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COMMENT

August 17, 2009

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

Re: Commodity Futures and Trading Commission ("CFTC") Rule Proposal Relating to the Account Ownership and Control Report, RIN 3038-AC63 ("Proposal").

Dear Mr. Stawick:

Newedge USA, LLC ("Newedge USA, LLC") is pleased to submit this comment letter on behalf of itself and its parent company, Newedge Group, relating to the proposal by the Commodity Futures Trading Commission ("CFTC") to collect certain account ownership and control data from designated contract markets and other registered entities via an Ownership and Control Report ("OCR").

As an initial matter, Newedge clearly recognizes the importance for the CFTC to gather and analyze trade information in order to carry out its mandate of monitoring the US futures markets and enforcing applicable rules and regulations. Indeed, it is without question that the CFTC plays a critical role in regulating the US futures markets and thus, as it notes in the Proposal, must have "the information necessary to conduct effective oversight, ensure market integrity, and protect customers from fraud and abuse." That being said, we believe that: (a) the Proposal, although directed at exchanges, will most significantly impact futures commission merchants ("FCMs"); (b) the Proposal will in fact result in an inordinate amount of work and expense for many, if not most FCMs; (c) the benefits to be gained by the Proposal do not justify this substantial burden, and; (d) there are more cost-effective ways of enhancing the Staff's monitoring abilities.

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Specifically, the OCR will require FCMs to obtain certain account information they do not possess, convert other account information they currently maintain in paper format to electronic format, and cross-reference large amounts of account information they currently do not reconcile on an across-the-board basis. For FCMs that provide a full-service offering – *i.e.*, execute and clear trades, have US and non-US customers, facilitate multiple trading systems, maintain accounts for customers with different traders and/or commodity trading advisors (“CTA”) and seek to conduct adequate surveillance of all these functions – these will be difficult and time-consuming tasks. And, when compared to this significant undertaking, we believe the benefits to be gained by the Staff through the OCR – essentially integrating two data repositories already maintained by the CFTC (*i.e.*, the large trader reports and the exchange trade registers) – appear to be, in our view, relatively small. Moreover, all these additional burdens are being proposed during a time when FCM profitability is being severely challenged by the costs associated with the potential need to raise additional capital,¹ and a decline in revenue because of reduced exchange volumes and very low interest rates.

We believe some effective ways to enhance the Staff’s ability to monitor markets on a more real-time basis without unduly burdening FCMs could include: integrating the trade register and large trader repositories at the CFTC; requiring account ownership and control information to be included by traders on front-end systems at the time of order entry and execution, and; petitioning the US Government for more investigative resources and staffing.

BACKGROUND

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 equity), options, FX and various OTC instruments. “Newedge” refers to Newedge Group, a 50%-50% joint venture between Calyon (part of Credit Agricole) and Société Générale, headquartered in Paris, France, and all of its worldwide branches, subsidiaries and other units. Newedge maintains offices in over 15 countries, and is a member of over 80 exchanges worldwide. Newedge estimates that its customers – who are principally institutional – execute 6.4 million lots and clear 7.0 million lots, globally, on a daily basis.²

Newedge USA is one of the leading broker-dealer (“BD”)/FCMs in the US. Indeed, according to CFTC statistics, Newedge USA currently holds the largest pool of customer “segregated” and “secured” assets of all US-based FCMs.³ Newedge USA’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. Newedge USA conducts only a very limited amount of proprietary trading, and then generally only to

¹ See CFTC’s Proposed Adjusted Net Capital Requirements for FCMs and Introducing Brokers, 17 CFR Part 1, RIN 3038-AC66.

² As of December 31, 2008.

³ As of June 2009.

hedge positions acquired through customer facilitation. As a result, Newedge USA does not generally hold large positions in inventory.

DISCUSSION

A. Implementation of the OCR Will Impose a Significant Burden on FCMs.

As noted, it is the FCMs, rather than the exchanges, that would to be most significantly impacted by the OCR proposal, since it is the FCMs that face the account owners and controllers primarily, and thus, have the most direct access to the information requested. And, as further noted, the OCR will impose a significant burden on many, if not most FCMs by, among other things, requiring them to obtain account information they do not possess, convert account information they maintain in paper format to electronic format, and reconcile a large amount of account information that is not currently cross-referenced on an across-the-board basis.⁴

1. The OCR Will Require Many FCMs to Obtain Information They Do Not Currently Possess.

At this time, FCMs are not required to obtain the social security numbers or tax identification numbers of the CTAs that trade their clients' accounts unless the FCM will be making direct payments to a CTA. Consequently, many FCMs do not keep records of such information. However, since this information is required by the OCR, such FCMs would be required to obtain the information which, for those that conduct business with numerous CTAs, would be a time-consuming task.⁵

Moreover, it is our understanding that while many FCMs maintain current Form 102 information for large reporting customers, this information is generally updated on a manual and "as needed" basis such as in response to a regulatory inquiry. The OCR, however, would require FCMs to keep all such information continuously current.

2. The OCR Will Require Many FCMs to Convert Information Recorded on Paper to Electronic Format.

Many FCMs, including Newedge, maintain Form 102 information in paper format. Because the OCR will apparently require FCMs to transmit such information to the exchanges electronically, many FCMs will be required to convert such information to an automated format. In this regard, it should be noted that large FCMs, such as Newedge, can receive approximately 150-200 Form 102 requests each month. Converting this

⁴ The OCR would require FCMs to provide to the exchanges a large variety of information, including: trading account number; name and address of trading account owner; the account controllers' name, address and CTA number; date on which the trading account was assigned to its current controllers; indication if account is reportable; indication if account is an omnibus account; name of the executing firm trading the account; name of the clearing firm and its unique identifier, and; the last four digits of the social security number or taxpayer ID of the trading account's owners and controllers.

⁵ We also note that most off-shore CTAs and account owners – which can make up a relatively large percentage of many FCMs' business – do not have social security or tax identification numbers.

information to an automated format will be a time-consuming and expensive task for many FCMs.⁶

In addition, some FCMs, including Newedge, maintain certain other account information required under the OCR – but not generally included on Form 102s – in paper format, such as: the date or dates on which a trading account was assigned to its controller(s); the account controller’s CTA number; indication of whether the account is a reportable account, and; the name of the executing firm for the trading account and its unique identifier. Again, converting such information to a form capable of electronic transmission would be a significant and expensive undertaking for many FCMs.⁷

3. The OCR Will Require FCMs to Reconcile Information That Is Not Currently Cross-Referenced on an Across-The-Board Basis.

While FCMs generally maintain trade reporting numbers for individual accounts as well as identification numbers for the individuals and systems trading such accounts, it is our understanding that many FCMs do not cross-reference or reconcile such data on an across-the-board basis. Rather, such information generally is reconciled only on an “as needed” basis, such as in response to a regulatory inquiry. For example, when an executing firm transmits trade information to its clearing firm, it generally does not provide data relating to trader or system IDs. The clearing FCM, however, may obtain such information through a separate clearing or trade file from the relevant exchanges. Consequently, many FCMs maintain trade reporting information and trader/system IDs in different locations. In order to comply with the OCR, however, FCMs would be required to cross-reference, in electronic format, each trader and system identification number with each trade reporting number.⁸ For firms that do not currently reconcile such information, creating a cross-reference table to do so – and keeping such information current – will be a difficult and time-consuming task (particularly since account controllers accessing markets directly are able to establish or change their trader identification numbers on their own and sometimes neglect to advise the FCM of such new numbers).

⁶ Further, to the extent the Staff believes that replacement of the Form 102 process by the OCR may save FCMs time and effort, we note that considering Form 102 information would be required by the OCR for all accounts – as opposed to just those reaching the reporting threshold – such a replacement is not likely result in a significant savings of time and resources for FCMs.

⁷ We also note that obtaining and transmitting in electronic format sensitive information such as account owner and controller social security numbers and tax identification numbers will put new and increased information security burdens on FCMs, which will be responsible for ensuring the confidentiality of such information.

⁸ We note in this regard that the trader identification number does not necessarily correspond to the account owner or even account controller; it is simply indicative of the individual inputting the trade into the front-end trading system.

4. The Significant Costs Associated with the Proposal on FCMs Could Result in a Reduction of the Number of FCMs in the Marketplace.

As noted above, the costs associated with the Proposal on FCMs would be significant and – coming at a time when FCM profitability is down substantially as a result of, among other things, lowered trading volume and interest rates – could, we believe, cause some FCMs to go out of business, merge into more profitable firms or reduce the number and variety of business activities they perform. Consequently, the Proposal, in our view, could have an anticompetitive impact on the industry and exacerbate the current trend toward consolidation among FCMs. Indeed, as the Staff is aware, there has been a significant trend toward consolidation among FCMs in the US over the past ten years. In its pending proposal regarding a capital increase for FCMs, the CFTC notes that there were 255 FCMs in the US as of August 31, 1995, but only 134 FCMs as of December 31, 2008. Further, as the Staff is aware, a number of the largest FCMs have merged in recent years, including Fimat USA, LLC and Calyon Financial, Inc., which has resulted in approximately 80% of all global segregated customer funds being held by only six FCMs. The time, expense and effort that would have to be expended by FCMs in complying with the OCR cannot be minimized. Indeed, for some smaller or less profitable FCMs, implementation of the Proposal could be the final factor in their determination not to stay in business.

As the Staff is aware, the CFTC must consider the potential anticompetitive impact when promulgating rules, and “take the least anticompetitive means of achieving [its] objectives.” See Section 15(b) of the Commodity Exchange Act (“[t]he Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the Act in issuing any order or adopting any Commission rule”) and Section 15(a) of the CEA (“Before promulgating a regulation under this Act the Commission shall consider the rule’s impact on the “competitiveness of futures markets”).

5. Answers to Open Issues Could Further Impact the Burden on FCMs.

We believe there are a relatively large number of open issues and questions relating to the OCR the answers to which could impact the burden on FCMs in complying with the directive. For example:

- who will create the software designed to consolidate and store OCR information – the CFTC, the exchanges, outside vendors or FCMs themselves?
- will the OCR replace Form 102 requests and, if not, will Form 102s be processed through the OCR or separately?
- will the OCR file replace the current trading file submitted by exchanges to FCMs for purposes of, among other things, internal surveillance systems?

- how often would OCR information need to be updated?
- how often would OCR information need to be transmitted to the exchanges?
- * will the OCR be standardized across the industry or will it be conducted on an exchange-by-exchange basis? (in this regard, we note that currently the various exchange data gathering and dissemination systems are not standardized, and to create an effective OCR, we believe they would have to be which could require significant effort on the part of the exchanges and FCMs)
- how much time will FCMs be given to obtain information they currently do not collect but is required by the OCR?
- will non-clearing FCMs or introducing brokers be required to report information to the OCR and, if not, what type of responsibilities will such entities have under the OCR?
- * in a give-up arrangement, which FCM (executing or clearing) will be responsible for the submission of required data to the OCR, and if it is the clearing firm's responsibility, how can it be assured that the clearing firm will receive the required information from the executing firm in an appropriate form on a timely basis?
- will FCMs be required to transmit such information or simply make it available for exchanges and the Staff to access in non-sorted format?
- what recourse will FCMs have against account owners and controllers that do not provide updated information either voluntarily or upon request?
- will exchanges and/or the CFTC be willing to bear some of the related expenses through reduced membership and trading fees and costs?
- what information security measures can the CFTC or the exchanges provide to ensure the confidentiality of sensitive account owner and controller information submitted by FCMs in complying with the OCR?
- can the CFTC ensure that exchanges will not use sensitive account ownership or controller information for their own purposes?

We suggest that the CFTC create an industry working group – which would include representatives from various FCMs, introducing brokers, back-office vendors and front-end vendors – to reach practical answers to these questions.

B. The Benefits to be Gained by Implementation of the OCR do Not, in Our View, Outweigh the Burdens Imposed on FCMs.

As noted above, we believe that implementation of the OCR will impose substantial burdens on many FCMs. The question then becomes whether the benefits to be gained by the Staff in implementing the OCR outweigh those burdens. We respectfully believe that they do not. As an initial matter, the Staff is already in possession of – or can gain access relatively quickly to – most of the important account and trade relating to large trades – i.e., those that have the most impact on markets, customers and registrants.⁹ Indeed, as the Staff concedes, it is able currently to obtain such information through exchange trade registers and subsequent manual Form 102 requests conducted on a case-by-case basis.¹⁰ And, while the Form 102 process may take several days to complete: (a) FCMs are obliged to provide the Staff with such information on a timely basis, and (b) the Staff does not need to follow-up on all trades, just those that are problematic. We question the benefits to be gained by obtaining Form 102-type information for small trades and/or inactive accounts, and certainly do not believe any such benefits justify the burdens imposed on FCMs in providing this information.

Indeed, even the Securities and Exchange Commission (“SEC”) – which is charged with monitoring a much large number of registrants and trades – does not have the ability to investigate all trades on a real-time basis. Rather, the SEC staff is generally relegated to identifying problematic trades or positions and following up on such activities with “bluesheet” requests through which it seeks to match the trading activity with account ownership. We also note this fact in light of the SEC’s and the CFTC’s current mandate to harmonize their requirements, rules and procedures where possible in order to provide registrants and customers with a more clear-cut and understandable regulatory framework. Maintaining the consistency of the manner in which the two agencies gather information from registrants in connection with the investigation of problematic trades – i.e., through an initial assessment and subsequent review via a Form 102 or bluesheet request – would appear to be an important step toward that goal.

In short, we do not believe the US futures markets have been subject to the types of large-scale frauds, manipulations or disruptions over the past twenty-five years or so – even with the onset of electronic trading and the minimization of the open outcry market – that would justify or necessitate the large-scale data assembly and transmission changes contemplated by the OCR. In other words, we believe that the Staff’s current system of gathering and analyzing potential information is working, even during times of market volatility and substantial electronic trading. Thus, while we acknowledge that implementation of the OCR would most likely “speed up” the Staff’s ability to analyze certain trades, we do not believe the CFTC has demonstrated an investigative or

⁹ As noted in the Proposal, “[i]n many cases, the Commission already receives the information it requires for effective regulation, including large trader reports for market surveillance and exchange trade registers for trade practice surveillance [and] [t]he detail and depth of the regulatory data available to the Commission is substantial.”

¹⁰ As noted in the Proposal, a “case-by-case manual inquiry [into problematic trading] is possible” by the Staff utilizing the CFTC’s current information sources and procedures.

enforcement need – i.e., “stated a case” – that justifies the burden to be imposed on FCMs.¹¹ Indeed, based on the Proposal, it does not appear that the CFTC has considered the burden that would be imposed on FCMs other than to a relatively nominal extent.¹²

C. There Appear to Be Other Means of Enhancing the Staff’s Surveillance Capabilities That Would be Less Burdensome on FCMs.

We believe there are a number of other means to enhance the Staff’s surveillance capabilities that are less burdensome on FCMs. We set forth some of these possibilities below.

- The CFTC could seek to reconcile its Integrated Surveillance System (“ISS”) (large trade information) and Trade Surveillance System (“TSS”) (trade register information) independent of an OCR process. The CFTC notes in its Proposal that one of the key goals of the OCR is to reconcile the ISS with the TSS (“[o]ne valuable benefit of the OCR is that it will effectively integrate these two primary systems”). While we can see the importance of integrating these two systems – since one contains trade information and the other contains owner account and controller information – we are not clear as to why the integration can only be accomplished in connection with large-scale changes to the current information gathering and dissemination process. As the CFTC concedes, it already has most of the information it needs, it just needs to reconcile the databases.
- The CFTC should consider requiring traders to enter account ownership and controller information – as well as all other information required under the OCR – into their front-end trading platforms at the time of order entry and execution. While this could require certain vendors and FCMs to re-configure their trading systems to allow for the capture of such information, it would appear to be a simpler and more cost-effective process than requiring FCMs, on an after-the-fact basis, to reconstruct and reconcile such information from various different data repositories.

¹¹ We do not believe the CFTC’s stated goals of assisting its Office of Chief Economist or Division of Market Oversight justify the burdens associated with implementation of the OCR since, in our view, there really is no need for immediate, real-time trading assessments by these divisions in accomplishing their respective mandates.

¹² The SEC, for example, appears to spend a fairly significant amount of time examining the administrative burden new rules will have on registrants. For example, the SEC generally: conducts a cost-benefit analysis in which it estimates, among other things, the amount of man-hours registrants will be required to devote on a yearly basis in complying with the proposed rule; analyzes new rules under the Paperwork Reduction Act to the extent they constitute a “collection of information” and, in so doing, assesses the total annual reporting and recordkeeping burdens imposed on registrants; prepares a final regulatory flexibility analysis in which it sets forth the need for the new rule, analyzes the impact it will have on small businesses, and determines whether there are any duplicative, overlapping or conflicting rules and requirements, and; assesses the impact the new rule will have on competition and efficiency in the marketplace.

- The CFTC should take this opportunity – in which the President and his advisors are considering the implementation of substantial changes to the regulatory structure of US financial services markets – to petition for more staffing, a larger budget and more assistance from other federal and state agencies in conducting its investigative and enforcement activities.
- The CFTC should put more regulatory onus on the individual exchanges and self-regulatory organizations in conducting trade surveillance. Indeed, the CFTC may want to consider separating, on a more formal basis, the regulatory functions of exchanges with their respective business functions as has now been done in the securities industry.

We would be pleased to discuss these suggestions further at the Staff's request.

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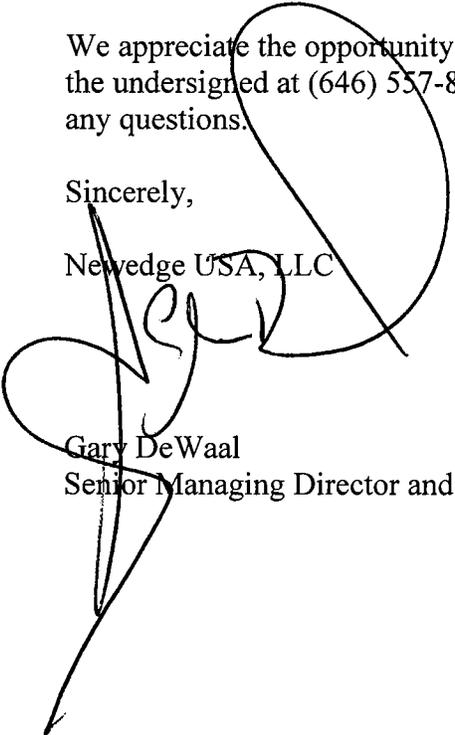
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Again, we clearly acknowledge the CFTC's critical role in monitoring the futures markets, and the importance of gathering relevant trade information on a timely basis to that mission. However, as noted above, we do believe there are other effective ways of enhancing the Staff's investigative abilities which are less burdensome on FCMs than the current OCR proposal.

We appreciate the opportunity to comment on this proposed rule. Feel free to contact the undersigned at (646) 557-8458 or at gary.dewaal@newedgegroup.com if you have any questions.

Sincerely,

Newedge USA, LLC



Gary DeWaal

Senior Managing Director and Group General Counsel