

# COMMITTEE ON CAPITAL MARKETS REGULATION

March 21, 2011

David A. Stawick  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21st St., NW  
Washington, DC 20581

Re: Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 3,698 (RIN 3038-AC98)

Dear Mr. Stawick:

The Committee on Capital Markets Regulation appreciates the opportunity to comment on the Commodity Futures Trading Commission's Proposed Rules<sup>1</sup> regarding risk management requirements for derivatives clearing organizations (DCOs) under §725(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>2</sup>

Since 2005, the Committee 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 57 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.<sup>3</sup> Since then, the Committee has continued to make recommendations for regulatory reform of major areas of the U.S. financial system.

The Committee wishes to express its support for §39.12(a) of the Proposed Rules for effectively embracing a pro-competitive approach to membership in clearing organizations. In March 2010, the Committee sent a letter to four members of Congress regarding centralized clearing of derivatives contracts.<sup>4</sup> That letter recommended nondiscriminatory standards for membership.<sup>5</sup> We now applaud the Commission for implementing rules that require objective, risk-based, and publicly disclosed standards that will help to promote the goals of nondiscrimination and open access to clearing organizations.

<sup>1</sup> Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 3,698 (proposed Jan. 20, 2011) (hereinafter Proposed Rules).

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, § 725(c) (hereinafter Dodd-Frank Act).

<sup>3</sup> COMM. ON CAPITAL MKTS. REG., *THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM* (May 2009), <http://www.capmktreg.org/research.html>.

<sup>4</sup> Letter from the Comm. on Capital Mkts. Reg. to Christopher Dodd, Chairman, Richard Shelby, Ranking Member, S. Comm. on Banking, Hous. & Urban Affairs and Barney Frank, Chairman, Spencer Bachus, Ranking Member, H. Fin. Servs. Comm. (Mar. 4, 2010), [http://www.capmktreg.org/pdfs/10-Mar-4\\_Committee\\_Derivatives\\_Letter.pdf](http://www.capmktreg.org/pdfs/10-Mar-4_Committee_Derivatives_Letter.pdf) (hereinafter CCMR Mar. 4, 2010 Letter).

<sup>5</sup> *Id.* at 15-16, 23-24.

Section 725(c) of the Dodd-Frank Act sets out the core principles for DCOs. Notably, § 725(c) requires each DCO to establish “appropriate admission and continuing eligibility standards”<sup>6</sup> for members and participants. It also requires those standards to be objective, be publicly disclosed, and permit fair and open access.<sup>7</sup>

Section 39.12(a) of the Proposed Rules embraces those principles and establishes standards that will help to promote competition. In particular, the Proposed Rules forbid a DCO from “adopt[ing] restrictive clearing member standards if less restrictive requirements that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted.”<sup>8</sup> The Proposed Rules also require a DCO to allow a participant to become a member so long as it meets the requirements and forbid discriminating against particular types of market participants.<sup>9</sup> These rules will help to encourage an open marketplace.

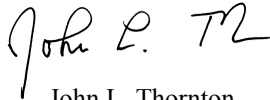
As the Committee noted in its March 2010 letter, there can be a tension between principles of open access and sound risk management.<sup>10</sup> The Commission has balanced these two concerns by requiring a clearing organization’s financial resources requirements to be “based on objective, transparent, and commonly accepted standards.”<sup>11</sup>

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.

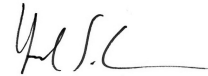
Respectfully submitted,



R. Glenn Hubbard  
Co-CHAIR



John L. Thornton  
Co-CHAIR



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DIRECTOR

<sup>6</sup> Dodd-Frank Act § 725(c).

<sup>7</sup> *See id.*

<sup>8</sup> Proposed Rules § 39.12(a)(1)(i), 76 Fed. Reg. at 3,719.

<sup>9</sup> *See id.* at § 39.12(a)(1).

<sup>10</sup> CCMR Mar. 4, 2010 Letter at 15.

<sup>11</sup> Proposed Rules § 39.12(a)(2)(ii), 76 Fed. Reg. at 3,719.