September 30, 2011

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

Re: RIN No. 3038-AD51: Customer Clearing Documentation and Timing of Acceptance for Clearing; and RIN 3038-AD51: Clearing Member Risk Management

Dear Mr. Stawick,

Javelin Capital Markets ("Javelin") appreciates the opportunity to comment on the notice of proposed rulemaking regarding clearing documentation and the timing of accepting trades for clearing as well as the Commodity Futures Trading Commission's (the "Commission's") proposed rules on clearing member risk management.

Javelin is an electronic trading venue that offers execution in both Credit Default Swaps ("CDS") and Interest Rate Swaps ("IRS"). Javelin will register and operate as a Swap Execution Facility ("SEF") when the registration window opens.

Javelin supports Title VII of the Dodd-Frank Act and commends the Commission's resolute effort in preparing rules necessary for the OTC derivatives marketplace to comply with the Dodd-Frank Act.

Introduction

Properly regulated central clearing is a fundamental principle in the Dodd-Frank Act designed to democratize the OTC market and reduce systemic risk. Further to this core goal is the precept that open access to clearing is critical to increase transparency and promote market efficiency. Any structural or functional barriers that serve to diminish the core goals of the Dodd-Frank Act need to be addressed in the current rules.

In order for central clearing to become an established and purposeful tool in reducing systemic risk, cleared transactions must be executed with the highest degree of confidence in the integrity of the settlement process. The timing of the acceptance of trades in to clearing is a critical part of the work flow and as such must be done with zero or near zero latency.

Precedent exists in well-established, cleared markets and allow for clearing to take place via perfect settlement or in real time (milliseconds) thus allowing all participants to have full confidence when transacting trades. In addition to established workflows existing in today's cleared markets, the technology to monitor and process these trades is also readily available.

With regard to the specific documentation referenced in the proposed regulation, Javelin agrees with the Commission that any documentation that eliminates trade anonymity, restricts access to clearing, limits customer choice and blurs the line between execution and clearing functions should not be permissible.

In order to achieve the goal of lessening systemic risk, a move toward central clearing is mandated. Inherent in central clearing is the need to have effective risk management at the Derivative Clearing Organization ("DCO") level, the Futures Commission Merchant ("FCM") level and at the execution venue. These multiple levels of risk management and trade surveillance need to be cohesive and will require that a Swap Execution Facility ("SEF") and FCM work together to solidify the integrity of the trade workflow. FCMs can be offered access and connection to the execution venue in order to monitor and mitigate risk. As the FCM has visibility on their customer's activity, and the ability to prevent trades at the point of execution, the FCM can then commit to perfect settlement as is the standard in the futures market.

Javelin supports the proposed rules since they serve to increase vigilance and promote greater integrity in the OTC markets. The Commission should approve the rules as proposed and move the implementation process toward finality. By giving more certainty to the timeline of final rules and implementation, the confidence for market participants to commit to necessary investments will be bolstered and allow for the core goals of the Dodd-Frank Act to be met.

Timing of Acceptance for Clearing

Migrating OTC transactions from a bilateral market architecture to a cleared market architecture is intended to reduce counterparty credit risk and allow for a greater degree of transparency, access and openness. In order to realize the full benefits of central clearing all participants must have the highest degree of confidence in the processing and timing of trades.

Workflows that foster trade integrity will produce greater liquidity as the entire pool of participants is afforded certainty of trade completion.

The fundamental shift from a bilateral workflow to a cleared workflow has a major distinction. In transacting a bilateral trade the evaluation of the transacting counterparties credit profile is required since the contracts traded represent a term agreement that requires both sides be able to fulfill their obligations over the stated life of the trade. In a cleared transaction this step is no longer required since the counterparty is centralized and guaranteed by the clearing house structure. In cleared transactions the decision of approving the trade is determined by the ability of the parties to capitalize the risk of the transactions via margin. Taking the embedded credit function out of the trade approval process requires an understanding of how cleared markets work today. In evaluating the currently operating, cleared, margined workflow we are able to see that both exchange traded clearing, as well as OTC clearing, are both viable options for today's market from both a functional and technological perspective.

The most optimal solution to create trade integrity is to have a zero latency approval process for executed trades being accepted in to clearing. This optimal solution can be seen in certain futures markets, such as Globex (see Exhibit A), where FCMs guarantee all their customer's trades. In the event an FCM deems the customer to be at limit, the FCM instructs the execution venue to disallow further trades. This process has been referred to as "perfect settlement" (see SDMA comment letter RE; OTC Derivative Market Integrity & Real Time Trade Processing Requirements for Processing, Clearing and Transfer of Customer Positions 17 CFR Parts 23, 37, 38 and 39 RIN 3038-AC98 dated 4/19/2011 Comment No: 42250)

Another effective method for accepting trades in to clearing that is well established and is already covering rates and credit is seen in the CME Clearport platform (see Exhibit B). This solution is slightly less optimal since it requires a real time check against FCM determined limits before a trade is accepted to clearing. While this process is not a zero latency option it is a low latency option. The time of response back in checking a transaction is real-time, meaning it is sub 1 second. Under this construct the issue of a rejected trade can be treated in the same manner as exists in the energy markets today. If a trade is rejected for clearing it is not a trade, and therefore, there is no need for establishing breakage cost. In a workflow where trade status is known real time to be either accepted or rejected, the slippage or replacement risk is recognized to be de minimis. The certainty of the trade is the critical element.

There are very rarely any breaks today under either model. Customers have very strong incentives not to violate their established limits, including but not limited to reputational risk. FCMs have a host of tools available that allow them to monitor their customer's orders and are best suited in the workflow to control risk limits and maintain proper capital against account risk.

A workflow that does not allow for either perfect settlement or real time acceptance of trades will create latency, leading to trade uncertainty and therefore undermining the benefits of central clearing.

The precedent that exists in the cleared markets points to a streamlined and proven workflow that has engendered a sense of confidence for all market participants. The application of technology has made the process low latency and scalable. Clearport has grown from average daily trade volume* of 139,177 contracts in 2005, to over 450,000 contracts today. Clearport covers multiple asset classes including credit and interest rates, and is interfacing with over 16,000 registered users. Globex had average daily volume of 6,368,000 contracts in interest rates during August 2011 and total exchange average daily volume of 14,420,000 contracts during the same period.**

Using the technology and workflow that is proven today will ensure that rapid processing is the industry standard. This current construct can be used as a benchmark when the time requirement for trade acceptance is defined as "technologically practicable if fully automated systems were used". Once this standard is established, rapid processing and the integrity of trading will work in concert to deliver the benefits of central clearing which include: protecting market participants from acting on bad information, ensuring eligible parties will not be held up by trades that fail to clear, promoting price discovery by screening for qualified prices, and freeing parties to effect other trades more quickly.

By observing both an exchange traded clearing model that offers zero latency acceptance of trades, as well as an off exchange model that offers real time acceptance of trades, we can also reach the conclusion that clearing can work effectively with rapid processing in either a vertically integrated transaction or a horizontally integrated transaction. Vertically integrated transactions are seen where the execution venue rests atop the clearing house allowing the FCM to see all transactions that are contained within that single exchange. Horizontally integrated transactions are seen where off exchange transactions at multiple execution venues may deliver trades for clearing. As long as the exchange of information is communicated in real time, acceptance in to clearing is not only possible but common.

*source http://www.cmegroup.com/clearing/files/CME_ClearPort_Brochure.pdf
**source http://investor.cmegroup.com/investor-relations/volume.cfm

Documentation

Cleared markets today use a very well designed and simple documentary procedure that plainly defines the relationship between a customer and the clearing broker that is the conduit to central clearing. For those participants that are direct clearing participants, a direct participant's clearing membership agreement with a DCO is used, while indirect participants have clearing agreements with a clearing member. These standard agreements are all that are required for documenting access to clearing. There are no additional execution agreements.

The notion that OTC products are not equivalent to other cleared products and thus require an additional measure of counterparty credit risk has been raised as a concern. The concern manifests itself in the event a trade that is submitted to clearing fails to clear, and during the period of trying to resolve the trade settlement, a breakage cost or replacement risk may be incurred. Documentation to address this scenario has been proposed and introduces the concept of allowing dealers to know the counterparty on cleared trades, as well as require the FCM of that counterparty to back any breakage associated with a failed trade's replacement cost. Documentation that includes a link between trade counterparts and their FCM does not exist in other cleared markets today and creates restrictive effects on customers, FCMs and certain Swap Dealers ("SD").

Using a document that requires all parties involved in a cleared swap to be approved as counterpart introduces a complex lattice of relationships in order to prevent potential losses in a scenario that is not only limited, but is also addressed in a much simpler streamlined manner in the current cleared markets. Using the comparison of clearing on Globex we see that the FCM stands behind all its customers' trades and it the ultimate arbiter of how much exposure a client can incur. In this framework all trades are accepted in to clearing until such time that the FCM notifies the execution venue that the customer should be shut off (perfect settlement with a kill switch). Looking at the Clearport solution, counterparties get real time approval for their trades based on limits set by their FCM. In the event of a limit violation the choice is to void the transaction, i.e. no trade. Both these models are well established, simple by design and easily adopted for OTC clearing. Choosing either of these methods of clearing would by design make a tri-partite arrangement unnecessary since there would be no adverse latency between execution and clearing.

The issues with a tripartite framework can be broken in to the following categories;

1. Restriction of Choice

   Customers would be unable to have full and open access to clearing using a tri-partite agreement since the customer's overall risk limit would be portioned across all its

potential counterparts/FCMs. For example, if a customer's overall limit is expressed as a nominal level (x), this level would be divided over the number of FCMs (n) the customer could face, i.e. (x/n). A customer with a full limit of $1,000,000,000 (x) would find itself only being able to do trades in apportioned limits of $200,000,000 if it wanted to sign on with 5 (n) FCMs. Choice of FCM is restricted due to limit allocations.

2. Diminished Liquidity

   Limiting the number of FCMs available in a tri-partite lattice through diluting trade limits, results in customers having a smaller subset of price providers to trade with. By pre-defining which counterparties are approved for clearing via an FCM guarantee under a tri-partite contract, a new SD or willing market maker may not be in the subset of price providers covered by this complex clearing contract. Customers will only have access to the pre-arranged list of approved counterparties. Liquidity is thus restricted through credit allocation.

3. Increased Latency

   Using a contract that requires each trade be checked against its ability to clear by identifying the counterparty and its FCM introduces latency to a workflow that has been demonstrated to work in a more efficient and balanced manner. Stalling the workflow and removing anonymity undermine the intent of clearing at its core.

4. Conflict of Interest

   Allowing dealers access to customer information and introducing uncertainty to the settlement process leaves the market looking very much the same as today's bilateral market. In today's market a small subset of market participants controls a disproportionate amount of customer flow and allocates access to that market via credit controls. Documentation that allows for the breaking of the line that separates execution from clearing would only serve to reinforce the existing concentration risk in today's market and is contrary to section 731 of the Dodd-Frank Act with regard to conflict of interest of swap dealers in clearing activities.

5. Abrogates the Rights of SEFs

   In addressing the tri-partite documentation Javelin is mindful that the role of the Government is not to insert itself in to contract law. The role of a regulator is to ensure fair and open access, maintain market integrity and prevent restrictions on trade. Documentary barriers that create anti-competitive conditions cannot be allowed

to establish as market precedent. Further, contracts that seek to abrogate the rights of third parties, either knowingly or unknowingly, cannot be allowed to stand. Tri-partite agreements with reference to superseding SEF rules would in effect contravene the Dodd-Frank Act by placing the contract terms above the SEF requirements as defined by the Dodd-Frank Act.

Using a construct that requires multi-partite approval on a trade is not only unnecessary, it is also fraught with restriction on trade and anti-competitive implications. By introducing a tri-partite design customers will be restricted from how many FCMs they can choose, which FCMs they can choose, which prices they can access and how much liquidity will be allocated to them. SDs that are not self-clearing will have a competitive disadvantage to their self-clearing peers using this construct. Execution venues that seek to operate as limit order books and offer trade anonymity would not be able to fulfill their mandates if this documentary barrier was allowed to exist.

Complex clearing documentation and the infrastructure to support a lattice of inter-connected parties can be replaced by simple industry standard clearing agreements as long as the acceptance of trades in to clearing takes place, either with no latency or with real time acceptance. By applying the standard already established in today's cleared markets for both vertically and horizontally integrated execution and clearing, we know what is technologically practicable. The benefits of having a streamlined documentary process coupled with workflow that promotes trade integrity will allow for the benefits of central clearing to be realized. Reducing systemic risk, increasing competition and participation, and promoting pre-trade and post-trade transparency, will all lead to savings via reduced execution fees and greater confidence in the system.

FCM Risk Management Tools

1. The FCM is in the best position to monitor and control risk

Central clearing works well in limiting systemic risk by design. A structure that requires the DCO monitor the soundness of its FCMs and charges the FCM with managing the soundness of its clients, is a well-established means of managing a complex interplay of multiple asset classes and multiple client exposures. While this system is effective, it is not without risk. Risk management at the FCM level is critical to ensuring the soundness of the system. Given the mandate to move swaps in to clearing, it is even more necessary to establish risk requirements at the FCM level as the scope of products and population of participants increases.

Clearing members are the entities best positioned in the trade workflow to monitor a market participant's ability to capitalize risk. Because clearing members administer the customer account, they can easily assess customer margin in real time.

The FCM is the central nexus where all trades, executed across multiple SEF's or execution venues, ultimately intersect. The clearing member is best positioned to proactively monitor such trades flowing in from multiple execution venues and thus aggregate its risk to the customer at the respective DCO. It is functionally impossible for SEFs, DCM's and bilateral trading environments to link with each other to monitor customer activity.

The FCM is also in the best position to protect itself. The FCM can notice the customer, its execution broker and execution venue to restrict the customer's trading real time in advance of a problem. Moreover, FCMs are incented to work with execution venues in setting limits to protect themselves.

Because the clearing member charges customers for its services, they can increase margin to higher risk firms. Finally, the clearing member is optimally positioned to require additional funds or liquidate a customer position in order to reduce or eliminate risk.

Through these proactive measures, the clearing member not only protects itself but, by extension, the execution venue, the customer and the market as a whole.

2. SEFs have requirements to enforce trading standards

SEFs are uniquely positioned to work with FCMs in providing additional visibility on customer activity. The Core Principles for Swap Execution Facilities call for SEFs to have certain functionality that allow for trade monitoring and limit setting. Core Principle 2 requires SEFs have automated systems for trade surveillance and for real time market monitoring of all trading activity on its platform. Core Principle 4 requires SEFs take an active role in preventing manipulation, price distortion and disruptions of the delivery or cash settlement process. Under this, it is noted that a SEF may be required to implement automated trading alerts to detect potential problems if a manual process is not effective. Core Principle 6 requires SEFs adopt position limits or position accountability for each swap as is necessary and appropriate.

Given that SEFs will have automated systems for trade monitoring, and will be required to establish trade and risk limits, SEFs can serve as an additional risk control in screening orders prior to the trade being routed to clearing upon execution.

3. SEFs can work with FCMs

SEFS can work with FCMs to establish limits, either simple or complex. FCMs may choose to have notional limits on a per trade basis or may seek to implement a more involved measure of risk. Parameters can be set that capture the Net Present Value of a transaction. The delta or dollar value of a basis point can be calculated and set to limit per trade exposures or aggregate risk. The FCM can provide this information either to the DCO or to the SEF directly.

SEFs can provide FCMs the ability to view on an account level any open market orders. The FCM as the provider of risk limits could be granted the ability to cancel a resting order, kill all orders or allow for "risk reducing only" transactions.

The added visibility to client activity can be a very useful tool in helping FCMs monitor risk and establish alerts for trading activity. The access to this data is not only valuable but must be held to the highest standard of confidentiality. The conflict of interest rules (section 731 of the Dodd-Frank Act) that require FCMs to be separated by appropriate informational partitions from the execution desk within the same firm, must be applied in this instance.

> *''(5) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—*
> *''(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and*
> *''(B) address such other issues as the Commission determines to be appropriate.*

4. SEFs are willing to invest in risk surveillance measures in exchange for guaranteed trade certainty

The Dodd-Frank Act moves well beyond the mandate for central clearing of trades. In order to achieve pre-trade transparency the Dodd Frank Act seeks to promote trading on swap execution facilities (section 733 of the Dodd-Frank Act). The most effective way to achieve this goal is to take all measures in order to establish trade integrity. Real time acceptance of trades for clearing and/or perfect settlement of trades will allow SEFs to operate and will be beneficial in allowing limit order books to function effectively.

SEFs have strong incentives to provide FCMs the tools and information they need to perform enhanced real time risk management. The development, maintenance and deployment of these tools will require investment. This investment will make sense if the

enhancements are recognized as a means to increase trade integrity. In offering FCMs real time risk controls the SEFs will be performing a valuable function for the market as a whole. FCMs in turn should acknowledge the functionality by reducing or eliminating latency in the clearing process.

FCMs that have full visibility to account activity, that can set limits at the SEF, that can cancel resting orders and that can halt execution should be guaranteeing all trades submitted for clearing. This is the most optimal form of trade acceptance as it has zero latency and will not only achieve the goal of promoting SEF trading but will serve to bolster trade integrity which brings more participation, greater liquidity, reduced transaction costs and greater operational efficiencies.

Summary

Title VII of the Dodd-Frank is specifically designed to reduce systemic risk through moving OTC trades in to central clearing and increase pre-trade and post-trade transparency by requiring cleared trades be transacted on swap execution facilities, and reported to swap data repositories. The key issue in promoting and realizing the full benefits of central clearing is trade integrity. The acceptance of trades in to clearing can be achieved with zero or near zero latency as evidenced in established markets today and this standard should be the one set for the OTC markets as they demonstrate what is "technologically practicable when automated systems are used".

The adoption of real time trade acceptance negates the need for documentation that is designed to cover breakage cost. Documenting the clearing process can also be held to the standard that exists in the established cleared markets today. Streamlined yet effective documents allow for standardization and lower costs for all market participants.

Bringing swaps in to central clearing will increase the size and scope of the cleared market. FCMs are a critical part of the clearing process, and as such will be positioned to handle the aggregation of risk across a growing set of clients and products. Risk management standards at every level of the trade process should seek to establish a cohesive, real time information exchange.

SEFs can play an important role in the trade monitoring process by working with FCMs and DCOs in providing visibility on account activity, setting pre-trade limits and offering risk controls. SEFs as the point of execution can develop and support risk monitoring and mitigation tools as part of the collective effort to promote perfect settlement of trades. A system designed to achieve the highest degree of trade integrity will benefit the entire market.

The rules as written support the core goals of the Dodd-Frank Act and speak to the fundamental requirements to establish a more open and democratic market structure. Central Clearing is at the core of the overall Dodd-Frank Act and as such requires primary focus. All rules that support Central Clearing should be finalized as written. Priority should be focused on

clearing as a first step to implementation. Approving the rules as written will add certainty to the timing of implementation and allow for additional capital investment to be directed toward compliance.

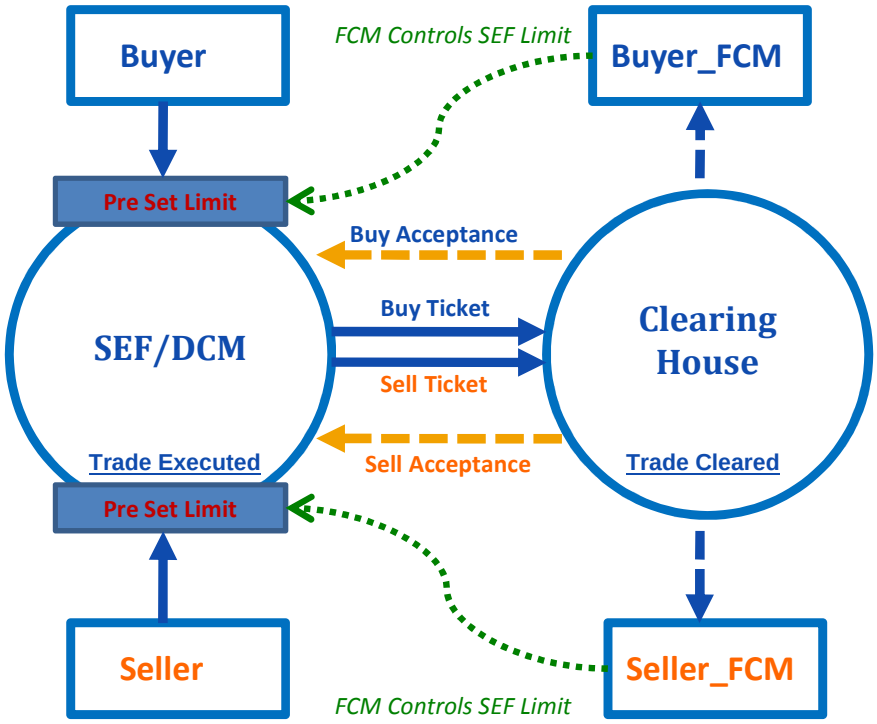
Respectfully,

/s/ Chris Koppenheffer

Chris Koppenheffer
Senior Managing Director

Cc: The Hon. Gary Gensler, Commission Chairman
The Hon. Michael Dunn, Commission Commissioner
The Hon. Bart Chilton, Commission Commissioner
The Hon. Jill E. Sommers, Commission Commissioner
The Hon. Scott D. O'Malia, Commission Commissioner
Lawton, John C. (jlawton@cftc.gov)
Radhakrishnan, Ananda (aradhakrishnan@cftc.gov)

EXHIBIT A



FCM: No Last Look Option

Post Trade Process:

Trade Executed On SEF between Buyer & Seller.
Trade Sent to CCP (milliseconds).
Trade Acceptance by CCP & FCM automatic.

Pre Trade Process:

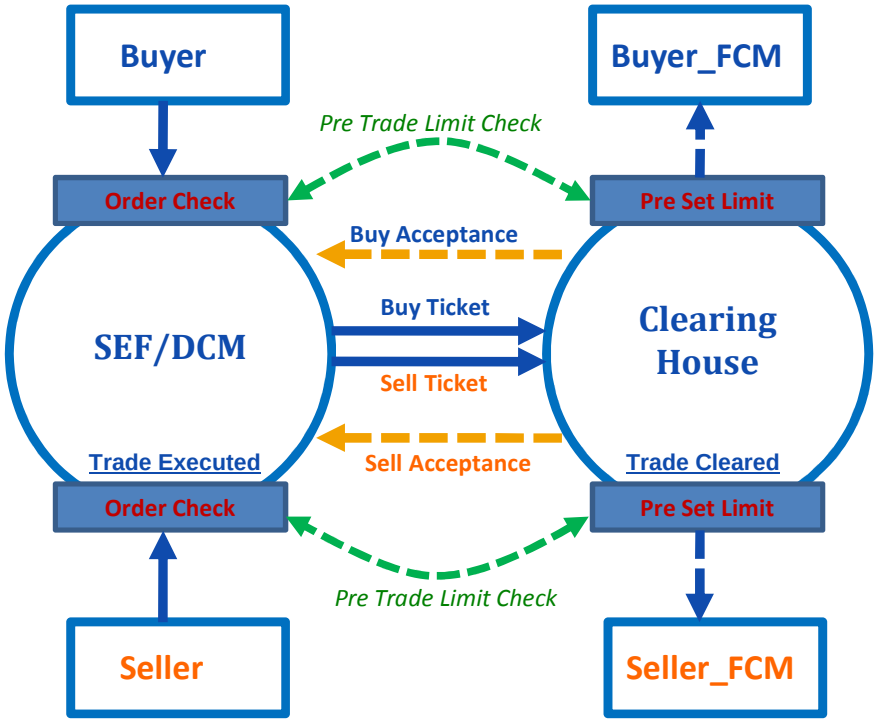
SEF notices customer real time of current 'spending power' on User Interface or API.
SEF institutes various 'fat finger' checks.
FCM directly monitors its customer orders on SEF.
FCM directly controls its customer limit directly on SEF.
FCM can cut customer off/dial limit down real time. (Prevents bad trades from occurring at source.)

Important:

FCM guarantees its customer trade.
Burden on FCM to police customer on SEF(s).
FCM is nexus to credit decision--best able to monitor customer across SEF
By protecting itself from bad trade, it protects market.
FCM best able to collect against customer (can liquidate account).

Note: Globex uses this model.

EXHIBIT B



FCM: Last Look Option

Post Trade Process:

Trade Executed On SEF between Buyer & Seller.
Trade Sent to CCP (milliseconds).
Trade Checked via FCM Pre-Set Customer Limit at CCP (milliseconds).
FCM may vary Pre-Set Customer Limit at CCP real time; exists today).
Trade Acceptance/Rejection Noticed back to SEF (on SEF) or Buyer/Seller (off SEF) (milliseconds).

Pre Trade Process:

1. To protect from Customer from knowingly exceeding limit
   - SEF screens order against Pre-Set Customer Limit.
   - CCP either makes Limit available to SEF or SEF queries data held at CCP.
2. To protect from Customer unknowingly exceeding limit:
   - SEF notices Customer real time of current 'spending power' on User Interface or via API.
   - SEF institutes various 'fat finger' checks.

Note: Clearport uses similar model

JAVELIN CAPITAL MARKETS, LLC
443 PARK AVENUE SOUTH, 10TH FLOOR • NEW YORK, NEW YORK • 10016
PHONE: (212) 779-2300 • FAX: 646-588-2039
www.thejavelin.com