CME Group

Craig S. Donohue
Chief Executive Officer

February 14, 2011

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

Re: Information Management Requirements for Derivatives Clearing Organizations
75 Fed. Reg. 78185 (Dec. 15, 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 regulations intended to establish standards for a derivatives clearing organization ("DCO") to comply with DCO Core Principles J (Reporting), K (Recordkeeping), L (Public Information) and M (Information Sharing). 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.

Our comments primarily focus on the CFTC's proposal with respect to Core Principle J (Reporting). As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or "DFA"), Core Principle J provides that each DCO "shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of" the DCO.[1] The CFTC proposes to adopt new Regulation 39.19 to establish requirements that a DCO must satisfy to comply with this Core Principle. The Regulation would require each DCO to provide certain specified information daily, quarterly, annually, upon occurrence of a specific event, or upon the CFTC's request. Unless otherwise specified by the CFTC or its designee (in this case, the Director of the Division of Clearing and Intermediary Oversight or his designee),[2] the information would be submitted electronically and in a form and manner prescribed by the CFTC.[3]

A. Daily, Quarterly and Annual Reporting Requirements

As set forth in proposed Regulation 39.19(c)(1)-(3), information to be reported by DCOs on a daily, quarterly and annual basis generally would include position information, margin requirements and related cash flows by customer origin and house origin, information relating to the DCO's financial resources, audited financial statements, and the DCO's annual compliance report. While CME Group is happy to comply with these proposed reporting requirements, we urge the CFTC to work with DCOs to determine

[1] DFA §725(c), Commodity Exchange Act ("CEA") §5b(c)(2)(J).

[2] *See* proposed Regulation 21.06.

[3] Regulation 39.19 provides no further information regarding the form and manner in which DCOs would be required to report information to the CFTC.

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the form and manner in which information will be supplied, particularly with regard to information required to be reported on a daily basis relating to positions and margin requirements, which we expect will be voluminous.

B. Event-Specific Reporting Requirements

1. *Intraday Margin Calls*

Event-specific reporting required under proposed Regulation 39.19(c)(4) would include "[a]ny intraday margin calls to a clearing member", which a DCO would have to report to the CFTC "no later than 1 hour following the margin call." The NPR theorizes that this information would "better position[]" the CFTC "to conduct risk surveillance activities efficiently, to monitor the financial health of the DCO, and to detect any unusual activity in a timely manner."[4] Intraday margin calls to clearing members are routine; they are not indicative of issues with a DCO's financial health or "unusual activity." Requiring DCOs to report to the CFTC each intraday margin call to a clearing member within one hour of the call would result in a significant amount of "busy work" for DCOs, with questionable benefit to the CFTC's goal of enhanced risk surveillance. If it is determined that the CFTC would benefit from having information about every intraday margin call, we urge the CFTC to add this requirement to the "daily reporting" section of Regulation 39.19 and allow DCOs to provide information to the CFTC regarding intraday margin calls by 10 a.m. the following business day.

2. *Events Requiring "Immediate" Notice*

Regulation 39.19(c)(4)(v)-(ix) would require "immediate" notice to the CFTC in whenever: (a) a clearing member fails to meet a margin call within the timeframe allowed by the DCO; (b) the DCO directs a clearing member to reduce its positions because the clearing member has exceeded its exposure limit or has failed to satisfy a financial obligation to the DCO; (c) the DCO determines that any position must be immediately liquidated or transferred, or that trading in any clearing member account shall be for liquidation only, because the clearing member failed to satisfy a financial obligation to the DCO; and (d) a clearing member defaults to the DCO. CME Group recognizes the importance of DCOs providing such information to the CFTC in an expeditious fashion. However, rather than requiring DCOs to provide "immediate" notice, we suggest that the CFTC require that "prompt" notice be given. An "immediate" notification requirement suggests that the very first thing the DCO must do is notify the CFTC (in whatever form and manner of electronic submission the CFTC may require), even before the DCO attends to the situation giving rise to the notice requirement and gathers all relevant information. A "prompt" notice requirement, on the other hand, would require the DCO to notify the CFTC quickly and expeditiously, while allowing the DCO to first attend to the situation at hand and ensure that the information reported to the CFTC is complete and accurate.

Regulation 39.19(c)(4)(xiv) would require "immediate" notice to the CFTC when the DCO "knows or reasonably should have known of": (a) the filing of any legal proceeding "which may have a material adverse financial impact on" the DCO; (b) "[a]ny event, circumstance or situation that materially impedes the [DCO's] ability to comply with this part and is not otherwise required to be reported under this

[4] 75 Fed. Reg. 78185, 78187 (Dec. 15, 2010).

section"; and (c) a "material adverse change in the financial condition of a clearing member that is not otherwise required to be reported under this section." We believe that certain aspects of these reporting requirements are unduly broad and unnecessary for the CFTC's statutory purpose of conducting oversight of DCOs.

Notice of legal proceedings should be limited to proceedings *to which the DCO or one of its affiliates is a party* and that may have a material adverse impact on the DCO. The CFTC should not require a DCO to provide notice of legal proceedings to which the DCO or its affiliate is not a party but which could, in theory, have a material adverse impact on the DCO (*e.g.,* a lawsuit against the CFTC challenging the validity of certain regulations). Furthermore, given the pace at which legal proceedings move forward, DCOs should be required to provide notice to the CFTC within 30 days of service of the complaint or other pleading on the DCO or its affiliate rather than requiring "immediate" notice.

We believe the "catch all" requirement that a DCO report "any event, circumstance or situation that materially impedes" its ability to comply with the Part 39 Regulations, and which it is not already required to report under Regulation 39.19, will prove too much in practice. Assuming, for example, that the CFTC requires DCOs to report certain information by e-mail, a DCO would be required to give the CFTC immediate notice whenever it has an e-mail outage (regardless of duration). Similarly, in connection with Core Principle L (Public Information) and proposed Regulation 39.21, a DCO would required to give the CFTC "immediate" notice any time its web site goes down (again, regardless of duration). Such information would be of questionable value to the CFTC. DCO reporting requirements are adequately addressed in other provisions of Regulation 39.19, and we suggest that the CFTC strike the proposed "catch all" reporting requirement in Regulation 39.19(c)(4)(xiv)(B).

CME Group further suggests that the CFTC require "prompt" (rather than "immediate") notice of any material adverse change in the financial condition of a clearing member that the DCO is not otherwise required to report. Similarly, proposed Regulation 39.19(4)(iii) should be amended to require "prompt" (rather than "immediate") notice when a DCO knows or reasonably should know of a deficit in the six-month liquid asset requirement in Regulation 39.11(e)(2).

3. *Rule-Enforcement Actions*

Proposed Regulation 39.19(c)(4)(xiii) would require a DCO to notify the CFTC no later than two business days after the DCO either: (a) "initiates a rule enforcement action against a clearing member"; or (b) "imposes sanctions against a clearing member." CME Group supports the proposal to require a DCO to report to the CFTC within two business days information with respect to sanctions imposed against a clearing member. We ask the CFTC to clarify that such notice would be required within two business days of the effective date of the sanctions.

CME Group does not support the proposal to require a DCO to notify the CFTC when it "initiates a rule enforcement action against a clearing member." The concept of initiating an enforcement action may apply to the CFTC's Division of Enforcement, which initiates enforcement actions against market participants by filing complaints or other pleadings in federal court or with an Administrative Law Judge. It does not apply, however, to the manner in which CME Clearing enforces rules against clearing members.

Generally speaking, pursuant to CME Rule 403.A, the Clearing House Risk Committee ("CHRC") "may conduct investigations, issue charges and consider offers of settlement on its own initiative or by referral from Exchange staff, the [Probable Cause Committee], or the [Business Conduct Committee]." In most cases, CME Clearing staff refers potential rule violations to the CHRC based on issues encountered in the course of clearing member audits. CME Clearing staff and the clearing member typically exchange written correspondence with respect to audit findings and the resolution thereof. In certain instances, this process results in a staff recommendation to the CHRC that sanctions be imposed against the member firm. We do not believe that any stage in this process can be equated to "initiating a rule enforcement action against a clearing member." A better approach would be to eliminate the requirement that DCOs report the initiation of rule enforcement actions against clearing members and simply require them to report when they impose sanctions against clearing members.

In addition, we note that CME Clearing is not a standalone corporation. Rather, it is a division of CME, a corporation which also includes a designated contract market ("DCM") with its own Market Regulation Department that operates in accordance with the DCM Core Principles. CME's Market Regulation Department is frequently involved with the issuance of sanctions against members and member firms, including but not limited to firms that are clearing members. The CFTC has issued a lengthy rulemaking proposal regarding regulations designed to implement the DCM Core Principles, including various reporting requirements.[5] In order to provide for a divisional approach to DCOs, and to avoid duplicative regulatory reporting requirements, we ask the CFTC to clarify that the reporting requirements in proposed Regulation 39.19(c)(4)(xiii) apply to sanctions issues by a DCO division and not to sanctions issued by a related DCM division.

4. *Other Event-Specific Reporting Requirements*

Proposed Regulation 39.19(c)(4)(x) would require a DCO to report to the CFTC various information and documentation concerning anticipated changes in ownership and organizational structure of the DCO and its parent company, generally three months before any such changes occur. The information a DCO must report would include the creation of a new subsidiary, or the elimination of an existing subsidiary, not only of the DCO but of its parent company. We do not believe that information about the creation or elimination of a separate subsidiary of the DCO's parent company would serve the CFTC's purpose of "conduct[ing] more effective and more streamlined oversight financial oversight of a DCO", or otherwise "enhance the Commission's ability to conduct a more in-depth and timely analysis of a DCO's activities, thereby enabling the Commission to identify insipient problems and address them at an earlier stage."[6] Furthermore, plans of a DCO's parent company to create (or eliminate) a subsidiary may be highly confidential – particularly three months before the anticipated change is expected to occur – and should not be required to be reported to the CFTC without a showing of compelling need. Because the value of this information to the CFTC is questionable, and the burdens associated with providing it may be substantial, we urge the CFTC to eliminate this reporting requirement.

Finally, as proposed, Regulation 39.19(c)(4)(xii) would require a DCO to report to the CFTC changes to the DCO's credit-facility funding arrangement no later than one business day after the DCO changes the arrangement, is notified that the arrangement has changed, "or knows or reasonably should have known

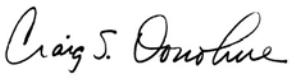
[5] Core Principles and Other Requirements for Designated Contract Markets, 75 Fed. Reg. 80572 (Dec. 22, 2010).

[6] 75 Fed. Reg. at 78187.

that the arrangement will change." CME Clearing renews its credit-facility funding arrangement each year. The annual renewal inherently involves the types of changes that would trigger the reporting requirements of this provision. However, CME Clearing does not know the content of those changes with any certainty until the agreement is finalized and executed by the parties. Providing notice to the CFTC when CME Clearing knows that its credit-facility funding arrangement will change, but is not yet certain of the content of those changes, would serve no apparent useful purpose. We therefore suggest that that the CFTC eliminate from proposed Regulation 39.19(c)(4)(xii) the requirement that a DCO notify the CFTC when it "knows or reasonably should have known that the arrangement will change."

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,



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