

From: Szarmack, Stephen <Stephen.Szarmack@cmegroup.com>
Sent: Monday, August 23, 2010 10:01 AM
To: BCDR <BCDR@CFTC.gov>
Cc: Szarmack, Stephen <Stephen.Szarmack@cmegroup.com>
Subject: Business Continuity and Disaster Recovery
Attach: 100823 CFTC Comment Letter.pdf

Attached find CME Group's comment letter in response to the CFTC's Business Continuity and Disaster Recovery Federal Register Release. If you have any questions regarding the comment letter, please feel free to contact me.

Regards,

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Craig S. Donohue
Chief Executive Officer

August 23, 2010

VIA ELECTRONIC MAIL

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
secretary@cftc.gov

Re: Business Continuity and Disaster Recovery – RIN 3038-AC 91, Fed. Reg. Vol. 75, No. 140 (July 22, 2010)

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges"), appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") proposed rulemaking ("Release") with respect to business continuity and disaster recovery ("BC-DR") programs. In the Release, the Commission proposes rules that would establish standards for recovery and resumption of trading and clearing operations by designated contract markets ("DCMs") and derivatives clearing organizations ("DCOs") that the Commission determines to be critical financial markets or core clearing and settlement organizations in the event of a wide-scale disruption affecting such entities' trading or clearing operations.

CME Group is the world's largest and most diverse derivatives marketplace. We operate four separate Exchanges, including the Chicago Mercantile Exchange, Inc ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products.

We also operate CME Clearing, one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions through CME ClearPort®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

I. Background

The Commission states in the Release that there have been a number of significant events over the past decade since the Commodity Futures Modernization Act of 2000 (“CFMA”) became law that necessitate a close review of the BC-DR standards for financial sector organizations. These events include the September 11, 2001 attacks, the Northeast regional power outages of 2003, the economic issues of 2008-2009 and a recent increase in cyber threats. Based on these past events and potential, unknown future events, it is essential for regulated entities to be able to recover and resume functioning promptly in the event their operations are affected by a widespread disruption.

The Commission relied on a document issued by the Board of Governors of the Federal Reserve System (“Fed”), the Department of Treasury (“Treasury”) and the Securities and Exchange Commission (“SEC”) in 2003 to assist in the development of its BC-DR rules for the futures markets.¹ In the Release, the Commission states that although DCMs and DCOs currently maintain adequate BC-DR programs, additional regulatory steps are necessary to further improve the recovery capabilities of registered entities, particularly organizations that meet the financial sector’s definition of “critical financial markets” and “core clearing and settlement organizations.”

The White Paper defines critical financial markets as “markets for federal funds, foreign exchange, and commercial paper; U.S. government and agency securities; and corporate debt and equity securities.” In addition, core clearing and settlement organizations are those that “(a) provide clearing and settlement services for critical financial markets, or (b) act as large-value payment system operators and present systemic risk should they be unable to perform.” CME Group believes that its DCMs and DCO will qualify as “critical financial markets” and a “core clearing and settlement organization” and it is therefore qualified to comment on the proposals set forth in the Commission’s Release.

From a company perspective, CME Group is a strong proponent of, and acknowledges the importance of, a robust BC-DR program. We continue to strengthen the resiliency of our disaster recovery facilities and business continuity capabilities and we have dedicated significant resources to improve our business continuity planning. The core components of our BC-DR program include, but are not limited to:

- Incident Response Plans;
- Business Impact Analyses;
- Business and Technology Recovery Plans;
- Alternate Workplace Recovery Sites;
- Pandemic Plans; and
- Testing Lifecycle.

Additionally, in order to ensure proper coordination during a crisis, we have established relationships with the local business community, law enforcement, and local and regional governmental emergency

¹ Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System (the “White Paper” (2003)).

agencies as well as the CFTC and the SEC. Also, our production electronic trading environment is operational in our third data center, further enhancing our disaster recovery facilities and capabilities.

II. New Regulation 40.9

The proposed new Regulation 40.9 has four separate sections dealing with BC-DR. Subsection (a) requires any registered entity that the CFTC determines is a critical financial market or core clearing and settlement organization to maintain a disaster recovery plan and BC-DR resources, including infrastructure and personnel, sufficient to enable it to achieve a same-day recovery-time objective ("RTO")² in the event of a wide-scale disruption affecting the relevant area of any of its normal-use trading or clearing operations.

Subsection (b) requires that a same-day RTO is one calling for recovery and resumption of trading and clearing within the business day on which the disruption occurs.

Subsection (c) sets forth the minimum requirements for geographic dispersal of infrastructure and personnel needed to meet a same-day RTO. It requires infrastructure sufficient to enable a critical financial market or core clearing and settlement organization to meet a same-day RTO after the interruption of normal trading and clearing by a wide-scale disruption must be located outside the relevant area of the infrastructure the entity normally relies on to: (i) conduct electronic trading, (ii) disseminate market data and provide price reporting, (iii) conduct electronic surveillance and maintain access to audit trail information, or (iv) conduct activities necessary to the clearance and settlement of existing and new contracts, and may not rely on the same critical transportation, telecommunication, power, water, or other critical infrastructure components as the infrastructure the entity normally relies on for such activities.

In addition, personnel sufficient to enable the critical financial market or core clearing and settlement organization to meet a same-day recovery time objective, after interruption of normal trading or clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally rely on to engage in such activities are located, must live and work outside that relevant area, so that they will not be made unavailable by a wide-spread evacuation or unavailability of personnel who live or work in that relevant area.

Subsection (d) requires every registered entity that the CFTC determines is a critical financial market or core clearing and settlement organization to conduct regular, periodic tests of its BC-DR plans and resources and its capacity to achieve a same-day RTO in the event of a wide-scale disruption.

Footnote 18 in the Release states that, "The same-day RTO is not intended to mandate the specific response of a particular entity to a particular disaster. Rather, the objective is intended to establish the recovery goal that the BC-DR plans of certain registrants must be designed to meet and, in turn, the resources that such registrants are expected to allocate to ensure that they are capable of achieving the

² Recovery time objective is defined as the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs.

objective. The Commission recognizes that a wide-scale disruption could occur near the end of a business day and would interpret this requirement in a practical manner in such an event.” CME Group is completely aligned with the Commission with respect to its goal to minimize any disruptions to the marketplace when a wide-scale disruption occurs. However, in determining a reasonable RTO, aside from a critical financial market or core clearing and settlement organization’s operational readiness, it is also imperative that the impacts on all market participants and independent technology service providers be considered as each catastrophic situation will need to be considered by the Commission on a case-by-case basis.

In contemplating the effects of a wide-scale disruption³, there will necessarily be severe disruption of power, telecommunications and critical infrastructure components in the relevant area. As such, critical financial markets and core clearing and settlement organizations as well as the entire trading community in the relevant area, including clearing firms, trading firms, service bureaus, market data providers and other industry participants will first need to evaluate their operational preparedness and then implement any required repairs to damaged systems and services before they can resume functioning. Based on the complexities and required coordination, we believe additional industry discussion and analysis is warranted to determine the best way to achieve a same-day RTO under a catastrophic wide-scale disruption. Clearly, every effort will be made by industry participants to attempt to recover trading and clearing capabilities as soon as possible after a wide-scale disruption occurs. However, there must be a reasonable and flexible RTO which takes into consideration the severity and unique characteristics of a catastrophic event.

With respect to emergency systems testing, CME Group agrees that periodic testing of BC-DR plans and resources is essential to minimize the consequences of a wide-scale disruption. CME Group currently performs the following preparedness exercises:

- Participation in an annual industry-wide disaster recovery test sponsored by the Futures Industry Association (FIA);
- Global Wide Emergency Notification Exercises;
- National Communication System Exercises (GETS/WPS);
- Global Wide Telecommuting Exercises;
- Business Unit Exercises that tests the ability to perform critical processes from an alternate location following a system recovery;
- Failover Exercises conducted at each of our data centers;
- Customer connectivity testing; and
- Partnership connectivity testing.

³ Wide-Scale Disruption means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

III. Proposed Effective Date

The Commission requests comment on a reasonable date for the proposed amendments to become effective. The Commission notes that all CFTC-registered DCMs and DCOs maintain adequate BC-DR programs. However, the Commission has decided to adopt new BC-DR requirements to address wide-scale disruptions which require geographical dispersal of infrastructure and personnel that will likely involve substantive changes to facilities, systems, operations and infrastructures at critical financial markets and core clearing and settlement organizations. These proposed changes will require significant investments in data centers, technology, operations and human resources and extensive coordination with market participants. Based on the proposed new requirements and our experience in developing BC-DR programs, we believe that critical financial markets and core clearing and settlement organizations will require 24 months to effectively plan, build out infrastructure and facilities, conduct internal and external testing and fully implement these changes.

IV. Conclusion

CME Group has worked diligently to develop its own robust BC-DR systems over the past number of years from both a human and capital perspective. As such, CME Group is aligned and fully supports the Commission's efforts to improve the BC-DR systems and operations of critical financial markets and core clearing and settlement organizations. CME Group also believes that further detailed discussion among industry participants and the Commission is required to determine what is the best way to achieve a same-day RTO in the event of a wide-scale disruption. We also recommend the industry be allowed 24 months to implement these new requirements given the complexities and magnitude of the changes to current BC-DR programs and the extensive level of coordination that will be required of the entire futures industry.

We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or Craig.Donohue@cmegroup.com or Stephen Szarmack, Regulatory Counsel at (312) 648-5422 or Stephen.Szarmack@cmegroup.com.

Sincerely,



Craig S. Donohue

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia