



BY E-MAIL AND REGULAR MAIL

September 30, 2011

Ms. Tatjana Verrier
Head of Unit
COMP Greffe Antitrust
European Commission
J 70 – 3/25
B-1049 Brussels

Re: COMP/D2/39.730 – CDS (Credit Default Swaps) – Clearing; Request for Information/Identification Number: 046

Dear Ms. Verrier:

This is in response to your letter to Ms. Amanda Cain, Clearing Sales, Newedge USA, LLC (“NUSA”), dated August 12, 2011. Thank you for giving us until today to file our response. We provide our answers to your questions below.¹

Question Number 1

Please give us a description of your activities in the CDS market (CDS dealer, Clearing Broker, Buy-side, others?) Are you trading in CDS? What kind of services do you offer or do you intend to offer in the CDS market?

Newedge Response

Newedge does not conduct CDS activities at this time. Newedge is considering the possibility of offering CDS products to its customers; however, this review is at a very preliminary stage.

¹ NUSA is a wholly-owned subsidiary of Newedge Group, SA (“Newedge Group”). Newedge Group, based on Paris, France, is 50% owned by Société Générale and Credit Agricole-CIB. Newedge refers to Newedge Group and all of its worldwide branches and subsidiaries.

Question Number 2

In your view, how does competition take place between CDS dealers? On which parameters do CDS dealers compete with one another (e.g., price, service, clearing arrangement, credit research, etc.)?

Newedge Response

Given Newedge's current lack of involvement in the CDS dealer market, we do not have specific views or opinions on how the market operates or on the forces that drive competition within it.

Question Number 3

Are you performing a dealer function in the CDS market or have you attempted to enter the market to perform such a function? What are the difficulties and barriers to entry a market entrant faces?

Newedge Response

Newedge is not performing a dealer function in the CDS market at this time, nor has it attempted to enter the market to perform such a function. That said, Newedge believes strongly in fair and open access to swaps clearinghouses and that member eligibility requirements for swaps clearinghouses should be tied directly to risk and not be unnecessarily exclusionary. In this regard we note that ICE Clear Credit, one of the largest if not the largest swaps clearinghouses for CDS products in the US, recently modified its member eligibility requirements to require all members to retain excess regulatory capital in an amount greater than 5% of their customer segregated funds which, for NUSA, would mean excess capital greater than \$1 billion. In our view, this requirement is not tied directly to risk (among other things, the percentage is based off of customer futures margin requirements rather than CDS or even other cleared swaps margin requirements), and thus, is unnecessarily exclusionary. Newedge provided its views on this matter to ICE Clear Credit in a letter dated September 3, 2011 (copy attached as Exhibit A).

Question Number 4

Is it possible to trade CDS or other credit derivatives on exchange or on an electronic trading platform? In other words, are you aware of the existence of any exchange or electronic trading platform offering trading in CDS or other credit derivatives?

Newedge Response

We believe it certainly is possible to trade CDS and other credit derivatives on an exchange or other electronic trading platform, particularly those that are less customized, more "plain vanilla" and for which there is a fairly liquid market, e.g., indices. Bespoke

single credit CDS products would be less conducive to trading on a centralized trading platform. We are not aware of any specific exchanges or electronic trading platforms currently trading CDS or other credit derivative products, but again, Newedge is not currently involved in the execution of such products. That being said, we plan to review, in order potentially to become a member, all exchanges, swap execution facilities or organized trading facilities that might offer CDS products that could be centrally cleared.

Question Number 5

Do you consider that some types of CDS, which are currently traded over-the-counter (OTC), are sufficiently standardized and liquid to be traded on an exchange or on an electronic trading platform? Please provide any reasons or justifications why trading (all or some) CDS is not suitable to be conducted on a trading platform.

Newedge Response

Because Newedge is not involved in the CDS market at this time, we do not have definitive views on this question. That said, we would be surprised to the extent it was determined that no CDS products are sufficiently liquid and non-customized to be traded on an exchange or electronic trading platform, particularly certain single credit CDS products.

Question Number 6

To what extent do different types of market participants (*i.e.*, large CDS dealers, small and medium size CDS dealers, clearing brokers, buy-side customers, others) currently have access to CCPs which offer CDS clearing? Do you consider current access of different types of market participants to CCPs to be sufficient?

Newedge Response

Because Newedge currently is not involved in CDS clearing, we have not conducted a review of eligibility requirements for the clearinghouses that clear CDS products. Consequently, we do not have a definitive view on the degree of access different types of market participants have to such clearinghouses. That said, as noted above, we do believe that ICE Clear Credit's requirement that clearing members maintain excess regulatory capital in an amount greater than 5% of their customer segregated funds is unnecessarily exclusionary (and in fact currently would prohibit NUSA, the largest futures commission merchant in the US based on customer funds on deposit from becoming a clearing member of ICE Clear Credit).

Question Number 7

Who do you consider are the main providers of CCP clearing of CDS? How is, in your view, competition functioning in the market for CCP clearing of CDS.

Newedge Response

Given Newedge's lack of involvement in the CDS market at this time, we do not have a definitive view on this topic. That said, we understand generally that ICE Clear Credit is one of the largest, if not the largest clearinghouses for CDS products in the US.

Question Number 8

Please describe whether you are or would like to become a direct or indirect clearing member of any operational CCP for CDS in Europe and/or the US? For what reasons and business activities would such a membership be desirable?

Newedge Response

As a global derivatives broker, it is natural for Newedge to provide clearing services in all asset classes traded by our customers through transparent market centers and centrally cleared, including CDS. Consequently, Newedge is considering, at a very preliminary stage, the possibility of offering its customers CDS products. Membership in a CDS clearinghouse in Europe and/or the US would be desirable to the extent Newedge determined to provide its customers clearing services in CDS.

Question Number 9

Please describe whether you have already joined or applied on joining any CCP for clearing of CDS in Europe or the US? If yes, which are the main issues in the discussions? In particular, have you encountered any difficulties to join a CCP for CDS? If so, please describe these difficulties. Were they related to specific membership requirements, in particular capital requirements? If so which ones and did you consider these requirements to be justified? How do these requirements compare to other CCPs clearing derivatives transactions.

Newedge Response

As noted, Newedge is not involved in clearing CDS products at this time. Further, Newedge is not in the process of applying for membership to a swaps clearinghouse for the purpose of clearing CDS products. That said, certain Newedge affiliates may be members of clearinghouses that offer CDS clearing as one of their services (but again, no Newedge Group affiliate is involved in such clearing at this time).

Question Number 10

What are the most important elements to consider for your company when joining a CCP as a direct or indirect clearing member?

Newedge Response

There are a number of factors Newedge considers in determining whether to join a clearinghouse, including the following: (a) the financial strength of the clearinghouse; (b) the financial strength of the clearing members of the clearinghouse; (c) the clearinghouse's clearing and/or default fund deposit requirements; (d) the clearinghouse's margin requirements; (e) the clearinghouse's member eligibility requirements; (e) the clearinghouse's governance and conflicts of interest structure and procedures; (f) the jurisdiction in which the clearinghouse is located; (g) the clearinghouse's regulator(s); (h) the clearinghouse's default management procedures; (i) the clearinghouse's customer collateral protection requirements and procedures; (j) the clearinghouse's "waterfall" sequence and procedures; (k) the clearinghouse's fees and dues; (l) the products and services offered by the clearinghouse, and; (m) the clearinghouse's reputation and customer service offering.

Question Number 11

Do you consider that there is a benefit of having competition between CCPs or do you consider a single CCP for CDS globally or in Europe beneficial? Please elaborate and describe the advantages and disadvantages of having a single CCP vs. having multiple competing CCPs.

Newedge Response

Again, because Newedge is not involved in the CDS market, we do not have a definitive view on this topic. That said, in general, we are proponents of competition and allowing market forces to determine the number and type of clearinghouses that offer particular products. We do not see why CDS products would be any different. Among other things, competition, in our view, can decrease costs to users and customers and spur innovation. However, to the extent multiple clearinghouses exist for the same product, we believe that clearing members should be able to determine which clearinghouse to use in clearing their customers' products (as opposed to permitting clients, regulators or the clearinghouses to make this determination). Forcing clearing members to join multiple clearinghouses that clear the same product will deplete clearing member capital as a result of the need to fund different clearing and/or default fund deposit requirements.

Question Number 12

What is in your view the optimal membership structure in a CCP (homogeneous membership structure vs. fully diversified structure vs. multiple tiers of membership)?

Newedge Response

As noted above, Newedge believes strongly in fair and open access to clearinghouses, including swaps clearinghouses. Among other things, fair and open access: (a) is mandated by law (such as by the US Dodd Frank Wall Street Accountability and

Transparency Act of 2010); (b) decreases systemic risk by increasing the number of clearing members through which clearing risk is mutualized, and; (c) increases competition among clearing members which, in turn, improves service and lowers costs to customers. We also believe the greater the variety of clearing members, the more likely customers will find a clearing member that fits their particular needs (for example, many customers would prefer a broker clearing member to a dealer clearing member since a broker clearing member will generally not trade on a proprietary basis the same products it is clearing – or executing on an agency basis – for customers). Consequently, we support brokers and dealers (including banks) being eligible for membership in clearinghouses, as well as buy-side participation through brokers. Any clearing member that clears trades on behalf of customers should be registered properly with the relevant regulator and subject to robust rules governing the handling of customer transactions. We do not object in principal to dealers clearing customer trades so long as they are properly registered, capitalized and supervised, and have adequate conflicts of interest policies and procedures (i.e., Chinese Walls) in place. Further, to the extent “indirect” members have the ability to post trades directly to a clearinghouse, they must be associated with a full clearing member who agrees to take regulatory and financial responsibility for such trades. Further, we note that the governance structure of CCPs should be diversified to reflect all member types as well as the public.

Question Number 13

Please explain your role in other derivatives than CDS such as IRS or exchange traded derivatives. What kind of services do you provide in these markets? Are you direct or indirect clearing member of any CCP in those markets? Do you consider yourself in direct competition with the main dealers in those markets?

Newedge Response

Newedge is one of the largest brokers of exchange-traded derivatives in the world, with memberships in over 85 exchanges and clearinghouses worldwide and offices in over 15 countries. Newedge’s primary function is acting as a broker, executing and clearing trades for primarily institutional customers on an agency or riskless principal basis, across a variety of asset classes including securities, futures and OTC derivatives. Consequently, Newedge conducts very little proprietary trading, and then generally only to hedge or otherwise facilitate customer transactions. Newedge is active in uncleared swaps (including interest rate, agricultural, FX, energy and metal products) as well as cleared swaps (primarily energy products). While certain Newedge affiliates execute swaps bi-laterally on a principal basis (i.e., acting as a trading counterparty or accepting a give-in from another trading counterparty), they do so as brokers; i.e., on a customer-driven, riskless principal basis in which each transaction is hedged separately (rather than netted). Newedge affiliates are members of a number of swaps clearinghouses, including: ICE Clear Europe; SGX AsiaClear; CME Clearport; IDCG; CME Clear Europe; NYSE Euronext Belear; LCH OTC Freight and LCH Enclear Emissions. Newedge has substantial market share on CME Clearport, SGX AsiaClear and ICE Clear Europe. Newedge directly competes with dealers, including large ones, in a variety of

markets and in a variety of different capacities including, perhaps foremost, as a prime broker.

Question Number 14

Please provide any other comment you may consider relevant and useful in relation to this case.

Newedge Response

Newedge believes that in addition to providing for fair and open access to CDS clearing venues, regulators should similarly ensure fair and open access to CDS execution platforms. In our view, this means, among other things, non-dealers having the ability to post and receive quotes on SEFs directly, as opposed to having all bids and offers transmitted and received through dealers. This requirement could be achieved either by permitting non-dealers direct access to SEFs and OTFs, or by implementing order protection rules requiring dealers to post immediately better priced quotes they receive from customers and brokers (our preference is the former given, among other things, it will not create potential delays in the posting of executable customer and broker orders). As a general matter, increasing the number and variety of market participants transmitting and receiving quotes directly on SEFs or OTFs in CDS (and other derivative) products will enhance market liquidity, narrow spreads, reduce execution costs and make such markets more efficient.

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Please ensure the confidentiality of the information contained herein to the fullest extent possible. To the extent you have further questions, please do not hesitate to contact the undersigned at (646) 557-8458 or, in my absence, John Nicholas, Global Head of New Regulation Monitoring and Implementation, at (646) 557-8516.

Sincerely,

Newedge Group



Gary Allan DeWaal
Senior Managing Director and
Group General Counsel

Attachment: Exhibit A