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Via Electronic Submission: http://comments.cftc.gov

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

Dear Mr. Stawick:

The D. E. Shaw group is a global investment firm serving predominantly institutional investors, such as funds-of-funds, pension funds, endowments, insurance companies, and other sophisticated entities. We are headquartered in New York, with 15 offices across North America, Europe, the Middle East, and Asia. We are a diversified, multi-disciplinary firm, employing investment strategies based on quantitative and qualitative research in markets around the world.

The D. E. Shaw group is an active member of the Managed Funds Association (MFA) and assisted them in drafting a comment letter dated September 30, 2011 (the "MFA Letter") relating to the Commodity Futures Trading Commission's (the "Commission") proposed rules on customer clearing documentation and timing of acceptance for clearing (the "Proposed Timing Rules"),[1] as well as the Commission's proposed rules on clearing member risk management.[2] We endorse the MFA Letter in full, but appreciate the opportunity to provide brief additional comments on an aspect of the Proposed Timing Rules into which we believe we have particular insight: post-execution trade allocation.

Section IV of the MFA Letter notes that certain investment managers regularly engage in a post-trade process to allocate a single "bunched" or "bundled" trade among multiple funds.[3] We have been engaged in this practice in various futures markets since 2003. The need for executing bunched trades

[1] Commission Notice of Proposed Rulemaking on "Customer Clearing Documentation and Timing of Acceptance for Clearing," 76 Fed. Reg. 45730 (Aug. 1, 2011) (the "Proposing Release"), available at: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-19365a.pdf.
[2] Commission Notice of Proposed Rulemaking on "Clearing Member Risk Management", 76 Fed. Reg. 45724 (Aug. 1, 2011), available at: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-19362a.pdf.
[3] This bunched trading is done in accordance with Commission Regulation 1.35(a-1)(5), available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cae225ccab224fcd86a798dc1d1aa9ba&rgn=div8&view=text&node=17:1.0.1.1.1.0.5.30&idno=17

arises where one trader may be executing orders in fast-moving markets on behalf of multiple strategies that are traded out of separate funds. In such cases if separate trades had to be executed for each fund, variability in pricing would disadvantage one or more of the funds. In addition, funds that had to wait to trade might also miss out on trading opportunities. Accordingly, bunched trading can be advantageous to all funds involved, as a practical matter.

In futures markets such bunched trades are cleared on a real-time basis, meaning that allocation among our funds necessarily takes place post-clearing. During the time between clearing and allocation, the clearing broker remains liable to the clearinghouse for the relevant trades. We have heard concern expressed that this issue may pose obstacles to real-time clearing, at least for asset managers that engage in bunched trading. We strongly disagree.

In the futures context we have been able to enter into contractual arrangements with clearing brokers who are willing to take on this risk. Although there is no standard industry-wide form that is used for this purpose, in our experience the negotiations on these contracts are not particularly difficult, compared with other trading arrangements entered into between sophisticated clearing brokers and sophisticated investment managers. Moreover, the clearing business is reasonably competitive and the small cost of executing a set of additional contracts should not unduly restrict dealers' willingness to perform this service. We therefore believe that if this model is exported to cleared OTC derivatives, a number of dealers will be willing to enter into standby clearing arrangements that allow for post-execution allocation of cleared swaps.

In short, we view the post-execution allocation issue to be somewhat of a red herring, and we believe it should not prevent the Commission from mandating real-time clearing in the Proposed Timing Rules. As an active participant in this area in the futures context, we believe that the small cost of negotiating standby clearing arrangements is far outweighed by the benefits of real-time clearing, as discussed in substantially more detail in the MFA Letter.

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Once again, we appreciate the opportunity to submit these comments. We are available to meet and discuss these matters with the Commission and its staff and to respond to any questions.

Very truly yours,

David Z. Moss
Senior Vice President