

September 29, 2010

**VIA ELECTRONIC MAIL**

David Stawick  
Secretary  
U.S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Dodd-Frank Rulemaking Related to Governance and Possible Limits on Ownership & Control**

Dear Mr. Stawick and Ms. Murphy:

Eris Exchange LLC (“Eris Exchange”) appreciates the opportunity to submit its input to the U.S. Commodity Futures Trading Commission (the “CFTC”) and U.S. Securities and Exchange Commission (the “SEC”) on the Dodd-Frank Act rulemaking related to governance and possible limits on ownership and control.

**Eris Exchange Was Founded to Promote Open Access to the Interest Rate Swaps Market**

Eris Exchange is an Exempt Board of Trade (“EBOT”) subject to the jurisdiction of the CFTC. Eris Exchange is an open platform that currently offers the trading of an interest rate swap futures contract that replicates the economics of a standard over-the-counter interest rate swap (the “Eris Futures Contract”). The Eris Futures Contract is cleared by CME Clearing. The participants of Eris Exchange must be eligible contract participants.

Eris Exchange was founded by five major independent liquidity providers: Chicago Trading Company; DRW Trading; GETCO; Infinium Capital Management; and, Nico Trading (the “Founders”). The Founders are proprietary trading organizations that trade across a wide range of asset classes, including equity securities, options, fixed income securities, and futures. The Founders undertake such activities in multiple capacities, in certain instances acting as market makers, both on exchange floors and through trading desks. The Founders have significant experience in the equity and futures markets.

While the futures markets that trade contracts closely related, or based on, interest rates (e.g., Treasury Note futures and Eurodollars), provide fair and non-discriminatory access to their trading platforms, the market for trading over-the-counter interest rate swaps has historically included high barriers to entry that effectively prevented the emergence of independent liquidity providers, such as the Founders.

Recognizing the need for additional participants in the interest rate swaps market and the value those participants could add to price discovery and liquidity, the Founders created an open venue for all market participants to trade the Eris Futures Contract.

### **The Rules Should Be Flexible To Allow Eris Exchange and Others to Form, Operate, and Compete**

In order to evolve under the Dodd-Frank Act, Eris Exchange intends on becoming a designated contract market (“DCM”) in the near future.<sup>1</sup> Eris Exchange, as a DCM, would be permitted to trade futures and swaps. For this reason, Eris Exchange has an interest in any rules that limit a DCMs ownership and control. See Sections 725 and 726 of the Dodd-Frank Act.

In considering the impact of ownership and control restrictions, Eris Exchange believes the CFTC should consider the potential for such rules to negatively affect existing exchanges like Eris Exchange that offer exchange-traded solutions and seek to improve transparency, both guiding principles of the Dodd-Frank Act. In general, the capital needed to start an exchange that can compete with incumbents is held by large market participants who are likely to be swap dealers (“SDs”) or major swap participants (“MSPs”), such as the Founders. Restrictions on such market participants owning or controlling DCMs or swap execution facilities (“SEF”) will ensure no new entrants to a market that the Dodd-Frank Act was designed to open to competition.

Eris Exchange believes there are significant differences between a new exchange, owned by five independent liquidity providers, that offers fair and non-discriminatory access to its trading platform and the types of dealer execution venues that the Dodd-Frank Act was designed to address. Eris Exchange is concerned that if these differences are not carefully considered, competition will be stymied. Therefore, Eris Exchange is opposed to rules that do not provide for the flexibility to permit Eris Exchange to continue to operate as originally structured. Any flexibility, however, must be clearly defined, apply universally to all DCMs and SEFs, and be conditioned upon open access to trading.

Eris Exchange believes that during this time of the regulatory evolution of the OTC markets, there would be fewer unintended consequences if conflicts of interest were addressed through governance requirements. Conflicts of interest, for example, could be addressed through requirements that the composition of the board of a DCM or SEF include public directors and an independent regulatory oversight committee.

### **Conclusion**

Eris Exchange is fully operational today for trading and clearing of interest rate swap futures, thus incorporating the guiding principles of the Dodd-Frank Act. Eris Exchange is committed to complying

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<sup>1</sup> The Dodd-Frank Act deleted the EBOT enabling provisions of the Commodity Exchange Act. On September 10, 2010, the CFTC issued an Order to provide grandfather relief to certain EBOTs to temporarily continue their EBOT operations after July 15, 2011. The Order sets forth various conditions for receiving grandfather relief, including the filing of both a relief petition and a SEF or DCM application with the CFTC.

with the principles of the Dodd-Frank Act, but seeks implementation in a manner that fosters competition and open access to the markets.

If you have any questions or would like to learn more about Eris Exchange, please do not hesitate to contact Stephen Humenik, Head of Legal and Regulatory Affairs at 703-969-5231 or [stephen.humenik@erisfutures.com](mailto:stephen.humenik@erisfutures.com) or Neal Brady at 312-253-9056 or [neal.brady@erisfutures.com](mailto:neal.brady@erisfutures.com).

Sincerely,



Neal Brady  
Chief Executive Officer  
Eris Exchange LLC

cc: Chairman Gary Gensler, CFTC  
Chairman Mary L. Shapiro, SEC  
Commissioner Michael V. Dunn, CFTC  
Commissioner Jill E. Sommers, CFTC  
Commissioner Bart Chilton, CFTC  
Commissioner Scott D. O'Malia, CFTC  
Commissioner Kathleen L. Casey, SEC  
Commissioner Elise B. Walter, SEC  
Commissioner Luis A. Aguilar, SEC  
Commissioner Troy A. Paredes, SEC