



May 8, 2012

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Chairman Gensler,

As the Commodity Futures Trading Commission (Commission) considers Final Rule on Core Principles and Other Requirements for Designated Contract Markets (DCMs), the Wholesale Markets Brokers' Association, Americas (WMBAA) urges the Commission to ensure that this final rule, in concert with other Title VII rulemakings, promotes further competition among market participants. Further, the WMBAA encourages the Commission to incorporate discussion into its final rules making clear that designated contract markets, along with other registered providers of mandated regulatory services, cannot bundle or take anticompetitive actions that disadvantage other registered providers of mandated regulatory services. Such positions are consistent with Congressional intent to fashion competitive markets¹ and the Commission's own stated goals.²

The proposed rules for DCMs, implementing the core principles set forth in the Commodity Exchange Act, prohibit (i) rules or action resulting in any unreasonable restraint of trade or (ii) the imposition of any material anticompetitive burden on trading on the contract market.

The WMBAA remains concerned that DCMs may seek to either (i) explicitly combine trade execution services with affiliated derivatives clearing organizations (DCOs) or (ii) provide favorable pricing to customers who rely on one provider for trade execution and clearing services. The tying of these two functions, familiar in futures markets, are antithetical to over-the-counter markets and pose serious risks to their ability to function. As the Justice Department observed in a 2008 comment letter to the Treasury Department, where a central counterparty clearing facility is affiliated with an execution exchange (such as in the case of US futures), vertical integration has hindered competition in execution platforms that would otherwise have been expected to: result in greater innovation in exchange systems, lower trading fees, reduced ticket size and tighter spreads, leading to increased trading volume and benefits to investors.

¹ See Floor Statement of Senator Herb Kohl (D-WI), July 15, 2010 ("Competition is the cornerstone of our Nation's economy, and the antitrust laws ensure strong competitive markets that make our economy strong and protect consumers. This bill will ensure that the antitrust laws retain their critical role in the financial services industry.").

² See comments by Gary Gensler, CFTC, House Agriculture Committee "Hearing to Review Proposed Legislation by the U.S. Department of Treasury Regarding the Regulation of Over-The-Counter Derivatives Markets," September 17, 2009 ("We are trying to promote competition amongst exchanges and trading venues. And so what we are saying is that a clearinghouse could not be vertically integrated in such a way with an exchange or trading platform so that the only product they accept is from that exchange or trading platform. And so thus we want to promote competition, somewhat like what is in the options market right now, where there is one clearinghouse but many exchanges.").



The WMBAA believes that the consideration of the final rule on DCMs provides the Commission with an ideal opportunity to make clear to participants of the markets it regulates that bundling and anticompetitive activity will not be tolerated. If left ambiguous, DCMs and DCOs may collude to squeeze competitors' market share, and then adopt a similar practice for swap execution facilities and affiliated DCOs. The same potential exists for the coupling of either trade execution services or clearing services with trade reporting services for swap data repositories (SDRs). These three prime mandated regulatory functions – execution, clearing, and reporting – should remain unencumbered by affiliation, collusion or cross-subsidization with commercial allies providing other regulated services.

Rather, the Commission should take a stand to promote competition in these areas. As noted by the Justice Department, “the control exercised by futures exchanges over clearing services . . . has made it difficult for exchanges to enter and compete.” The absence of vertical integration has facilitated head-to-head competition between exchanges for equities and options, resulting in low execution fees, narrow spreads and high trading volume. We urge the Commission to promote competitive service arrangements that benefit market participants for a wide arrange of venues and platforms.

We appreciate the opportunity to share our thoughts on this very important issue.

Regards,

A handwritten signature in black ink that reads "Chris Ferreri". The signature is written in a cursive, flowing style.

Chris Ferreri
Chairman

cc: The Honorable Jill Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott O'Malia, Commissioner
The Honorable Mark Wetjen, Commissioner