CME Group

Craig S. Donohue
Chief Executive Officer

February 7, 2011

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

Re: General Regulations and Derivatives Clearing Organizations 75 Fed. Reg. 77576 (Dec. 13, 2010), RIN 3038-AC98

Dear Mr. Stawick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") notice of proposed rulemaking ("NPR") regarding requirements for the chief compliance officer of a derivatives clearing organization ("DCO"), as set forth in proposed Regulation 39.10, and the establishment of regulatory standards for compliance with certain DCO Core Principles.[1] CME Group is the parent of Chicago Mercantile Exchange Inc. ("CME"). CME's clearing house division ("CME Clearing") offers clearing and settlement services for exchange-traded futures contracts, and for over-the-counter ("OTC") derivatives transactions through CME ClearPort. CME is registered with the CFTC as a DCO, and is one of the largest central counterparty clearing services in the world.

A. DCO Chief Compliance Officer

1. Overview

Among the many new requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or "DFA") is the mandate in Section 725(b) (as codified in new Section 5b(i) of the Commodity Exchange Act, or CEA) that each DCO designate an individual to serve as its chief compliance officer. CME Group is committed to promoting and maintaining a strong culture of compliance throughout our organization. In furtherance of that commitment, we devote substantial time and resources to developing compliance policies and procedures and providing compliance education and training to our personnel. These efforts involve officers and employees in various departments throughout CME Group and its subsidiaries, including but not limited to CME and CME Clearing. CME Group supports creating a culture of compliance at CFTC registrants, including DCOs, and concurs with the regulatory policy underlying the requirement for every DCO to have a chief compliance officer ("CCO").

In preparing this letter, we have had the benefit of reviewing comment letters submitted by other market participants in response to the CFTC's separate rulemaking proposal implementing Sections 731(k) and

[1] The NPR also addresses (i) procedures for DCO applications and for the transfer of a DCO registration, (ii) requirements for approval of DCO rules establishing a portfolio margining program for customer accounts carried by a futures commission merchant that is also registered as a securities broker-dealer, and (iii) certain new or revised definitions.

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732(d) of Dodd-Frank, which require every swap dealer, major swap participant and futures commission merchant ("FCM") to appoint a CCO.[2] We have found particularly insightful the comment letters submitted by the Futures Industry Association ("FIA") and the Securities Industry Financial Markets Association (the "FIA/SIFMA Letter"),[3] the National Futures Association (the "NFA Letter"),[4] the National Society of Compliance Professionals (the "NSCP Letter"),[5] and Newedge USA, LLC (the "Newedge Letter").[6] Many of the issues discussed in those letters are also germane to the CFTC's proposal regarding the DCO CCO role. In particular, as we discuss below, while certain aspects of proposed Regulation 39.10 are appropriate, other provisions in the Regulation stray too far afield from Dodd-Frank's mandate and established compliance practices in the financial services industry with respect to the appropriate scope of CCO responsibilities.

2. CCO Reporting Structure

Dodd-Frank provides that the CCO "shall report directly to the board or senior officer" of the DCO.[7] Proposed Regulation 39.10(c)(ii) likewise requires the CCO to report to the DCO's board of directors or senior officer. The CFTC seeks comment as to "(i) [w]hether it would be more appropriate for a CCO to report to the senior officer or the board of directors; (ii) whether the senior officer or board of directors generally is a stronger advocate of compliance matters within an organization; and (iii) whether the proposed rules allow for sufficient flexibility with regard to a DCO's business structure."[8]

CME Group believes that Regulation 39.10 provides a DCO with appropriate flexibility to determine whether its CCO should report to its board or senior officer, and to select which reporting structure works best considering its corporate organization, size and business needs. Of course, a key function of the CCO will be to advise DCO senior management on compliance with applicable laws and regulations, and to keep them informed of developments in these areas. The CCO will also assist senior management in educating DCO staff on compliance issues, and serve as a point of contact within the DCO for compliance questions. Given the CCO's day-to-day responsibilities, it would be logical for a CCO to report to DCO senior management, who are responsible for establishing and communicating a compliance policy and for ensuring that it is observed. Generally speaking, the board of directors (or a board committee) should oversee implementation of compliance policy, and ensure that compliance issues are resolved effectively and expeditiously by senior management with the assistance of the CCO.[9]

With respect to accommodating various DCO business structures, we note that CME Clearing is not a stand-alone entity but operates as a division of a larger corporation (CME). The senior officer of the DCO division is familiar with the day-to-day operations of the DCO and its personnel and is therefore generally

[2] 75 Fed. Reg. 70881 (Nov. 19, 2010).

[3] Letter from FIA and SIFMA (John M. Damgard, FIA President, and Kenneth E. Bentsen, Jr., SIFMA Executive Vice President, Public Policy and Advocacy) to the CFTC (Jan. 18, 2011).

[4] Letter from NSCP (Joan Hinchman, Executive Director, President and CEO) to the CFTC (Jan. 18, 2011).

[5] Letter from NFA (Thomas W. Sexton III, Senior Vice President and General Counsel) to the CFTC (Jan. 18, 2011).

[6] Letter from Newedge (Gary DeWaal, Senior Managing Director and Group General Counsel) to the CFTC (Jan. 7, 2011).

[7] DFA § 725(b), CEA § 5b(i)(2)(A).

[8] 75 Fed. Reg. 77576, 77581 (Dec. 13, 2010).

[9] *Compliance and the Compliance Function in Banks*, Basel Committee on Banking Supervision, at 9-10 (April 2005).

best positioned to ensure that the DCO division is compliant with the CEA and CFTC Regulations. Accordingly, a DCO may determine that its CCO should report to the senior officer of the DCO division rather than reporting to the senior officer of the larger corporation.[10] In order to provide for a divisional or business-unit approach, we ask the CFTC to clarify that the term "senior officer" of the DCO (as used throughout Regulation 39.10) may apply to the senior officer of a division that is engaged in DCO activities.

3. Potential for CCOs with Other Duties

Proposed Regulation 39.10(c)(i) requires the CCO to "have the background and skills appropriate for fulfilling the responsibilities of the position" and prohibits anyone who would be disqualified from registration under Sections 8(a)(2) or (a)(3) of the CEA from serving as CCO. The CFTC requests comment on whether additional limitations should be placed on the person who may be designated as the CCO. In particular, the CFTC asks whether it should restrict the CCO position from being held by an attorney who represents the DCO or its board of directors, such as in-house counsel. The rationale for such a restriction would be based on concerns that the interests of acting as defense counsel "would be in conflict with the duties of the CCO."[11]

CME Group recognizes that it may be preferable for a CCO to only perform compliance activities, and that compliance staff, and in particular the CCO, should not be placed in a position where possible conflicts of interest may arise between their compliance responsibilities and other duties they perform at the DCO. Nevertheless, it is commonplace for CCOs to have certain other job responsibilities, most typically in related "control areas" such as the Legal Department or Internal Audit.[12] At a minimum, the CCO inevitably will share some functions with Legal and Internal Audit, and will engage in ongoing coordination and information sharing with those departments in order for each to carry out its role efficiently and effectively. We believe the CFTC should not add further restrictions to the CCO role but should retain an approach that gives DCOs flexibility to determine whether their CCOs may perform certain tasks that are not strictly compliance-related.[13]

[10] Similar "division" issues were raised in at least one comment letter regarding CCO requirements for swap dealers, major swap participants and FCMs. Letter from Cargill Inc. (David Robertson, Assistant Vice President & Assistant General Counsel) to the CFTC (Jan. 14, 2011).

[11] 75 Fed. Reg. at 77581-82.

[12] Recent surveys indicate that about 35 to 40 percent of companies polled have a CCO that does not have other job responsibilities, and that where the CCO job is shared with another title, it is most commonly someone from the Legal department (at around 20 percent of survey participants), or Internal Audit (at around 10 percent of survey participants). Melissa Klein Aguilar, *Chief Compliance Officer Now a Full-Time Job*, Compliance Week (Dec. 15, 2009).

[13] Having a CCO also act as in-house counsel may present certain challenges with respect to defining and maintaining appropriate roles. For example, in order to preserve the attorney-client privilege (which generally does not apply to CCO communications, even if the CCO is an attorney), "[l]awyers who also perform compliance functions should make clear to other employees when they are acting as legal counsel and providing legal advice." Securities Industry Association, Compliance & Legal Division, *White Paper on the Role of Compliance*, at 3 (October 2005) ("SIA White Paper"). However, issues such as this do not necessitate a blanket prohibition against CCOs also serving as in-house counsel.

4. Overbreadth of Proposed CCO Responsibilities

a. "*Ensuring" Compliance*

As proposed, Regulation 39.10(c)(2)(iv) purports to require CCOs to "ensur[e] compliance with" the CEA and CFTC regulations "relating to agreements, contracts, or transactions, and with [CFTC] regulations prescribed under section 5b of" the CEA (which addresses DCO Core Principles). Although this mirrors language in Dodd-Frank requiring CCOs to "ensure compliance", we do not believe that Congress intended the CFTC to promulgate regulations that burden CCOs with such an insurmountable task.

As stated in the NFA Letter, "[t]he CCO should not…be held to the impracticable standard that must 'ensure' a firm's compliance as contemplated in the Commission's proposal."[14] The appropriate standard – and one that is actually achievable – is to require CCOs to put in place measures *reasonably designed to* ensure compliance with the CEA and CFTC regulations. This is consistent with FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes), which requires the CCO of broker-dealer members to establish written policies and procedures "reasonably designed to achieve compliance with applicable" rules, regulations and laws.

The Financial Stability Oversight Council ("FSOC") utilized this same standard in a recent study recommending that boards of directors and CEOs of banks be made "responsible for developing and maintaining a program *reasonably designed to achieve compliance* with the Volcker Rule."[15] Furthermore, as explained in the NSCP Letter:

> …the Gramm Leach Bliley Act required, in Section 501, that financial institutions adopt safeguards to "ensure the security and confidentiality of personal information." During the rulemaking by the banking regulators, FTC and SEC, the regulators recognized that this standard needed to be modified, and required that financial institutions be required by the regulations to adopt safeguards "designed to ensure the security and confidentiality of personal information." That standard remains in the regulations to this day, has worked well, and has never been objected to by Congress as inconsistent with its instructions. This example suggests that the CFTC can adopt regulations that are consistent with the spirit of Dodd-Frank and will work well, without adopting verbatim the "ensuring" compliance standard for CCOs.[16]

The CFTC appears to acknowledge the impracticality of an "ensuring compliance" standard elsewhere in the proposed Regulation. Most notably, Regulation 39.10(c)(2)(viii) requires the CCO to establish "a compliance manual *designed to promote* compliance", and a "code of ethics *designed to prevent* ethical violations and to *promote* ethical conduct." CME Group urges the CFTC to amend the language throughout Regulation 39.10 to require CCOs to establish measures *reasonably designed to* ensure compliance with the pertinent sections of the CEA and CFTC regulations.

[14] NFA Letter at 6.

[15] Financial Stability Oversight Council, *Study & Recommendations on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds*, at 35 (Jan. 2011) (the "FSOC Study").

[16] NSCP Letter at 3.

b. "*Enforcing" Compliance Policies and Procedures*

Proposed Regulation 39.10(c) would require each DCO to provide its CCO "with the full responsibility to develop and enforce, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures", as that term is defined in proposed Regulation 39.1(b). This provision raises several serious concerns.

First, the CFTC proposes to define "compliance policies and procedures" to encompass "all policies, procedures, codes, including a code of ethics, safeguards, rules, programs, and internal controls that are required to be adopted or established by a DCO pursuant to the Act, Commission regulations, or orders, or that otherwise facilitate compliance with the Act and Commission regulations." Literally construed, this definition would burden CME Clearing's CCO with "full responsibility to develop and enforce", among other things, the CME Rule Book and CME's financial and accounting policies, procedures and internal controls. In order to avoid such profoundly negative and obviously unintended consequences, the CFTC should narrow the definition of "compliance policies and procedures" to encompass only "those policies, procedures and codes, including a code of ethics, that are required to be adopted or established by a DCO pursuant to the Act, Commission regulations or orders." We further suggest that, for the sake of consistency, the CFTC should harmonize the terminology and definitions of "compliance policies and procedures" for DCOs and "compliance policies" for FCMs, swap dealers and major swap participants.[17]

Second, the text of Dodd-Frank does not require a CCO to "enforce" compliance policies and procedures, and neither should Regulation 39.10. The importance of separating a CCO's functions of monitoring and advising on compliance issues from senior management's functions of enforcing and supervising compliance policies is well-established in the financial services industry. This critical division of responsibilities is described in the Security Industry's Association's *White Paper on the Role of Compliance*:

> The role of the Compliance Department is to advise businesses on how to comply with applicable laws and regulations, and to monitor business activity and employee conduct to identify violations (or potential violations) of rules, regulations, policies, procedures and industry standards. Even with the evolving, and in many cases increased, emphasis being imposed on the Compliance Department function, there is a huge difference between the role of the Compliance Department and its personnel, and the overall broad firm responsibility "to comply" with applicable rules and regulations. The Compliance Department plays an integral support function for firm compliance programs, but only senior management and business line supervisors ultimately are responsible for ensuring firm compliance with laws and regulations. Since these different roles are often confused, it is critical to understand and maintain these distinctions.[18]

The NSCP Letter similarly emphasizes that the CCO "guides, tests, monitors and reports on the status of a registrant's activities for compliance with the law but does not actually engage in the business of the firm. It is the business unit within the registrants that either obeys the law or violates it. All that the CCO

[17] The CFTC has proposed to require CCOs of FCMs, swap dealers and major swap participants to establish "compliance policies", a term the CFTC has proposed to define as "all policies, procedures, codes, safeguards, rules, programs, and internal controls required to be established by a registrant pursuant to the Act and Commission regulations, including a code of ethics."

[18] SIA White Paper at 10 (footnotes omitted).

can do is guide, monitor, and report on these business activities."[19] The NFA also disagrees with the CFTC's proposal "to the extent that it seeks to expand the CCO's oversight role of a firm's compliance function to one of a line supervisor who is ultimately responsible for the execution of compliance policies."[20]

To give effect to the well-established and critical distinction between a CCO's monitoring and advisory role and senior management's enforcement and supervisory role, we urge the CFTC to revise the language of proposed Regulation 39.10(c) to require DCOs to provide their CCOs "with responsibility to develop, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures...." For similar reasons, we urge the CFTC to revise proposed Regulation 39.10(c)(2)(vi) to require the CCO to "[e]stablish[] appropriate procedures [for] the handling, management response, remediation, retesting, and closing of noncompliance issues", and to eliminate the requirements that the CCO "follow[]" such procedures (which is a function of senior management).

c. *Resolving Conflicts of Interest*

Proposed Regulation 39.10(c)(2)(ii) would require the CCO, "in consultation with the board of directors or the senior officer," to "resolv[e] conflicts of interest that may arise."[21] This mirrors language in Dodd-Frank. Nevertheless, as the FIA/SIFMA Letter observes, when Congress stated in Dodd-Frank that the CCO should "resolve" conflicts of interest:

> …it did not intend to mean "resolve" in the executive or managerial sense such that the CCO alone would examine the facts and determine and effect the course of action. We believe Congress intended to mean identify, advise [and] escalate as appropriate and assist senior management in resolving conflicts, and to require putting in place reasonable procedures for the resolution of conflicts. Again, the authority to actually resolve conflicts, like the power to enforce compliance, is a duty that should remain with the firm's senior executives and supervisors.[22]

We agree with this analysis and urge the CFTC to revise Regulation 39.10(c)(2)(ii) to require the CCO, in consultation with the board of directors or the senior officer, to establish policies and procedures reasonably designed to resolve any conflicts of interest that may arise.

[19] NSCP Letter at 3.

[20] NFA Letter at 6-7.

[21] The NPR states that such conflicts of interest would include: "Conflicts between business considerations and compliance requirements; conflicts between the consideration to restrict clearing membership to certain types of clearing members and the requirement that a DCO provide fair and open access; conflicts between and among different categories of clearing members of the DCO; conflicts between a DCO's clearing members and its management; and conflicts between a DCO's management and members of the board of directors." 75 Fed. Reg. at 77581.

[22] FIA/SIFMA Letter at 3.

5. Annual Compliance Report

a. *Content*

Dodd-Frank requires the CCO to "annually prepare and sign a report that contains a description of (i) the compliance of the [DCO] with respect to" the CEA and CFTC regulations, "and (ii) each policy and procedure of the [DCO] (including the code of ethics and conflict of interest policies of the [DCO])."[23] These requirements are reflected in Regulation 39.10(c)(3)(i). As proposed, the Regulation would further require the annual compliance report to contain the following information:

- For each DCO Core Principle: (A) a list of the compliance policies and procedures that "ensure compliance"; (B) an assessment as to the effectiveness of such policies and procedures; and (C) a discussion of areas for improvement and recommendations for potential or prospective changes or improvements to the DCO's compliance program and resources allocated to compliance.
- A list of any material changes to the DCO's compliance policies and procedures since the last annual report.
- A description of the financial, managerial and operational resources set aside for compliance with the CEA and CFTC regulations.
- A description of "any material compliance matters," including incidents of noncompliance, since the last annual report, and of the corresponding action taken.
- A delineation of the roles and responsibilities of the DCO's board of directors, relevant board committees and staff in addressing any conflict of interest, including any necessary coordination with, or notification of, other entities, including regulators.

We reiterate our concerns regarding language in the proposed Regulation requiring the CCO to "ensure" compliance, and the overbreadth of the proposed definition of "compliance policies and procedures." In addition, CME Group supports the recommendation in the FIA/SIFMA Letter that the CFTC specify key areas that should be discussed in the annual report, rather than requiring the report to describe in detail the registrant's compliance with respect to each of the numerous components of the CEA and CFTC regulations.[24] The CFTC may have intended to accomplish this result by referring specifically to compliance with the DCO Core Principles in proposed Regulation 39.10(c)(3)(ii). However, we believe the CFTC should revise subparts (i) and (ii) of the DCO annual report provisions to require the report to: (i) contain a description of the DCO's compliance with respect to the DCO Core Principle provisions in the CEA and CFTC regulations, and the DCO's compliance policies and procedures (as we suggest that term be defined); and (ii) with respect to each of the Core Principles, provide the information currently listed in proposed Regulation 39.10(c)(3)(ii)(A)-(C).

In addition, rather than requiring the annual report to describe all material compliance matters and actions taken in response thereto, a better approach would be to require the report to identify *any material non-compliance issues that were not properly addressed*. This approach is also recommended in the NSCP Letter, which observes that "the key issue is not whether compliance issues happened at a firm, but

[23] DFA § 725(b), CEA § 5b(i)(3)(A)(i)-(ii).

[24] FIA/SIFMA Letter at 18.

whether a firm's governance and supervisory procedures are operating reasonably, and whether material issues were escalated and remediated by the firm." [25] We agree with the NSCP that broad reporting requirements with respect to compliance issues may create a chilling effect on open and continuous communication with the CCO and would be seriously counterproductive to good public policy.

b. *Certification Requirement*

Dodd-Frank provides that the annual report "shall…include a certification, that under penalty of law, the compliance report is accurate and complete."[26] Dodd-Frank is silent as to the person who shall make the required certification. The CFTC proposes to add that task to the CCO's list of responsibilities. We urge the CFTC to reconsider that approach, and to instead require the senior officer of the DCO (or, in the case of a DCO that is a division of a larger corporation, the senior officer of the DCO division) to make the required certification.

As explained in the comment letters submitted by FIA/SIFMA, NFA and Newedge regarding CCO requirements for FCMs, swap dealer and major swap participants:

- The best way to achieve the goal of a robust effective compliance program, and to close the loop on creating a culture of compliance, is to require the registrant's senior officer – and not the CCO – to complete the required certification.[27]

- A certification by the registrant's senior officer would be consistent with FINRA Rule 3130, which requires the firm's CEO (or equivalent officer) to execute the annual compliance certification, after consulting with the CCO and such others, to the extent appropriate, in order to attest to the statements in the certification.[28]

Furthermore, the FSOC has recommended that banks' senior officers certify compliance with the Volcker Rule. More specifically, the FSOC urged agencies to "strongly consider requiring the CEO to attest publicly to the ongoing effectiveness of the internal compliance regime. This will ensure the highest level of compliance for the satisfaction of these expectations."[29] CME Group similarly urges the CFTC to strongly consider requiring the DCO's senior officer, and not its CCO, to make the necessary certification in the annual compliance report.

[25] NSCP Letter at 4.

[26] DFA § 725(b), CEA § 5b(i)(3)(B).

[27] FIA/SIFMA Letter at 16; NFA Letter at 8.

[28] FIA/SIFMA Letter at 16; Newedge Letter at 7.

[29] FSOC Study at 36.

c. *Confidentiality*

CME Group concurs with the observation in the FIA/SIFMA Letter that CFTC regulations governing annual compliance reports should "expressly state that Annual Reports shall be confidential documents that are not subject to public disclosure by listing such Annual Reports as a specifically exempt item in Regulation 145.5."[30] We urge the CFTC to revise the provisions in proposed Regulation 39.10 regarding DCO annual compliance reports accordingly.

6. Insulating CCOs from Undue Pressure or Coercion

The CFTC seeks comment on whether it should adopt a regulation that requires DCOs to "insulate a CCO from undue pressure and coercion."[31] Absent such a regulation, the CFTC asks how potential conflicts "between and among compliance interests, commercial interests, and ownership interests of a DCO" can be addressed.[32] Regulation 39.10, as proposed, provides several important mechanisms designed to minimize the likelihood that a CCO will fail to adequately perform her function as a result of inappropriate pressure from other parts of the business. In particular, Regulation 39.10(c)(i) requires the CCO to have "the background and skills appropriate for fulfilling the responsibilities of the position." Regulation 39.10(c) mandates that the CCO be given authority to develop appropriate compliance policies and procedures for the DCO. Moreover, pursuant to Regulation 39.10(c)(iv), a DCO must report to the CFTC whenever there is a change in the designation of the person serving as its CCO. Additionally, our recommendation to require the senior officer of the DCO to certify the annual compliance report should greatly reduce any incentive DCO senior management may have to discourage the CCO from fulfilling her job responsibilities.

Beyond these measures, CME Group believes that each DCO should be given flexibility to take additional steps (based on the DCO's particular corporate structure, size and complexity) designed to ensure an appropriate level of independence for its CCO. Such steps might include, for example: (a) in those cases where the CCO reports to the senior officer, giving the CCO a right of direct access to the board of directors (or a board committee), bypassing normal reporting lines, should the CCO determine that such a course of action is necessary; (b) having Internal Audit review the activities of the DCO compliance function; (c) requiring that the board of directors be informed when the CCO leaves that position, and the reasons for the departure; and (d) where the DCO is part of a larger organization, not tying CCO remuneration to the DCO's financial performance.[33] We urge the CFTC to provide DCOs with flexibility in designing such additional arrangements, and to refrain from prescribing detailed CCO-independence measures that would force all DCOs into "one size fits all" standards.

[30] FIA/SIFMA Letter at 20-21.

[31] 75 Fed. Reg. at 77582.

[32] *Id.*

[33] Where the DCO is part of a larger corporate organization, CCO remuneration related to the financial performance of the larger organization as a whole should generally be acceptable.

7. Implementation Period

The CFTC requests comment on an appropriate effective date for Regulation 39.10. As noted above, the CCO role and related compliance requirements are new for DCOs under Dodd-Frank. "Generally, for a registrant that does not currently have a CCO or compliance program, approximately eighteen months would be required to recruit and hire a CCO and implement a compliance program."[34] That time period is particularly appropriate here because of the challenges associated with locating and retaining an individual with the relatively unique background and skills necessary and appropriate for fulfilling the responsibilities of a DCO CCO. Given that Dodd-Frank and forthcoming CFTC regulations will require several categories of registrants to employ CCOs, many companies will be undertaking a CCO job search simultaneously which will likely make the task of retaining a qualified CCO even more competitive and time consuming than in normal conditions.

Furthermore, once employed, the CCO's responsibilities will entail more than simply becoming familiar with the CFTC's regulatory requirements (including the myriad new regulatory requirements under Dodd-Frank) and preparing a compliance manual and code of ethics. The CCO will also be expected to comprehensively monitor the DCO's business activities, which will require building an effective compliance framework and surveillance systems tailored for DCO compliance monitoring needs, and commensurate with the particular DCO's compliance risk profile. The CCO (and outside consultants and/or compliance personnel the DCO may retain to assist with these tasks) will need to consider data collection, analytical requirements and reporting needs in order to build and apply solution frameworks that integrate data and deliver it in a way that enables the CCO and the DCO's business supervisors to monitor, surveil and supervise in accordance with the DCO's compliance policies and procedures, and to comply with new CFTC DCO reporting requirements.[35] We believe that, in order to accomplish all of these tasks, DCOs will require an implementation period of not less than 18 months after Regulation 39.10 is issued in final form.

B. DCO Core Principles

1. Core Principle N (Antitrust Considerations)

Proposed Regulation 39.23 provides, "Unless necessary or appropriate to achieve the purposes of the Act, a [DCO] shall not adopt any rule or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden." The CFTC requests comment on "whether there are additional standards or requirements that should be imposed to more effectively implement the purposes of DCO Core Principle N." We believe that the Regulation is adequate as proposed.

2. Core Principle R (Legal Risk)

Proposed Regulation 39.27 addresses new DCO Core Principle R regarding Legal Risk. Subpart (a) of the Regulation requires DCOs to have all necessary legal authorizations in place. Subpart (b) requires DCOs to have a "well-founded, transparent, and enforceable legal framework" that provides for significant aspects of the DCO's operations, risk management procedures and related requirements. For DCOs that provide clearing services outside of the U.S., subpart (c) requires the DCO to, among other things, "identify and address *any* conflict of law issues." We believe this requirement is unduly overbroad, and we

[34] NSCP Letter at 8.

[35] *See generally* 75 Fed. Reg. 78185 (Dec. 15, 2010), Information Management Requirements for DCOs.

urge the CFTC to revise Regulation 39.27(c) to require DCOs to "identify and address any *material* conflict of law issues."

CME Group thanks the CFTC for the opportunity to comment on this matter. We would be happy to discuss any of these issues with the Commission and its staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or Craig.Donohue@cmegroup.com; or Lisa Dunsky, Director and Associate General Counsel, at (312) 338-2483 or Lisa.Dunsky@cmegroup.com.

Sincerely,

Craig S. Donohue

CSD/110211 CFTC Comment Ltr

cc: Chairman Gary Gensler (via e-mail)
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