MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

April 11, 2011

Via Electronic Submission: http://comments.cftc.gov

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

Re: RIN No. 3038-AC98: Notice of Proposed Rulemaking on Requirements for Processing, Clearing, and Transfer of Customer Positions

Dear Mr. Stawick:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") on its proposed rules on "Requirements for Processing, Clearing, and Transfer of Customer Positions" (the "**Proposed Rules**")[2] related to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").[3] MFA strongly supports the intent of the Proposed Rules "to expand access to, and to strengthen the financial integrity of, the swap markets"[4] by establishing uniform standards for submission of transactions to, and prompt processing, submission and acceptance of swaps eligible for clearing by, a derivatives clearing organization ("**DCO**").[5] Further, we strongly support the Commission's goal of preventing unnecessary delay and market disruption by requiring DCOs to promptly transfer customer positions from a carrying clearing member to another clearing member.[6] Accordingly, we respectfully provide the following suggestions on the Proposed Rules, which we believe will assist the Commission in adopting final rules that help to achieve these goals.

---

1 MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

2 76 Fed. Reg. 13101 (Mar. 10, 2011) (the "**Proposing Release**").

3 Pub. L. 111-203, 124 Stat. 1376 (2010).

4 Proposing Release at 13103.

5 The Commission has not yet promulgated final rules regarding the requirements for registration as a DCO. Thus, for the remainder of this letter, when we refer to DCOs, it shall mean an entity likely to be registered as such an entity based on the Commission's current proposed rules.

6 Proposing Release at 13102.

I. Proposed §39.12(b)(7): Timeframe for Clearing Transactions

Proposed §39.12(b)(7) would require DCOs to comply with specified timeframes for processing and clearing contracts, agreements and transactions that vary depending on the execution method used and whether or not the trade is subject to mandatory clearing.[7] MFA strongly supports the Commission's proposal for real-time clearing acceptance. First, because real-time acceptance gives market participants certainty of clearing immediately following execution, thereby allowing them to hedge more efficiently and maintain balanced risk management.[8] Second, it is a critical component to the implementation of broad, mandatory clearing. Third, because real-time acceptance is essential to electronic trading, particularly limit order book trading. Lastly, because real-time acceptance promotes open, competitive markets and access to best execution by giving parties to a cleared trade immediate certainty that they will face the DCO, thus eliminating the need to negotiate individual credit agreements with each of their counterparties.

Given the benefits of real-time acceptance, we respectfully request that the Commission impose the same real-time acceptance timeframe for all trades submitted for clearing, regardless of the execution method used or whether or not the trade is subject to mandatory clearing. We are concerned that if a customer faces any delay in a DCOs acceptance of any trade, it will lead the customer to trade with fewer counterparties, typically the largest dealers that pose lower long-term counterparty credit risk or with which customers have a bilateral International Swaps and Derivatives Association, Inc. ("**ISDA**") master agreement in place. In contrast, as the Commission has acknowledged, real-time acceptance benefits the market because if a customer has clearing certainty and there is no risk of bilateral counterparty credit risk exposure, the customer will be able to transact with any competitive, eligible counterparty, without the need for extensive documentation and credit intermediation or other credit arrangements.[9] Therefore, adopting real-time acceptance timeframes that contravene this benefit would undermine the

---

[7] Proposed §39.12(b)(7) specifies that:

- for transactions executed on a swap execution facility ("**SEF**") or designated contract market ("**DCM**"), the DCO must accept for clearing, immediately upon execution, all transactions listed for clearing by the DCO;
- for swaps not executed on a SEF or DCM and subject to mandatory clearing, a DCO must accept for clearing, upon submission to the DCO, all swaps that are listed for clearing by the DCO; and
- for swaps not executed on a SEF or DCM and not subject to mandatory clearing, a DCO must accept for clearing, no later than the close of business on the day of submission to the DCO, all swaps the DCO lists for clearing.

[8] Real-time acceptance for clearing is essential because when a customer executes a trade, it may be part of a larger strategy involving related or offsetting trades. The customer must know with certainty that its trade will clear since it will immediately enter into related transactions in reliance on the clearing of that trade.

[9] Proposing Release at 13111. As noted by Commission Chairman Gary Gensler, we agree that the practices in the futures markets should be a model, and that uniform standards for prompt processing, submission and acceptance for clearing of all swaps eligible for clearing (not only those for which clearing is mandatory) will allow the documentation framework to closely resemble the futures construct. In Section V of this letter, we address specific suggestions relating to documentation in the context of the Proposed Rules.

fundamental policy goals of clearing by limiting optimal risk management, competitive liquidity and open access to best execution.

As a result, we recommend that the Commission modify the proposed timeframes so that, as long as a DCO receives a matched trade submission according to its messaging requirements – which the Commission should require to be reasonable, standardized and non-discriminatory – the DCO would be required to process each trade for acceptance or rejection for clearing in real-time.[10] We understand that from the DCO's perspective, there is no practical difference: (i) between processing a trade that is subject to mandatory clearing and processing a trade that the parties clear voluntarily; (ii) between processing a SEF-executed trade and processing a trade executed bilaterally using a voice-based system; or (iii) for processing of particular types of trades, such as block trades.[11] Delay in processing swaps not subject to mandatory clearing will generally deter parties from clearing them, and thus, slow the progressive expansion of the product set and volumes of cleared trades. Therefore, we believe adopting rules that create such unnecessary distinctions will undermine the Commission's goal of encouraging central clearing.

In order to accept a transaction for clearing once submitted, a DCO confirms that the transaction is in an instrument eligible for clearing and that the transaction otherwise conforms to its guidelines, and then the DCO ascertains whether the transaction is within the credit limits that apply to the counterparties to the trade. For a trade between two direct members of the DCO, the DCO should at all times have the information necessary to confirm credit eligibility in real time, since the DCO itself establishes and monitors the credit limits of its direct participants.

When, however, one or both of the counterparties is an indirect clearing participant, the DCO must also confirm that the trade is within the indirect participant's credit limits as established and adjusted from time to time by that indirect participant's clearing member. There are currently two approaches for enabling the DCO to perform this customer credit verification:

(1) under one approach, each clearing member maintains (and may periodically adjust) its credit limits for each of its customers through a confidential facility at the DCO. When a trade is submitted to which the customer is a party, because the limits are maintained with the DCO, the DCO can verify in real time that the trade is within that customer's limits as determined by its clearing member as well as confirm that the clearing member is also within its aggregate limits with respect to the DCO.

---

[10] We believe that if parties execute a swap that they want cleared (whether submission for clearing is voluntary or mandatory), the swap is binding at its execution subject to clearing, and if the DCO rejects it, there is no trade. If clearing of such swap is not mandatory, the transacting parties could contract in advance to fallback to a bilateral swap in the event the DCO rejects the swap for clearing, but such a fallback arrangement is at the option of the parties and should not be a prerequisite to submission for clearing.

[11] We appreciate that certain investment managers may need to engage in a second process to manage allocations (*e.g.*, for bunched trades). However, proposed §39.12(b)(7) focuses on DCO timing requirements, and for a DCO there should be no difference between an investment manager allocating portions of a trade pursuant to a separate agreement with its clearing member and an investment manager allocating portions of a trade to multiple clearing members as part of a separate allocation process.

(ii) under an alternate approach, in order to verify that the customer's trade is within the limits set by its clearing member, the DCO is constrained to dispatch a message to the clearing member. The clearing member, upon receiving the message in its systems, will confirm whether the new trade is within the customer's limits, and send a return message to the DCO either confirming clearing member acceptance or rejecting it.

This latter approach can be, and currently in certain instances is, accomplished in real time through automation. However, because this processing step is outside of the DCO's control, it creates the risk that, absent affirmative requirement, processing could be held up at the clearing member and introduce delay and uncertainty into the clearing acceptance process.

Accordingly, MFA submits that to minimize the time between trade execution and clearing, and specifically to ensure compliance with the Proposed Rules' real-time acceptance requirements, the relevant clearing member should be required through real-time automation to: (i) immediately accept or reject a trade that its customer has submitted/affirmed for clearing, whether the request is routed from the customer, the SEF or the DCM; and (ii) immediately communicate its acceptance or rejection of the trade back to the DCO.

II. Proposed §39.12(b)(4): Participant Eligibility

Core Principle C requires each DCO to establish appropriate standards for determining the eligibility of agreements, contracts or transactions submitted for clearing.[12] In response, the Proposed Rules include new §39.12(b)(4), which would prohibit a DCO from requiring one of the original executing parties to a swap to be a clearing member in order for the transaction to be eligible for clearing. MFA strongly supports proposed §39.12(b)(4) and believes that the Commission should further strengthen and expand this provision. Specifically, we recommend that the Commission modify the proposed rule to prohibit DCOs from adopting rules or engaging in conduct that is prejudicial to indirect clearing members as compared to direct clearing members with respect to eligibility or the timing of clearing or processing of trades generally. We believe that when an indirect clearing member trades with another indirect clearing member, the clearing process should be identical and as prompt as when one of the parties is a direct clearing member, so long as the transaction satisfies the relevant DCO's rules, requirements and standards otherwise applicable to such trades. Moreover, providing such parity would allow new liquidity providers to efficiently and effectively enter into and compete within the market.

III. Proposed §39.15(d): Transfer of Customer Positions

Under Core Principle F,[13] each DCO must: (i) establish standards and procedures that are designed to protect and ensure the safety of its clearing members' funds and assets; (ii) hold such funds and assets in a manner that minimizes the risk of loss or delay in the DCO's access to the

---

[12] Core Principle C, as amended by the Dodd-Frank Act, Section 5b(c)(2)(C) of the Commodity Exchange Act ("**CEA**"); 7 U.S.C. 7a–1(c)(2)(C).

[13] Core Principle F, as amended by the Dodd-Frank Act, Section 5b(c)(2)(F) of the CEA; 7 U.S.C. 7a–1(c)(2)(F).

assets and funds; and (iii) only invest such funds and assets in instruments with minimal credit, market and liquidity risks. Proposed §39.15(d) seeks to implement Core Principle F by requiring a DCO, upon customer request, promptly to transfer customer positions and related funds from one clearing member to another, without requiring the close-out and re-booking of the positions prior to the requested transfer.[14]

MFA emphatically supports proposed §39.15(d) and strongly believes that facilitating a customer's ability to freely transfer all or a portion of its portfolio and associated margin between clearing members at the same DCO will have beneficial results, including:

(i) allowing customers to use more than one clearing member to protect themselves against clearing member default;

(ii) enhancing customers' ability to transfer positions, in whole or in part, if the customer perceives that its current clearing member is under stress (*e.g.*, at risk of default or insolvency), thereby mitigating the disruption caused by any eventual default of that clearing member;

(iii) allowing customers to manage their portfolios efficiently and achieve optimal compression; and

(iv) fostering competition among clearing members for clearing services.[15]

In furtherance of the principle of efficient portability in proposed §39.15(d), we recommend that in the final rules the Commission expressly prohibit DCOs' rules from giving ceding clearing members the right to refuse the DCO's instruction to transfer all or a portion of a customer's portfolio in any situation, even if such clearing member is not in default. We agree that such transfer should be allowed only if all positions not transferred by the customer: (i) remain "appropriately margined" (*i.e.*, the customer has posted margin consistent with the margin required by the DCO, using either the same methodology utilized previously or such other methodology as otherwise agreed between the customer and its clearing member); and (ii) there is no ongoing event of default of the customer that would give the ceding clearing member specific rights, in whole or in part, over the positions and margin being transferred. In addition, we suggest that the Commission mandate that the DCO rules must specify that upon a requested transfer, the DCO will simultaneously transfer margin along with the related positions, and prohibit ceding clearing members from imposing extraordinary charges on transfers that could act as deterrents or hidden consent rights.

---

[14] Proposing Release at 13102, in which the Commission states that ''promptly'' means "as soon as possible and within a reasonable period of time" and that the Commission's intention is to conform the Proposed Rules to current futures industry standards, where the timeframe is typically no more than two business days.

[15] *Id.* at 13111. Commission Chairman Gary Gensler recognized some of these benefits in the Proposing Release, where he stated that the requirement for prompt and efficient transfer of customer positions between clearing members would promote efficiency and provide end users the benefit of greater competition amongst clearing members.

This framework is consistent with that of futures clearing currently,[16] and transferring margin at the same time as the transfer of the related positions would reduce costs, limit the operational risk to the customer and eliminate the possibility that the customer would be called to re-post margin with respect to the transferred positions prior to the transfer or return of margin it previously posted.[17] Therefore, we believe that the final rules must specifically set forth these additional measures to ensure facility of transfer and to reverse the current practice at certain clearing organizations of requiring clearing member consent, which creates delay or imposes added costs on such transfer requests.

The Commission has further sought comment as to whether "promptly" provides adequate guidance with respect to the time period within which DCOs would be required to transfer customer positions or whether another descriptive term or phrase is more appropriate.[18] Recognizing that the Commission prefers not to specify a particular timeframe,[19] we would urge the Commission to mandate that the DCO must make such a transfer within the shortest commercially reasonable time period, *i.e.*, "as soon as technologically practicable". Given that the Commission opted not to specify a particular timeframe in recognition of future technological advances that will allow DCOs to transfer positions more quickly,[20] it makes sense to connect DCOs' ability to transfer customer positions to existing technological constraints. Mandating that transfers must occur as soon as technologically practicable will also allow the market to realize more fully the benefits (discussed above) of liberalizing the transfer rules.

IV. Proposed §23.506: Submission of Swaps for Processing and Clearing

Proposed §23.506 would require swap dealers ("**SDs**") and major swap participants ("**MSPs**") to route swaps that are not executed on a SEF or DCM to a DCO in a manner that is acceptable to the DCO for the purposes of risk management. Proposed §23.506 would further require SDs and MSPs to coordinate with DCOs to facilitate prompt and efficient processing in accordance with proposed regulations related to the timing of clearing by DCOs, and that section sets forth required timeframes for a SD, MSP, FCM, SEF and DCM to submit contracts, agreements or transactions to a DCO for clearing.[21] MFA generally supports these guidelines.

---

16 *See e.g., Id.* at 13107. With respect to other aspects of proposed §39.15(d), such as the time period within which DCOs must effect such transfers, the Commission has indicated (as discussed in footnote 9) that the futures industry is an appropriate model for this new transfer regime. We agree. We understand that, under normal circumstances, there are no operational or other reasons why a DCO could not execute a portability request on a same day or overnight basis, as is standard practice in futures markets.

17 We note that if DCOs are not required to transfer margin along with the related positions, time delays could result between when customers are required to post margin with the new clearing member and when the original clearing member returns the customer's outstanding margin amounts. Concurrent transfer of the positions and related margin would eliminate this need to have duplicative posting of collateral in respect of the same positions.

18 Proposing Release at 13107.

19 *Id.*

20 *Id.* The Commission stated that this preference is due to the belief that, as technology evolves, "it is likely that the transfer of customer positions and related funds can be accomplished more quickly and with greater operational efficiency".

21 Proposed §23.506 states that:

However, to minimize the time between trade execution and clearing and to ensure compliance with the proposed real-time acceptance requirements, the Commission should promulgate specific rules that ensure timely submission to DCOs of all trades not executed on a SEF or DCM (making allowances for after-hours trade submission protocols).[22] Specifically, the final rules should stipulate timeframes that are as short as technologically practicable, so that as technology and trade flows become more established and efficient the timeframes will compress.

In addition, we believe that real-time acceptance (as discussed in Section I) and streamlined documentation procedures (as discussed in Section V) are essential to the development of SEFs.[23] We think it is important to promote SEFs as desirable venues because we believe they will be essential to the continued development of organized markets for the execution and trading of swaps. Therefore, to encourage SEF development, we recommend that the Commission require DCOs to support real-time acceptance of transactions executed on SEFs by mandating that DCOs must have universally disciplined, real-time processes that take standard messages regarding block trades from SEFs, complete the clearing acceptance process and deliver real-time messages back to the SEFs that the DCO has accepted or rejected the trade.

V. Recommended Rulemaking Relating to Cleared Swap Documentation and Impediments to Best Execution and Competitive Markets

As noted above, real time acceptance for clearing eliminates the need for credit arrangements between transacting counterparties, since they immediately face the DCO and not each other. The elimination of the need for individually negotiated bilateral credit arrangements

---

- for swaps subject to mandatory clearing, an SD or MSP must submit the swap for clearing as soon as technologically practicable following execution, but not later than the close of business on the day of execution;
- for swaps not subject to mandatory clearing, if cleared, such swaps would have to be submitted for clearing not later than the next business day after execution of the swap or the agreement to clear, if later than execution; and
- SEFs and DCMs would submit swaps for clearing immediately upon execution.

[22] In this regard, we believe that both parties will enter the details of the vast majority of non-SEF executed trades into automated trade capture systems at essentially the same time that they execute the trade.

Also, by way of analogy, we note that many futures exchanges require submission of the details of any off-exchange or block trades within minutes of execution. *See e.g.*, Chicago Mercantile Exchange ("**CME**") Rule 526, which requires the seller in a block trade to report the trade to the CME "within five minutes of the time of execution; except that block trades in interest rate futures and options executed outside of Regular Trading Hours (7:00 a.m. through 4:00 p.m. Central Time, Monday through Friday on regular business days) and Housing and Weather futures and options must be reported within fifteen minutes of the time of execution. The report must include the contract, contract month, price, quantity of the transaction, the respective clearing members, the time of execution, and, for options, strike price, put or call and expiration month."

[23] *See also* MFA's comment letter to the Commission dated March 8, 2011, in response to the Commission's proposed rules on "Core Principles and Other Requirements for Swap Execution Facilities", 76 Fed. Reg. 1214 (Jan. 7, 2011), available at: http://www.managedfunds.org/downloads/CFTC.Swap.Execution.Facilities.Rules.Final.MFA.Letter.pdf, in which MFA supports the Commission's proposed regulations that would permit a broad range of SEF trading platforms.

is one of the significant systemic benefits of clearing, as it allows participants to seek out liquidity and best execution from the widest universe of transacting counterparties and eliminates barriers to entry for new eligible participants in a market. Further, because the clearing member faces only the customer and the DCO once the trade is cleared, the clearing member has no need to know the identity of the customer's counterparties, and therefore, should not exercise any restriction or influence over the customer's freedom to transact with competing price providers.

Long-established cleared markets, including markets for cleared swaps, do not require credit arrangements between transacting parties, again since counterparty credit risk is managed through the clearing framework. In a cleared market, the only documentation necessary for a market participant to enter into cleared trades is:

(i) a clearing arrangement, which is effectively a single credit arrangement where either the participant's qualification is as a direct clearing participant under the credit guidelines of the DCO or its qualification is as a customer of one of the DCO's clearing members. From a documentation perspective, these arrangements take the form of the direct participant's clearing membership agreement with the DCO on the one hand, or the indirect participant's clearing agreement with its clearing member on the other; and

(ii) adherence to the DCO's rules that govern the terms of the specific cleared transactions as well as the functioning of the cleared market and responsibilities of its participants, including in a default scenario.

In bilateral, non-cleared markets, counterparties can transact only with parties with whom they have negotiated specific credit agreements, either directly on a bilateral basis or trilaterally with the involvement of a guarantor or credit intermediary (*e.g.*, as in derivatives prime brokerage). Negotiation and ongoing administration of such arrangements is time-intensive, costly and necessarily limits the number of transacting counterparties available to a participant. These arrangements also tend to concentrate trading activity amongst those firms that are deemed the most secure from an individual credit perspective. Since credit intermediation is no longer relevant in a cleared market because the DCO performs this function centrally, such credit and documentary burdens should no longer pertain to a cleared market.

Therefore, we believe that, consistent with current practice in other cleared markets (*e.g.*, the cleared energy swap markets), the cleared over-the-counter swaps markets should not require any agreement between transacting counterparties as a precondition to enter into a cleared swap. The Commission's proposed requirement for real-time acceptance absence of a need for such an agreement is underscored by the Commission's proposed requirement for real-time acceptance, which effectively eliminates credit exposure concerns between the counterparties.

In our view, two areas that might appropriately be the subject of an optional bilateral agreement between transacting counterparties are the following: (1) the allocation of breakage[24] and (2) the possible fallback to a bilateral agreement if a trade fails to clear, where permitted. In the future, with the implementation of real-time acceptance for clearing, it should not be necessary to address these issues in a bilateral agreement because few (if any) trades should fail to clear. Moreover, in the rare case where a trade does fail to clear, breakage should be minimal given the immediate notice of such failure (and a fallback to a bilateral trade may no longer be permitted). However, we believe that such bilateral arrangements could be useful during a transition phase, as real-time acceptance becomes standard and cleared products are progressively transitioned from voluntary clearing to mandatory clearing, provided such arrangements can be put in place without unduly restricting participants' access to best execution through establishment of a simple industry standard agreement template, such as the form currently being drawn up by an industry working group.[25]

It has been proposed, however, that there should also be a form of credit arrangement that should apply even to cleared swaps cleared in real-time. This arrangement would require a customer seeking to transact with an SD (the "**Executing Counterparty**") to enter into a "trilateral" guaranteed clearing arrangement amongst the customer, the Executing Counterparty, and the customer's clearing member as a precondition to entering into a cleared swap. Some dealer firms have maintained that this arrangement is necessary to manage the risk that the customer: (i) may cause a trade to be rejected for clearing (*e.g.*, by breaching a credit or position limit), and (ii) then default on its obligations, if any, to pay breakage. The "trilateral" agreement requires the customer's clearing member to establish a specific limit for the customer's transactions with the Executing Counterparty, and to declare that it will accept for clearing such transactions that fall with this specific sublimit for that party. If the clearing member breaches its commitment to accept a trade, the Executing Counterparty will have recourse to the clearing member and the customer for breakage owed. Accordingly, this "trilateral" arrangement represents a form of guarantee by the clearing member to pay breakage to the Executing Counterparty in the event the customer breaches its obligation to do so.[26]

---

[24] "Breakage" refers to losses incurred by a party when a DCO rejects its counterparty's side of the trade for clearing and the counterparty cancels the trade because it engaged in hedging or related trades in the expectation that the trade would clear.

[25] We reemphasize that such a "bilateral" transaction document must remain optional, and no DCO should be permitted to require it as a precondition to submission for clearing at the DCO. In other words, if parties execute a swap transaction that is to be cleared (whether submission for clearing is voluntary or mandatory), the swap is binding at its execution subject to clearing, and if the DCO rejects it, there is no trade (absent a fallback arrangement agreed between the transacting parties). Again, if clearing of such swap is not mandatory, the transacting parties could contract in advance to fallback to a bilateral swap in the event the swap is rejected for clearing, but such a fallback arrangement is at the option of the parties, and the parties must not be obliged to enter into an ISDA or similar agreement as a prerequisite to submission for clearing.

[26] Other cleared markets do not require such arrangements. First, all participants are strongly deterred from exceeding their limits, since they are likely to be shunned as trading counterparties thereafter. Second, clearing systems have procedures typically to do all that is possible to clear the trade – for example, the customer's clearing member can call increased margin as a condition for clearing a trade that exceeds a limit. Third, Executing Counterparties are able to undertake credit diligence on their counterparties. Fourth, consistent with the Proposed

The mechanics of the "trilateral" guarantee require that there no longer be anonymity between a clearing member and its customer's trading counterparties, since the clearing member is being required in effect to individually approve that each of its customer's trades with the Executing Counterparty are within the Executing Counterparty's sublimit. As a result, such arrangements require the clearing member to limit the range of its customer's counterparties (rather than allowing the customer to utilize its full clearing credit limit to transact with whomever it chooses) and could force the customer to execute with the clearing member's trading desk affiliate (where greater information exchange with the clearing member would facilitate flexibility with limits), both of which would have an anti-competitive effect that impairs the customer's access to best execution.

MFA believes that real-time acceptance eliminates the need for these arrangements.[27] Indeed, such arrangements likely conflict with the real-time acceptance requirement as they introduce a need for clearing members to evaluate each customer transaction not only against the customer's overall credit limit, but also against specific limits set for each of the customer's permitted Executing Counterparties. When a customer seeks to enter into a transaction that is within its overall limit, but exceeds specific sub-limits, it will be obliged to seek the permission of its clearing member through a manual process that disrupts automated trade processing and introduces delay in its efforts of securing the best available price in the market. As observed, such arrangements are not required or customarily used in other cleared markets (including other cleared swap markets). Therefore, we believe it would be appropriate for the final rules to prohibit:

(i) a market participant (such as an SD) from requiring, as a precondition to executing a cleared swap, documentation or adherence to a credit limit scheme that limits the number of eligible parties a market participant may transact with, or otherwise impairs the participant's access to competitive liquidity and best execution;

(ii) a clearing member from imposing execution limits or other forms of restrictions that are anti-competitive, compromise anonymity between a customer's trading counterparties and its clearing member, limit the number of eligible parties a market participant may transact with or otherwise inhibit the customer's ability to achieve best execution in the relevant market (without limiting a clearing member's right to impose and adjust overall position/credit limits on a customer's net open position with its clearing member); and

---

Rules' requirements, ensuring that all trades are executed in an environment of real-time acceptance ensures that breakage is minimized or eliminated. These observations illustrate that there are less intrusive ways to manage any risk that a participant is responsible for rejection from clearing and defaults on its obligation to pay breakage.

[27] This model is the current **CME** credit default swap ("**CDS**") model, the CME and International Derivatives Clearing Group interest rate swap ("**IRS**") model, as well as the IntercontinentalExchange ("**ICE**") energy swaps model. These models are all already working, consistent with the futures trade flow model, and we understand that ICE and LCH.Clearnet similarly are building CDS and IRS trade flows to conform to regulatory requirements and provide real-time acceptance and support anonymity.

(iii) a DCO from requiring that the transacting counterparties to a cleared trade enter into a bilateral agreement (such as an ISDA agreement) or other credit arrangement outside the parties' direct and indirect clearing arrangements, as a precondition to submission for clearing. For swaps for which clearing is voluntary, parties may optionally enter into fallback arrangements in case the DCO does not accept the trade for clearing.

We note that these "trilateral" credit arrangements are currently proposed for cleared swaps that are transacted bilaterally (*e.g.*, by voice). It may be appropriate in certain instances for a SEF to administer arrangements to ensure certainty of clearing in support of, for example, a central limit order book, but unlike the credit arrangements described above, a SEF could administer such support on an anonymous basis and exclusively according to each participant's total credit limit available on the SEF, without any limitation of the amount a participant can transact with other specific participants on the SEF or a limitation on permitted counterparties.

****

MFA thanks the Commission for the opportunity to provide comments regarding the Proposed Rules. Please do not hesitate to call Carlotta King or the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director, General Counsel

cc: The Hon. Gary Gensler, CFTC Chairman
The Hon. Michael Dunn, CFTC Commissioner
The Hon. Bart Chilton, CFTC Commissioner
The Hon. Jill E. Sommers, CFTC Commissioner
The Hon. Scott D. O'Malia, CFTC Commissioner

The Hon. Mary Schapiro, SEC Chairman
The Hon. Kathleen L. Casey, SEC Commissioner
The Hon. Elisse B. Walter, SEC Commissioner
The Hon. Luis A. Aguilar, SEC Commissioner
The Hon. Troy A. Paredes, SEC Commissioner