

January 18, 2011

**VIA ON-LINE SUBMISSION**

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

Re: Registration of Foreign Boards of Trade (RIN 3038–AD19)  
(Federal Register Vol. 75, No 223, Page 70974)

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets, appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Notice of Proposed Rulemaking ("Release") that was published in the Federal Register on November 19, 2010. In the Release, the Commission seeks comment on proposed rules to implement the statutory framework that establish registration requirements for a foreign board of trade ("FBOT") seeking to provide members or participants located in the United States with direct access to its electronic trading and order matching systems.

CME Group is the world's largest and most diverse derivatives marketplace. CME Group includes four separate Exchanges, including 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. CME includes 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®.

As a pioneer in the globalization of the futures markets, CME has helped to expand the customer base for futures products. CME Globex, for example, is available to users around the world for more than 23 hours a day and five days a week. To satisfy the increasing demands of the international marketplace, customers can access the CME Globex platform in more than 150 countries and foreign territories around the world. Telecommunications hubs in Singapore, London, Amsterdam, Dublin, Milan, Paris, Seoul, Sao Paulo and Kuala Lumpur reduce our customers' connectivity costs, increase accessibility, and delivery faster, more efficient trading. Additionally, CME has established international offices in London, Singapore, Tokyo, Hong Kong, Sao Paulo and Calgary. CME believes that its significant global expertise and experience will provide the Commission with a unique and valuable perspective on the matters discussed herein.

As the Commission notes in the Release, Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") states that the Commission may adopt rules and regulations requiring registration with the Commission for an FBOT that provides members of the FBOT or other participants in the United States with direct access to the electronic trading and order matching system of the FBOT, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade.

In addition, Section 738 continues:

In adopting such rules and regulations, the commission shall consider—

(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and

(ii) any previous Commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

In our view, reducing or limiting barriers to entry in the global futures and options industry has strongly contributed to business growth and increased competition. This is due, at least in part, to the fact that U.S. market participants can directly and electronically trade foreign futures and options contracts from the U.S. Correspondingly, non-U.S. based investors can directly and electronically trade products listed by CME Group Exchanges and other U.S. futures and options exchanges. Moreover, FBOTs can efficiently offer U.S. customers access to products also traded on U.S. exchanges, thereby increasing global competition in these markets. The CFTC has wisely promoted global growth and competition while recognizing that comparability in regulatory standards is superior to insisting upon additional, but not necessarily better, regulatory requirements.

Consistent with that history and the Commission's statutory authority, CME believes that the Commission's analysis should be more narrowly tailored to determining whether an FBOT is subject to a "comparable" regulatory regime by its home country regulator. In contrast to that approach, we have a significant concern that the proposed rules are too prescriptive and would impose significant burdens without corresponding benefit.

The proposed rules assume that the Commission's current no-action process remains a useful model. We believe that this assumption is incorrect. First, the current no-action process was inconsistent with the law and imposed significant costs without material benefit to any person or process. Second, since Dodd-Frank did not intend to grant the Commission general regulatory authority over FBOTs, the imposition of an information gathering process with limited utility does little more than stretch already limited Commission resources.

Consistent with our past viewpoints, CME suggests that the Commission limit its inquiry to questions regarding the comparability of the regulatory regime in the foreign board of trade's home jurisdiction. Three of the factors currently considered in connection with no-action requests should be the focus of the inquiry: (1) the regulatory regime governing the FBOT in its home jurisdiction; (2) the FBOT's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance); and (3) existing information-sharing agreements among the Commission, the FBOT, and the FBOT's regulatory authority. CME favors a regime that permits foreign exchanges that are subject to a responsible regulatory regime in their home jurisdiction to make their products available for trading in the U.S. by permitting direct or indirect access to their electronic matching system. To facilitate cross-border harmonization of standards, this policy should be adopted in conjunction with responsible foreign regulators adopting a corresponding policy permitting access on similar terms to CFTC regulated exchanges.

This approach focuses the Commission's attention on the legitimacy of the home regulator rather than on the broader inquiries that have informed the no-action process to date and are imbedded in the proposed rules. This process would provide a more tailored inquiry which would, from a cost-benefit standpoint, effectively utilize the Commission's resources while promoting cross-border business. We would expect that the Commission would continue to vigorously monitor that core regulatory principles are being met and that the process is not being abused to avoid legitimate CFTC regulation.<sup>1</sup>

As the markets continue to expand their geographic footprints, we are concerned that, in the event the proposed rules were enacted, the requirements could potentially inhibit existing FBOTs with no-action relief and inhibit additional FBOTs from providing direct access in the U.S. This, in turn, may well affect the ability of a global company such as CME Group from expanding and effectively competing in the global marketplace. CME opposes any action by the CFTC that might encourage foreign regulators to adopt a reactive regulatory stance toward U.S.-based exchanges; the Commission should be cognizant of this realistic possibility as it continues in this rulemaking process.

In addition, we have certain specific points on the proposed requirements which we believe would streamline the process. First, the proposed rules greatly expand the types of information required to be provided by the FBOT in that it requires a significant amount of new information with respect to a clearing organization which clears FBOT products. The Commission should clarify that, if a U.S. Derivatives Clearing Organization ("DCO") serves as the clearing organization for the FBOT or FBOT applicant, many of the requirements may be satisfied simply by noting that the clearing organization is a DCO regulated

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<sup>1</sup> This approach is also consistent with Congress' mandate. In 1982, Congress stated that the Commission, in regulating intermediaries located in the U.S. "may adopt different rules for different foreign boards of trade and markets," acknowledging that the FBOT's home regulatory environment should be taken into account in connection with the regulation of U.S. vendors of its contracts.. H.R. Rep. No. 97-565, Part I, at 53 (1982), *reprinted in* 1982 U.S.C.C.A.N. at 3871, 3902. Congress stated that it "expect[ed] that the Commission will, if necessary, draw distinctions under its regulations between [foreign] exchanges that pose no significant dangers to customers in the United States and others that do." *Id.* at 85, 1982 U.S.C.C.A.N. at 3934.

by the CFTC. See, e.g., Proposed Regulation 48.7 (d) and (e).<sup>2</sup> Many of the requirements are clearly designed to demonstrate that clearing organizations are comparable to DCOs; regardless of the merits of this requirement, DCOs are already regulated by and subject to the ongoing supervision of the CFTC and thus any additional requirements would be unnecessary and burdensome.

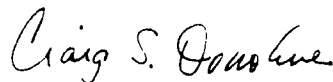
Second, the proposal also promotes a "limited" application process for FBOTs which have operated or are operating pursuant to existing "no-action" relief. As part of this "limited" application, FBOTs are required to not only update but to resubmit all documentation used to support their initial no-action request. While we appreciate the need for the Commission to have updated information, we see little utility, from both a CFTC and an FBOT resource perspective, to justify the burden imposed. We believe that the appropriate approach would be to "grandfather" existing FBOTs into the registration regime with the caveat that the FBOT submit information which has materially changed since the time of the no-action relief (and which was not subsequently provided).

### III. Conclusion

CME Group is a global institution whose ability to compete throughout the world is based upon our ability to be facile and innovative in a competitive environment. As noted above, we have significant concern that the proposed rules are overly prescriptive and will have the effect of engendering retaliatory action by foreign regulators that will inhibit our ability to continue to grow our business and compete effectively in the current global environment.

CME Group thanks the Commission for the opportunity to comment on this matter. 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 via email at [Craig.Donohue@cmegroup.com](mailto:Craig.Donohue@cmegroup.com), or Christopher Bowen, Managing Director, Chief Regulatory Counsel, at (212) 299-2200 or [Christopher.Bowen@cmegroup.com](mailto:Christopher.Bowen@cmegroup.com).

Sincerely,



Craig S. Donohue

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

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<sup>2</sup> We currently provide clearing services for the Dubai Mercantile Exchange.