From: Simon Wheatley <Simon.Wheatley@lchclearnet.com>
Sent: Wednesday, November 17, 2010 1:14 PM
To: dcodcmsefGovernance <dcodcmsefGovernance@CFTC.gov>; DCOGovernance <DCOGovernance@CFTC.gov>
Cc: Compliance <Compliance@lchclearnet.com>; Charlotte Foy <Charlotte.Foy@lchclearnet.com>
Subject: RIN 3038 AD01 comment LCH#2.
Attach: RIN3038_AD01[2].pdf

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Sirs
Please find attached a further comment with respect to "Requirements for Derivatives Clearing Organizations, Designated Contract Markets and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest".
The original will follow by mail.
Please revert with any immediate queries.
Kind regards

Simon Wheatley
Director, Compliance and Regulation
LCH.Clearnet Limited
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LCH.CLEARNET

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

17 November 2010

Dear Mr Stawick,

Re: RIN 3038 AD01, "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest"

The LCH.Clearnet Group ("LCH.Clearnet") is pleased to add further comment to its letter of November 5, 2011, in response to the request for comment by the Commodity Futures Trading Commission (the "CFTC" or "Commission") on RIN 3038 AD01, "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest."[1]

As mentioned in our earlier submission, the Group appreciates the careful thought and consideration that the Commission has given to the rulemaking process and the open way in which it has consulted with market participants and other interested parties. LCH.Clearnet strongly supports the policy goals underpinned both by the Proposing Release and the statutory provisions contained in Section 726 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Section 726(a) of the Dodd-Frank Act specifically empowers the Commission to adopt rules mitigating conflicts of interest with respect to any Derivatives Clearing Organization ("DCO") that clears Swaps. These rules may include numerical limits on the control of, or the voting rights with respect to, such a DCO by one of several specified market participants. These participants include a Swap dealer, a major Swap participant, and a large bank holding company or non-bank financial company regulated by the Federal Reserve.

In its proposed rules published under RIN 3038 AD01, "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest", the Commission has set out specific composition requirements for representation on DCO Boards, Risk Management and Nominating Committees.

LCH.Clearnet is fully supportive of the Commission's endeavor in this regard and believes that appropriately gauged board and committee composition rules can help ensure that conflicts are appropriately managed. In particular, the Group is a strong advocate of Public Director representation within DCOs, and agrees with the Commission's proposal that DCO Boards should include Public Directors. The LCH.Clearnet Board currently has four independent members (representing approximately 25 percent

[1] RIN 3038 AD01, "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest" (the "Proposing Release").

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of the Board) and, additionally, the Risk Committees of its clearinghouses are each chaired by an independent director.

The Group would, however, urge the Commission to consider whether its proposed definition of a Public Director might not preclude DCOs and their customers from enjoying the broad and balanced mix of Board representation that they do today.

The LCH.Clearnet Board is comprised of a well-balanced mix of independents, exchange representatives and financial intermediaries. This wide spectrum of representation ensures that the Board is well-positioned to serve the interests of LCH.Clearnet's entire shareholder and user community and able to operate its clearinghouses accordingly.

LCH.Clearnet believes that it is of key importance to ensure that DCO Boards be furnished with a sufficiency of the necessary risk and market expertise to ensure that their operations be managed in accordance with the responsibilities and in support of the objectives laid out under the Dodd-Frank Act.

Such expertise can best be bought to bear through a wide spectrum of representation from across the Swaps industry, including not only clearing members, but also representatives from exchanges. In the future, it might also be appropriate to ensure that Swaps Execution Facilities (SEFs) be represented on DCO boards.

In order to ensure that DCO Boards and their Committees do not become unwieldy and yet are not constrained from offering board seats to representatives from exchanges and SEFs, the Group would therefore strongly encourage the Commission to review its definition of Public Directors so as to provide that a Director would not be deemed to have a "material relationship" with a DCO solely because the Director is an officer or employee of a DCM, SEF or other market for which the DCO provides clearing services, unless (i) the DCM, SEF or other market owns more than **10** percent of the voting securities of the DCO, or (ii) the clearing fees paid by the DCM, SEF or other market over the immediately preceding three calendar years do not exceed an annualized average of 15 percent of all the DCO's clearing fees during such three-year period. To this end, attached to this letter is suggested text to add a new subparagraph 4 to proposed rule 1.3(ccc).

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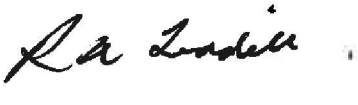
LCH.Clearnet looks forward to extending its clearing services in the US marketplace, thereby introducing the safeguards of its proven structures deeper into the US customer base.

We recognize the hard work undertaken by the Commission in order to develop these proposed rules and value its open and thoughtful approach in this task. LCH.Clearnet appreciates the opportunity to comment on these important issues and would be pleased to enter into a further dialogue with the Commission and its staff. Please contact Simon Wheatley at (+44) 207 426 7622 regarding any questions raised by this letter or to discuss these comments in greater detail.

Yours sincerely,



Roger Liddell

Chief Executive

LCH.CLEARNET

CFTC Rule 1.3(ccc)(4). A director of a derivatives clearing organization shall not be deemed to have a "material relationship" with such derivatives clearing organization solely because the director is an officer or employee of a designated contract market, swap execution facility or other market for which the derivatives clearing organization provides clearing services, *provided*, that (i) the designated contract market, swap execution facility or other market does not own more than **10** percent of the voting equity of such derivatives clearing organization, or (ii) average annualized clearing fees paid by such a DCM, SEF or other market over the immediately preceding three calendar years does not exceed 15 percent of the average annualized clearing fees paid to the DCO during such three-year period.