BLACKROCK

September 30, 2011

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

Re: Customer Clearing Documentation and Timing of Acceptance for Clearing 17 CFR Parts 1, 23, and 39 (RIN 3038-AD51)

Dear Mr. Stawick:

BlackRock, Inc. [1] submits these comments on the Commodity Futures Trading Commission's (the "Commission" or the "CFTC") Notice of Proposed Rulemaking entitled "Customer Clearing Documentation and Timing of Acceptance for Clearing" (the "Proposed Rule").[2] In the Proposed Rule, the Commission proposes regulations which address: (i) the documentation between a customer and a futures commission merchant (referred to as a "FCM" or "clearing member") that clears on behalf of the customer; and (ii) the timing of acceptance or rejection of trades for clearing by derivatives clearing organizations ("DCOs") and clearing members. This comment letter focuses on the second of these two issues.

As an asset manager representing many different types of clients, investment vehicles, and separate accounts, we offer these comments to assist the Commission in adopting final rules that benefit all market participants and promote the success of cleared swaps as they migrate from the over the counter ("OTC") private bilateral market to the centrally traded and cleared market. BlackRock supports the Commission's goals to expand access to and strengthen the financial integrity of the swap markets.

In our prior comment letter on this subject, we urged the CFTC to adopt rules that provide asset managers sufficient time to process orders for multiple clients or accounts in a single transaction (a "trade (block)").[3] Having reviewed the Proposed Rule, we continue to have concerns that the proposal would impair the ability of asset managers to execute trade (blocks).

1 BlackRock is one of the world's leading asset management firms. We manage over $3.5 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, third-party mutual funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world.

2 76 Fed. Reg. 45730 (Aug. 1, 2011).

3 *See* BlackRock comment letter dated April 11, 2011 entitled Requirements for Processing, Clearing, and Transfer of Customer Positions ("Prior Letter") (attached as Appendix A). We use the term "trade (block)" to refer to a swap transaction of any size that is submitted to a derivatives clearing organization ("DCO") for clearing and executed on behalf of multiple clients or accounts. The term applies to block trades as well as non-block trades.

Asset managers use trade (blocks) to execute the same transaction for multiple accounts. This serves customers in two ways. First, a trade (block) ensures that all accounts receive identical pricing for the trade. Second, entering into a trade (block) is more efficient and less costly than entering into multiple transactions. However, trade (blocks) require additional processing time post-execution because they involve multiple accounts and clearing members.

While we agree that minimizing the time between trade execution and acceptance for clearing is important to mitigate risks, we believe, for the reasons set forth in our Prior Letter, that sections 1.74(b), 23.608(e), 23.610(b) and 39.12(b) of the Proposed Rule would inadvertently inhibit the ability of asset managers to use trade (blocks). In particular, the Proposed Rules would require DCOs, FCMs, swap dealers, and major swap participants to facilitate the acceptance or rejection of each trade submitted by customers as soon as would be technologically practicable if fully automated systems were used. The Commission states that it "anticipates that this standard would require action in a matter of milliseconds or seconds or, at most, a few minutes, not hours or days."[4] Although we appreciate that the Commission recognizes that "immediate" acceptance for clearing upon execution, as proposed in a Prior Rule[5], might not be feasible for all cleared markets at this time, requiring trade (blocks) to be accepted for clearing within seconds or minutes will also limit the availability of these trades for some market participants.

We reaffirm our recommendation in our Prior Letter that to accommodate the post-trade execution allocation process that is critical to allowing all asset managers to service their clients effectively, and to account for the different risk profile of OTC swaps and futures, the CFTC's final rules should provide:

(i) at time of trade execution, confirmation of the trade economics is done at the block level removing uncertainty of market risk elements of the trade; and

(ii) for submission of clearing of the trade to a DCO a delay of up to 2 hours be allowed.

In cases where a trade is executed by an asset manager on behalf of one fund or account using one FCM for clearing, or for multiple funds or accounts using the same FCM for clearing, the time required for allocation and submission for clearing can potentially be anticipated to be much shorter than two hours, as the allocation process is less complex.

4 Proposed Rule at 45733.
5 See section 39.12(b)(7) of a prior rule (the "Prior Rule") entitled "Requirements for Processing, Clearing, and Transfer of Customer Positions 17 CFR Parts 23, 37, 38, and 39".

If the Commission were to require by rule that acceptance of clearing occur immediately as in the Prior Rule or as soon as technologically practicable upon trade execution, it will be necessary for clearing members to provide to the industry trade (block) clearing services with the ability to allocate the trade (block) subsequent to execution to the multiple clearing members associated with the individual funds and accounts within a reasonable time period so post-trade allocation of the trade (block) can be done for multi fund asset managers. Providing this service transfers the risk of a clearing break to the clearing member who provides the trade (block) and as a result many clearing members may not offer this service or only provide the service to a limited number of their clients. If clearing members do not offer trade (block) clearing services, asset managers will not be able to execute trade (blocks) (since they will not be able to allocate appropriately). This will dramatically change current investment management practices and substantially increase transaction costs for clients.

Thank you for the opportunity to state our views on this important issue. If you have any questions or would like further information, please contact any of us.

Sincerely,

Joanne Medero

Richard Prager

Supurna VedBrat

Appendix A (Prior Letter)

BLACKROCK

April 11, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Requirements for Processing, Clearing, and Transfer of Customer Positions 17 CFR Parts 23, 37, 38, and 39 (RIN 3038-AC98)

Dear Mr. Stawick:

BlackRock, Inc. submits these comments on the Commodity Futures Trading Commission's (the "Commission" or the "CFTC") Notice of Proposed Rulemaking entitled "Requirements for Processing, Clearing, and Transfer of Customer Positions" (the "Proposing Release" or "Proposed Rule"). In the Proposed Rule, the Commission proposes regulation to establish the time frame for a swap dealer ("SD"), major swap participant ("MSP"), futures commission merchant, swap execution facility ("SEF"), and designated contract market ("DCM") to process and submit contracts, agreements, or transactions to a derivatives clearing organization ("DCO") for clearing; to establish certain product standards and a time frame for a DCO to clear such contracts, agreements, and transactions; and to facilitate a DCO's transfer of open positions from a carrying clearing member to another clearing member without unwinding and re-booking the position.

BlackRock is one of the world's leading asset management firms. We manage over $3.54 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, third-party mutual funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world.

As an asset manager representing many different types of clients, investment vehicles, and separate accounts, we offer these comments to assist the Commission in adopting final rules that benefit all market participants and promote the success of cleared swaps as they migrate from the over the counter ("OTC") bilateral market. BlackRock supports the Commission's goals to expand access to and strengthen the financial integrity of the swap markets.

However, we believe that proposed section 39.12(b)(7) would harm our clients by impairing the ability of asset managers to execute orders for multiple clients in a single transaction (a "trade (block)").[6] In addition, although we support the Commission's goal of setting an appropriate time frame for the processing and submission of swaps for clearing, as well as a DCO having the capability to accept and clear a swap upon submission, we believe these time frames must account for the differences in risk profile between swaps and futures.

The CFTC should not require that a swap executed on a SEF or DCM be submitted for clearing immediately.

Under proposed section 39.12(b)(7), DCOs would be required to comply with specified time frames for processing and clearing contracts, agreements, and transactions depending upon where a swap is executed. In connection with a swap executed on a SEF or DCM, the transaction would need to be submitted for clearing, **immediately** upon execution, for all swaps listed for clearing by the DCO.

Although we agree that a DCO must have the capability to accept and clear a trade upon submission, requiring that trades be submitted for clearing immediately upon execution on a SEF or DCM is problematic for asset managers and their clients. Asset managers like BlackRock trade on behalf of multiple funds and accounts, each of which has the choice of selecting its own clearing member. Frequently, a particular investment strategy will be linked to many different client accounts, and when applying trade ideas linked to these strategies, an asset manager will execute a single trade (block) on behalf of these multiple funds and accounts. Executing a single trade (block), instead of multiple, smaller trades, facilitates better pricing and achieves operational efficiencies and certainty of trade execution, all of which support consistent investment performance for clients benchmarked against stated investment objectives.

At the time of trade execution, the economic details of the trade as a single block should be matched and confirmed. However, for purposes of clearing and settlement, the asset manager must go through the allocation process to optimize the allocation based on the notional amount finally executed, which may not be 100% of the notional amount originally requested. Once the allocation process is completed the trade information includes the individual notional amounts, the names of the funds and accounts that are the legal owners of risk, and the clearing members associated with the individual funds and accounts. Only at this stage are the individual trades ready for submission for clearing to the DCO.

The futures markets today are vertically oriented; trades are executed on an exchange and cleared by an affiliated clearing house. Both trade execution and clearing are contained within the business vertical and the process for clearing a futures contract is rapid. An associated clearing member facilitates the allocation process and distribution of risk post-execution by stepping in the middle of the trade as counterparty to the clearing house while distributing or allocating risk to the

[6] We use the term "trade (block)" to refer to a swap transaction of any size executed on or subject to the rules of a SEF or DCM on behalf of multiple clients or accounts. The term applies to block trades as well as non-block trades.

individual funds and accounts. Essentially, the associated clearing member intermediates the market and credit risk among the clearing house of which it is a member, the affiliated exchange and the funds and accounts that are clients of the clearing member.

The OTC cleared swap market will potentially be a more distributed market where execution of trades is anticipated to take place on many different venues, including SEFs and DCMs that may not be affiliated with the clearing houses. As such, if a clearing member steps into a trade as allocation of risk to individual funds and accounts is taking place, the clearing member will be taking on the risk introduced by the SEF/DCM trade execution and not the exchange/clearing house for which it is a member. This would raise costs of using cleared swaps for asset managers and their clients and could frustrate the Commission's goal of encouraging the clearing of swaps.

Futures and swaps have different risk profiles, so the futures model for trade allocation is not appropriate for cleared swaps.

We also encourage the Commission to take into account the differences in risk profile between futures and cleared swaps and the differences in the maturity of the current cleared market structure for these two transaction types before adopting final rules. We agree that the maximum possible certainty of trade execution is very desirable, especially as swap trading migrates onto SEFs and DCMs. However, care must be taken to ensure that the procedures or rules do not put undue risk, exposure or operational burdens on certain market participants and we are concerned that the Proposed Rules do not account for differences between futures and cleared swaps.

As discussed, the futures market allows for a single clearing member to assume the entire risk of a single executed trade (block) until the trade (block) is allocated and given up to the various clearing members, which can take place by the end of day. The OTC swap risk profile is different from futures and we are concerned that this approach, if applied to OTC swaps, will concentrate unnecessary risk for short periods of time onto clearing members. If clearing members are required to intermediate risk in this fashion for swaps, as they would be under proposed section 39.12(b)(7), they may be exposed to substantially greater risks in light of the larger transaction sizes and different risk profile of cleared swaps. This may limit a clearing members' willingness to provide clearing at a reasonable cost for trades of multiple funds and accounts that are executed as a single trade (block) to asset managers, even though asset managers may have diversified the risk exposure for the trade (block) among many clearing members at the individual fund/account level. Moreover, this approach would be operationally burdensome for asset mangers, as it would require the implementation of new documentation and the build out of new technology to provide the allocation breakdown and reconciliation. Proposed section 39.12(b)(7) would also create informational inefficiencies and increase the likelihood of processing errors by requiring DCOs to receive clearing information for a trade (block) twice: once as a block and once when allocated with legal ownership of risk information.

Proposed resolution

To accommodate the post-trade execution allocation process that is critical to allowing asset managers to service their clients effectively, and to account for the different risk profile between OTC swaps and futures, we recommend that the CFTC's final rules provide that:

(i) at time of trade execution, confirmation of the trade's economic details is done at the block level removing uncertainty of market risk elements of the trade; and

(ii) for submission of clearing of the trade to a DCO a delay of up to 2 hours be allowed.

In cases where the allocation process is less complex, it is anticipated that the time required for allocation and submission would potentially be much shorter. For example, when a trade is executed by an asset manager on behalf of one fund or account using one clearing member for clearing, or for multiple funds or accounts using the same clearing member for clearing, the time required for allocation and submission for clearing may potentially be much shorter than two hours.

In addition, we recommend that this process be supported with SEFs and DCMs having robust trade operating procedures to accommodate any trade disputes in an operationally efficient manner.

We thank the Commission for the opportunity to comment on the Proposed Rule. If you have any questions or would like further information, please contact any of us.

Sincerely,

Joanne Medero

Richard Prager

Supurna VedBrat