

VIA AGENCY WEBSITE

September 26, 2011

Jacqueline H. Mesa
Director, Office of International Affairs
Commodity Futures Trading Commission
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Washington, DC 20581

Ethiopia Tafara
Director, Office of International Affairs
Securities and Exchange Commission
Station Place
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**RE: Commodity Futures Trading Commission/Securities and Exchange Commission
Request for Comment
Acceptance of Public Submission for a Study on International Swap Regulations Mandated by
Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act**

Dear Ms. Mesa and Mr. Tafara:

Thank you for your letter of August 8, 2011 requesting comments on the regulation of swaps and security-based swaps across various international jurisdictions. NYSE Euronext is a leading operator of derivatives and securities markets in multiple regulatory jurisdictions. The derivatives markets we operate offer a wide range of products including options, futures and options on futures across a variety of asset classes, such as interest rates, equity indices, and commodities. In the U.S., these markets include NYSE Liffe U.S., NYSE Arca and NYSE Amex. In Europe, NYSE Euronext operates multiple derivatives markets including those operated by Liffe Administration and Management, Euronext Paris SA and Euronext Amsterdam, N.V.

While NYSE Euronext is not currently offering execution or clearing for swaps or security-based swaps, we do provide clearing services and price discovery tools for over-the-counter (OTC) products.

- **Bclear** - The inherent risks and operational inefficiency resulting from rapid growth in the OTC market prompted NYSE Liffe to work with customers to develop the Bclear service. Bclear combines much of the flexibility of the OTC market with valuable benefits of an exchange and clearing house environment. Bclear has been used extensively by leading investment banks and buy-side firms to process OTC derivatives business, helping them to reduce operational risk and manage counterparty risk. Bclear now offers futures and/or options on over a thousand underlying companies from more than 20 countries, as well as a broad range of index derivatives.

Certain OTC trades in UK stock options and UK index options may now be reported for confirmation, administration and clearing via Bclear by or on behalf of persons located in the U.S. The contracts which have been approved for U.S. persons include the FTSE 100 Index



Option (ESX), the FTSE 100 Index Flexible Option (European-Style Exercise) (FLX), the FTSE 100 Index Flexible Option (American-Style Exercise) (XUK) as well 101 UK stock options. U.S. persons must be a Qualified Broker-Dealer or a Qualified Institution.

Direct users of Bclear must be members of the London derivatives market as either a:

- General Clearing Member (GCM)
- Individual Clearing Member (ICM), or
- Non-clearing Member with a clearing agreement in place with a GCM for the London derivatives market

Bclear is available to OTC market participants as “clients” of a member firm. Counterparties to a trade executed by a broker and reported via Bclear can either be customers of the broker or of another member firm; they do not need to be a member of the London derivatives market. Non-members (e.g. non-member brokers) can access Bclear through a clearing member (GCM or ICM). This provides clients with access to the same input and viewing screens that are available to members.

- Cscreen - We also offer Cscreen, an electronic pre-trade price discovery tool which provides customers with a more efficient way of disseminating indications of interests for wholesale equity derivatives by reducing the administration involved in inter-dealer brokerage. Cscreen is a dynamic, real time web based application for brokers and traders. Cscreen has been at the forefront of the transition from telephone to electronic broking since 2002. Cscreen is operated by LIFFE Services Limited, which is authorized and regulated by the Financial Services Authority as a service company.

In addition to the services mentioned above, NYSE Euronext is exploring additional prospects to assist clients as they seek to comply with increased clearing and execution obligations for their swap and security-based swap portfolios. Our current experience in the exchange-listed markets logically positions us to offer such solutions for those swaps and security-based swaps which are expected to migrate to central counterparties for clearing. Additionally, those clients trading swaps and security-based swaps will likely wish to explore potential clearing efficiencies we may be able to offer given our current suite of product offerings.

The request for comment correctly acknowledges that the regulatory developments across jurisdictions are proceeding on different timelines, thereby making it difficult to comment on the areas that MAY require improved harmonization. In this context and in response to Item F, we have identified some potential areas that may lack harmonization should the yet-to-be-finalized regulations applied through the Dodd-Frank Act, EMIR and MiFID 2 continue on their current courses:

- Segregation and Portability

As currently proposed, EMIR would require a CCP to offer customers of clearing members a choice between “individual client segregation” or omnibus client segregation for both listed derivatives and OTC derivatives. The “individual client segregation” option is similar to the “physical segregation model” previously explored by the CFTC, though the CFTC only contemplated such a model for cleared swaps. The CFTC has now proposed a “complete legal segregation” model for cleared swaps which allows for the futures commission merchant (FCM) and the derivatives clearing organization (DCO) to operationally commingle collateral, but account for such collateral individually: In the event that an FCM defaults simultaneously with one or more cleared swap customers, the DCO would be able to access the collateral of the FCM’s



defaulting cleared swap customer to cure the default, but not the collateral of the FCM's non-defaulting cleared swap customers. We understand that the CFTC continues to consider whether to permit the DCO to access the collateral of non-defaulting cleared swaps customers, after the DCO attempts to cure the default by applying its own capital as well as the guaranty fund contributions of its non-defaulting FCM members. Each of these options is a departure from the current practice for futures in which client property is segregated from that of the clearing member on an omnibus basis – client property is treated separately from the property of the FCM – but clients are treated as a group on an omnibus basis at the DCO. Therefore, it stands to reason that each of these proposals will likely cause central counterparties (CCPs) to incur increased costs. While both jurisdictions seek to lessen systemic risk via portability, ensuring the stability of a CCP must also be a consideration in the context of systemic risk during a crisis situation. Efforts to adopt policies that otherwise encourage the use of CCPs should not at the same time hinder the CCP's ability to effectively manage risks. Further, the divergence between U.S. and European positions and the regulatory arbitrage that is likely to follow should be avoided. The current model has served the listed derivatives market well in times of market volatility. Efforts to extend collateral protection arrangements to swap market users should be informed by the success of the U.S. futures model. However, if it is determined that collateral requirements must depart from the current model, the scope of the obligation should be limited to swaps (as proposed by the CFTC).

➤ Swap Execution Facility and Organized Trading Facility

We understand that the European Commission is considering amending the MiFID framework to require those sufficiently liquid OTC derivatives which are eligible for central clearing to be traded on a Regulated Market, a Multilateral Trading Facility (MTF) or a newly recognized "Organized Trading Facility" (OTF). The concept of OTFs is often compared to the creation of "Swap Execution Facilities" (SEFs) and "Security-Based Swap Execution Facilities" (SB-SEFs) within the Dodd-Frank Act. However, when compared to the proposed rules issued by the CFTC and the SEC, OTFs are not yet as well defined. As such, there are a number of areas to consider the potential for vastly differing requirements.

The Dodd-Frank Act includes a requirement for SEFs and SB-SEFs to provide 1) impartial access to its market and 2) the ability for multiple participants to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce. As currently contemplated, OTFs are systems where multiple third party buying and selling interests interact, and the execution of client orders against the proprietary capital of the OTF operator is not permitted. Similarly, both the SEC and the CFTC proposed regulations would prevent one-to-one bilateral transactions and single dealer platforms.

The CFTC has further proposed to preclude the use of voice-based execution methods for those transactions made available to trade on a SEF and subject to any clearing mandate, while the European Commission has not suggested any such restriction to date. While OTFs will be subject to pre-trade and post-trade transparency requirements each will be permitted to organize trading on the basis of discretionary rules (i.e. some customers may enjoy preferential treatment). Additionally, the CFTC, but not the SEC nor the EC, has proposed to require SEFs to provide that market participants transmit a request for quote to at least five potential counterparties within the system or platform.



Each of these discrepancies appears to stem from different interpretations of how OTFs, SEFs or SB-SEFs should provide impartial, multilateral access. There seems to be some confusion as to whether such multilateral access should be a required feature offered to venue participants and/or a required multi-lateral execution method with which venue participants must comply. There should be efforts made to align the rules governing these newly created systems.

More generally, the creation of any additional category of trading venue should be sufficiently targeted. Because Europe already has experience with MTFs, there are lessons learned and apparent unintended consequences that should be avoided. Some MTFs are set up as alternative trading platform to compete directly with the Regulated Markets creating an unlevel regulatory playing field. Similar experience in U.S. equities trading has resulted in market fragmentation whereby certain alternative trading systems (ATSs) compete directly with the more-regulated registered exchanges. Statistics clearly show that a significant amount of trading in listed securities has shifted from registered exchanges to other non-exchange market centers. While we embrace the benefits of competition, we believe that these shifts in the marketplace are partially due to the significant regulatory disparity among entities providing effectively identical services. The regulatory barriers to establish and operate an ATS are low compared to the lengthy registration process involved in becoming a national securities exchange and the significant ongoing regulatory obligations imposed on registered exchanges. Though they often perform similar or identical functions, registered exchanges and ATSs are subject to different levels of regulatory scrutiny. Because the potential for market fragmentation has actually been exhibited in other markets, we would strongly encourage regulators to avoid establishing new categories of trading venues for swaps that seek to duplicate the function of derivative contracts already offered by existing trading venues. These newly created venues should fill a void that exists in executing swaps and security-based swaps and not encourage a race to the bottom where the lesser regulated entity replicates futures contracts which are otherwise required to be executed on a designated contract market.

➤ Trade Execution Requirement

The European Commission has suggested that the European Securities and Markets Authority would assess and decide when a derivative which is eligible for clearing is sufficiently liquid to be traded exclusively on the various organized venues and thereby required to be traded on a Regulated Market, an MTF or an OTF. This differs from the system established within the Dodd-Frank Act which stipulates that any swap or security based swap which is subject to the clearing requirement is automatically required to also be executed on a designated contract market (DCM), a securities exchange, a SEF or SB-SEF unless no such venue makes the swap or security-based swap available for trading. It stands to reason that there may be contracts subject to a clearing obligation in Europe that are not required to move from a bi-lateral execution method where in the U.S. no such allowance would exist so long as a DCM, national securities exchange, SEF or SB-SEF makes the contract available to trade.

➤ Mandatory Access to Central Counterparties and Trading Venues

The provision of the Dodd-Frank Act requiring a DCO to provide for clearing derivatives which are executed bilaterally or on an unaffiliated execution venue is limited to swaps and does not extend to listed futures contracts. More specifically, Section 723(a)(3) of the Dodd-Frank Act establishes the new clearing requirements for swaps and also requires that a DCO provide open access for swaps executed on an unaffiliated venue (or by way of bilateral negotiations). Importantly, the statutory language goes on to state that such a requirement does not extend to

clearing contracts of sale of a commodity for future delivery or options on such futures contracts. Therefore, this language intentionally limits the obligation of CFTC-registered DCOs to establishing rules for accepting swaps, but not futures, from unaffiliated execution sources.

Certainly, a central counterparty is allowed to voluntarily provide access for listed futures contracts, executed on unaffiliated venues, but the Dodd-Frank Act clearly does not require such an allowance. Discussions in Europe continue to contemplate extending an access mandate for unaffiliated parties beyond swaps to also capture listed derivatives, not only for CCPs, but also for trading venues. Such a mandate would be completely inconsistent with that required under U.S. law and would set up a system whereby European clearing and trading venues would operate under a completely different set of operational obligations from those venues registered with the CFTC under the Commodity Exchange Act. Because many of the entities involved in clearing and trading operate in both the U.S. and in Europe, and because clients span the globe, consistency is essential.

Thank you for the opportunity to provide comments on the current regulatory initiatives pertaining to evolving international regulations for swaps and clearinghouses. NYSE Euronext firmly believes that global harmonization is essential to achieving the intended outcomes sought by the Group of 20 nations (G-20) to more formally regulate OTC derivatives.

Sincerely,



Garry Jones

Cc: Natalie M. Radhakrishnan
Babback Sabahi