodology, positions and or groups of positions comprising a single strategy are margined independently of each other and offsets between them do not efficiently impact the total margin requirement.

SEC Release at 37 n. 18. In short, PM reduces customer, broker and market risks by more accurately aligning margin requirements with portfolio risk than does traditional strategy-based margining.

In addition, full PM will:

a. allow customers (and brokers) to "free up" their capital for other purposes, such as additional investing opportunities, which could assist in improving the liquidity of US markets;[9]

[8] SEC Release No. 34-53577 (March 30, 2006) (SEC release adopting NYSE's and CBOE's proposals to expand the types of products eligible for PM).

b. "assist regulators monitor a larger segment of positions in the market as part of their surveillance efforts" (Joint Report at 42);

c. encourage firms to invest their funds in the US markets because they will be able to benefit from the added leverage portfolio margining allows – and which added leverage has been offered by overseas markets for years (indeed, from our perspective as a global intermediary that operates in the world's largest markets, we know that the international competition for investment dollars is only going to increase);[10]

d. encourage market participants to become more involved in the centralized clearing of OTC derivatives since they will not have to post as much collateral to the clearinghouse as a result of PM (and many market participants' primary concern regarding centralized clearing is having to lock up significant amounts of their collateral at clearinghouses), and;

e. encourage BDs and FCMs to participate in the clearing of credit default swaps ("CDS") and other OTC products.

With respect to the last point, CDS and other OTC derivative products are anticipated to have higher margin requirements than traditional futures or securities products. Thus, holding them outright over a long term for customers will generate significant capital requirements for joint BD/FCMs that compute their capital pursuant to the risk-based customer margin method, since such firms' capital requirements increase as the amount of customer margin they hold increases. However, full PM will allow brokers' clients to offset their securities and futures positions with CDS and other OTC derivative products, and vice versa, thereby potentially lowering their margin requirements and, consequently, their brokers' capital requirements. And, encouraging registered brokers – which are subject to a host of capital, margin, suitability and other requirements – to become more involved in the OTC derivatives market will, in our view, assist in reducing overall market risk. This is consistent with the purpose behind Dodd Frank in the first instance.

In short, providing for full PM will, among other things, assist the Agencies in bringing about the centralized execution and clearance of OTC derivatives that Dodd-Frank mandates; that is, the legal requirement to implement centralized OTC clearing has been put in place, but full PM will provide the "inducement" necessary for market participants to want to become involved in this activity. Don't just beat on the industry with the stick of requirements; provide an inducement to make the industry want to embrace the centralized clearing of swaps, too!

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[9] See Joint Report at 5 ("Portfolio margining would release firm and customer capital to be used for other purposes").

[10] See Joint Report at 42 ("Since certain off-shore jurisdictions permit full-fledged portfolio margining, panelists agreed that portfolio margining is important to the international competitiveness of America's financial markets").

DISCUSSION

In connection with this rulemaking, the CFTC:

a. proposes the issuance of Rule 39.4(e), which would require a designated clearing organization ("DCO") – prior to providing clearing and settlement services for a futures PM account that holds securities – to submit its proposed PM rules to the CFTC for approval under CFTC Rule 40.5 and to petition the CFTC for a Section 4d exemptive order allowing it to commingle futures and options on futures with securities;

b. states that Dodd-Frank does not set a deadline for the implementation of full PM;

c. states that it must consult with the SEC and obtain industry views on substantive regulations relating to full PM, and;

d. requests comment on "possible strategies for the [CFTC] and the SEC to address issues raised by [PM] and to facilitate the availability of [PM] programs for qualified participants."

With respect to (a) above, NUSA does not take issue with proposed Rule 39.4(e). Indeed, requiring a DCO to obtain prior CFTC approval of the rules it intends to implement relating to its clearing and settling full PM accounts – and requiring such DCO to obtain a Section 4d exemptive order from the CFTC under the Commodity Exchange Act – appears to be a reasonable control which will ensure, among other things, that DCO rules relating to full PM are adequate and consistent.

With respect to (b) above, NUSA disagrees, as noted, with the CFTC's statement that "Dodd-Frank does not set a deadline" for implementation of full PM. Rather, we believe that, based on common principles of statutory construction, Congress intended that rules to effectuate full PM be implemented by July 17, 2011. Specifically, Section 713 of Dodd-Frank does not identify the deadline for the implementation of full PM; however, virtually all other SEC and CFTC rulemakings mandated by Dodd-Frank are required to be issued within one year of enactment. There is not an exception for the finalization of rules related to PM. Thus, basic concepts of statutory construction dictate that Congress intended that rules related to full PM be finalized within one year of enactment (i.e., by July 17, 2011).

With respect to (c) above, we recommend that the CFTC consider issuing proposed PM rules establishing, among other things:

- the concept of PM accounts carried as futures accounts ("FPM accounts"), and stating clearly that such accounts may hold securities-related products including stocks, equity options, fixed income products and securities-based swaps;

- the type of offsets available, the degree of stress-testing required, the theoretical pricing model(s) that may be used and any minimum margin charges that must be incurred in an FPM account;

* that only joint BD/FCMs may carry such accounts;

* that BD/FCM customers may elect to carry their positions in a FPM account or a securities PM account ("SPM account");

* that securities held in FPM accounts are entitled to protection under the CFTC's segregated and secured assets protection regime;

* that futures clearinghouses be required to issue rules facilitating FPM accounts;

* the capital charges to be assessed against a joint BD/FCM in the event required margin is not collected on a timely basis in an FPM account;

* the supervisory, internal audit and risk management controls and procedures joint BD/FCMs must have in place to the extent they maintain FPM accounts;

* that SEC rules, interpretations and guidance relating to the margin value to be afforded to securities products in an FPM account will apply;

* the minimum net equity value that must be maintained in an FPM account, if any;

* how FPM account activity will be reviewed by external regulators (i.e., by joint CFTC-SEC auditing teams, etc.), and;

* that activities relating to securities products other than those directly involving PM should be governed by the SEC and securities SROs.[11]

Finally, with respect to (d) above, we recommend that the CFTC and the SEC use the current Joint Advisory Committee to work through the rules necessary to effectuate full PM. We note in this regard that the next Joint Advisory Committee is scheduled for February 18, 2011. Once and for all, the CFTC and SEC should figure this out, and not let historic anachronistic attitudes

[11] Similarly, the SEC should consider issuing rules that, among other things: direct the securities SROs and the OCC to investigate use of the SPAN theoretical pricing model for use with SPM accounts; direct the SROs and the OCC to determine the type of offsets available, the degree of stress-testing required and any minimum margin charges that must be incurred in connection with futures products carried in an SPM account; establish the loan value futures products will carry; establish the application of the SEC's rehypothecation rules to futures-related products; establish that only joint BD/FCMs may carry such accounts; establish that BD/FCM customers may elect to carry their positions in a FPM or an SPM account; establish that an FPM carried at a registered FCM is considered a good control location for purposes of SEC Rule 15c3-3 (and the application of any other "possession and control" requirements to futures-related products); establish that futures products held in SPM accounts are entitled to protection under the SIPA; require that DTC and OCC issue rules as necessary to facilitate SPM accounts; mandate the adoption of CFTC rules, interpretations and guidance with respect to the margin value to be afforded to futures products in an SPM account; describe how SPM account activity will be reviewed by external regulators (i.e., by joint CFTC-SEC auditing teams, etc.), and; establish that activities relating to futures products other than those directly involving PM should be governed by the CFTC and futures SROs.

about the efficacy of each other's customer protection schemes get in the way of benefiting institutional customers overall.

* * *

As noted above, we believe the CFTC (and the SEC) has done an enormous amount of excellent work over the past year or so in fulfilling Congress' mandate under the Dodd-Frank, and we commend the Staff in this regard. That said, let us not forget the importance of implementing full PM to US markets and market participants during this grueling rulemaking process! We believe, among other things, it will induce market participants to "buy into" the centralized clearing of OTC derivatives that Dodd-Frank has now mandated, and thereby allow the Agencies to better effectuate Congressional intent. Voluntary buying in, is always better than mandating!

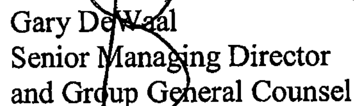
Please let us know if we can assist you in developing rules relating to full PM, or if we can be of any other assistance. Thank you for reviewing these comments.

If you have any questions, please do not hesitate to contact the undersigned at (646) 557-8548, or John Nicholas, US Securities Compliance Director, at (646) 557-8516.

Sincerely,

Newedge USA, LLC

By



Gary DeWaal
Senior Managing Director
and Group General Counsel

cc: Mary Schapiro, Chairman
Securities and Exchange Commission