ROSENTHAL COLLINS GROUP

January 22, 2010

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Via courier and email
Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Chicago Mercantile Exchange Revised Petition to Commingle Customer Funds used to Margin Credit Default Swaps with Other Funds Held in Segregated Accounts

Dear Mr. Stawick:

Rosenthal Collins Group, LLC ("**RCG**") respectfully submits this letter in response to the Commission's request for comments on the revised petition filed by the Chicago Mercantile Exchange ("**CME**"). The revised petition requests the Commission to issue an order permitting the CME clearing house to commingle funds used to margin, secure or guarantee Credit Default Swaps ("**CDS**") it will clear with other segregated funds held by the CME clearing house under Section 4d of the Commodity Exchange Act, as amended and Commission regulations. In essence, the requested order will allow the CME clearing house to use the funds of customers trading futures and options on futures contracts and the capital of their clearing firms to satisfy the obligations of a CDS default, in the event that the guaranty fund funded by CDS clearing members is not sufficient to meet such default, notwithstanding that clearing firms and their futures customers, who do not trade CDS, did not elect to assume such a risk. RCG opposes the entering of such an order by the Commission.

RCG has been a CME clearing member for many years, has 20,000+ active customers and holds customer funds in excess of one billion dollars. RCG opposes, and has consistently opposed, any rule changes that would expose its and any futures customers' funds to a default by a clearing firm trading CDS through pooling any such customers' funds with those of the CDS clearing firms.

We have made our views known to the CME without any results. RCG is of the opinion that the proposed plan is dangerous and raises the risk for all concerned. The proposed commingling would be patently unfair, as it would subject futures clearing firms and their customers' funds to a risk to which they have not undertaken to be exposed – a CDS default. But more than being unfair, the proposed commingling, by exposing futures customer funds to the risk of CDS defaults, engenders a systemic risk that will undermine what has long been the cornerstone of customer protection and customer confidence in the futures industry – the segregation of customer funds not only by the clearing firms, but by exchange clearing houses.

In March, 2009, the estimated size of the CDS market was approximately 30 trillion dollars. The CME guaranty fund would be under approximately $10 billion. Even assuming that the current size of the CDS market is below this recent estimate, it still exceeds the CME guaranty fund by an extremely large margin. Thus, given this discrepancy, if the CME's revised request is granted, any significant CDS default or threat of one, like the recent one that almost sunk world markets, could endanger the capital and customer funds of clearing firms that do not participate in the trading of CDS. Even the threat of such a default will undermine any

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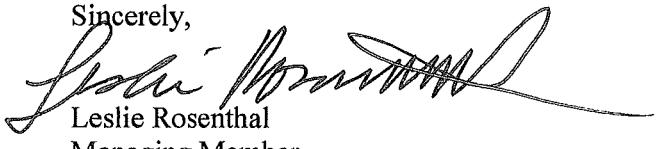
confidence in the recognized fundamental customer protection in the futures industry and should not be allowed.

That the implementation of the CME proposal would translate into catastrophic results is clearly illustrated by recent history. In 2008 when the financial markets in general, and the CDS markets in particular, collapsed, the US futures industry admirably was able to weather this crisis, principally because investors, traders and customers had confidence that their segregated funds were protected from exposure to an institution's financial problems. However, consider what would have occurred had Lehman Brothers been a CDS clearing member when it went into bankruptcy? If one applies the Lehman Brothers debacle as a "stress test" on the CME revised proposal, allowing the funds of futures customers to be used to satisfy a CDS default, the fate of the futures industry would have been far different—in a highly negative manner—than what did occur. In such a circumstance, we have to ask, "Would the futures industry, as we know it, still exist"? Similarly, had AIG been a CDS clearing firm, the result would have been catastrophic, as its CDS defaults would have far exceeded any amounts in the tranche dedicated to CDS defaults, thereby exposing the entire guaranty fund, which includes futures customers' funds, to satisfy the default. The current CME proposal is another example of "Main Street" guaranteeing "Wall Street." That might be the role of Government; it is certainly not the role of our customers.

At the very least, any plan permitted by the Commission should require, as in the case of the Intercontinental Exchange, a *separate* clearing entity or function for CDS trades, thereby not commingling CDS segregated clearing funds with futures segregated clearing funds. By doing so, clearing firms and their customers who do not trade CDS are not subjected to the potential catastrophic results of a default in CDS, something recent history indicates, as noted above in the examples, is more likely than a futures or options on futures default under our industry's vaunted segregated funds system.

Thank you for the opportunity to submit these comments. Should the Commission desire to discuss this matter, please do not hesitate to contact Scott Gordon, RCG Chairman and CEO, or me.

Sincerely,



Leslie Rosenthal
Managing Member

Leslie Rosenthal has served on the Board of Directors of the Chicago Board of Trade, the Chicago Mercantile Exchange and the Chicago Board of Trade Clearing Corporation. His service has included the Chairmanship of the Chicago Board of Trade, the Chairmanship of the Chicago Board of Trade Clearing Corporation and the Chairmanship of the CME Clearing House Committee.

cc: Hon. Gary Gensler, Chairman
Hon. Michael Dunn, Commissioner
Hon. Jill E. Sommers, Commissioner
Hon. Bart Chilton, Commissioner

Division of Clearing and Intermediary Oversight
Ananda Radhakrishnan, Director
Robert B. Wasserman, Associate Director