

COMMITTEE ON CAPITAL MARKETS REGULATION

December 19, 2011

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

Re: Customer Clearing Documentation and Timing of Acceptance For Clearing,
76 Fed. Reg. 45,730 (RIN No. 3038-AD 51)

Dear Mr. Stawick:

The Committee on Capital Markets Regulation (Committee) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC) proposed rules regarding Customer Clearing Documentation and Timing of Acceptance for Clearing.¹

Since 2005, the Committee, composed of 32 members, has been dedicated to improving the regulation of U.S. capital markets. Our research has provided an independent and empirical foundation for public policy. In May 2009, the Committee released a comprehensive report entitled *The Global Financial Crisis: A Plan for Regulatory Reform*, which contains fifty-seven recommendations for making the U.S. financial regulatory structure more integrated, more effective, and more protective of investors in the wake of the financial crisis of 2008.² Since then, the Committee has continued to make recommendations for regulatory reform of major areas of the U.S. financial system.

We support the CFTC's stated goals of proposing regulations to facilitate customer access to clearing and to bolster risk management through timely processing.³ We further agree with the CFTC "that acceptance or rejection for clearing in close to real time is crucial both for effective risk management and for the efficient operation of trading venues."⁴ We believe that real-time clearing would significantly reduce, if not eliminate, the risk of counterparty exposure due to trade breakage. However, we have identified a strong difference of opinion in the financial industry, including among members of our Committee, about the operational aspects of real-time clearing and whether and how it can be achieved in the short-term. Specifically, we have encountered

¹ Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 Fed. Reg. 45730 (proposed Aug. 1, 2011) [hereinafter Proposed Rules].

² COMM. ON CAPITAL MKTS. REG., *THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM* (May 2009), <http://www.capmktreg.org/research.html>.

³ Proposed Rules, 76 Fed. Reg. at 45,731.

⁴ Proposed Rules, 76 Fed. Reg. at 45,732-33.

disagreements about the credit check process, where it should take place (whether at the clearing merchant or central counterparty) and whether suitable technology already exists for automated credit checking.

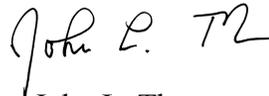
We recognize that real-time clearing is a critical element of smoothly functioning, cleared derivatives markets. We also recognize that further work needs to be done in identifying and resolving what certain market participants have identified as obstacles to real-time clearing. We would encourage the CFTC and the Securities and Exchange Commission (SEC) to take a more active role in this process. We suggest that the CFTC and SEC jointly chair an effort to intermediate among industry participants, to ensure that adequate attention and resources are devoted to achieving real-time clearing and further, to develop a timetable for achieving it.

Thank you for considering our comments. Please do not hesitate to contact us at (617) 384-5364 if we can be of any further assistance.

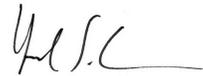
Respectfully submitted,



R. Glenn Hubbard
Co-CHAIR



John L. Thornton
Co-CHAIR



Hal S. Scott
DIRECTOR