CME Group

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Chief Executive Officer

February 22, 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: Core Principles and Other Requirements for Designated Contract Markets (RIN number 3038-AD09); (Federal Register Vol. 75, No 245, Page 80572)

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 December 22, 2010. In the Release, the Commission seeks comment on proposed rules, guidance and acceptable practices, which apply to the designation and operation of contract markets.

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, São Paolo and Kuala Lumpur reduce our customers' connectivity costs, increase accessibility, and deliver faster, more efficient trading. Additionally, CME has established international offices in London, Singapore, Tokyo, Hong Kong, São Paolo 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.

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I. Overview

We support the overarching goals of the Dodd-Frank Act ("DFA") to reduce systemic risk through central clearing and exchange trading of derivatives, to increase data transparency and price discovery, and to prevent fraud and market manipulation. Unfortunately, DFA left many important issues to be resolved by the regulators with little or ambiguous direction and set unnecessarily tight deadlines on rulemakings by the agencies charged with implementation of the Act. In response to the urgent schedule imposed by DFA, the Commission has proposed hundreds of pages of new or expanded regulations.

Within those hundreds of pages of regulations issued thus far, the Commission has put forth proposals aimed at implementing the overarching goals of DFA. Such proposals include proposed rules that will, among other things, serve as the foundation for the reporting of swap data to the Commission and determining which swaps will be subject to the clearing mandate. While we disagree with the substance and sequencing of some of those proposals, we commend the Commission's efforts to effectuate Congress' goals of bringing transparency to the previously un-regulated swaps market and reducing systemic risk.

Other proposals, however, are far outside the bounds of the Commission's statutory mandate. Specifically, many of the Commission's proposals are not required by or are inconsistent with DFA, impose unnecessary and costly burdens on the industry, and require increases in CFTC staff and expenditures to adopt and enforce. These proposals are particularly objectionable in light of the Commission's repeated complaints that it lacks the funding necessary to implement and enforce DFA. Rather than focusing its resources on implementing the rules and regulations necessary to achieve the principle objectives of DFA, the Commission has warned the industry that alleged resource constraints may cause it to enact rules or prioritize tasks in ways that will stifle innovation and competition. For example, Commissioner Dunn recently stated that if the CFTC's "budget woes continue, my fear is that the CFTC may simply become a restrictive regulator. In essence, we will need to say "No" a lot more . . . No to anything we do not believe in good faith that we have the resources to manage" and that "such a restrictive regime may be detrimental to innovation and competition."[1]

We do not object to the CFTC's receiving an appropriate budget; however, we do object to the CFTC's wasting scarce resources to impose uncalled-for regulations and duplicate the oversight of self-regulatory organizations ("SROs") subject to its jurisdiction. While the financial crisis focused well-warranted attention on the lack of regulation of OTC financial markets, and Congress crafted legislation that, we hope, reduces the likelihood of a repetition of that near disaster, it is important to emphasize that regulated futures markets and futures clearing houses did not contribute to that crisis. Indeed, CFTC-regulated futures exchanges and clearing houses operated flawlessly, performing all of their essential functions without interruption. Significantly, while large financial firms regulated by other oversight agencies failed, our clearing house experienced no default and no customers on the futures side lost their collateral or were unable to immediately transfer positions and continue managing risk.

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[1] Commissioner Michael V. Dunn, Opening Statement, Public Meeting on Proposed Rules Under Dodd-Frank Act (January 13, 2011), available at http://www.cftc.gov/PressRoom/SpeechesTestimony/dunnstatement011311.html

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Despite the exemplary performance of the CFTC-regulated futures exchanges and clearing houses during this time of severe market turmoil, the Commission, in its Release, is proposing to rewrite the regulatory regime for DCMs that served the market so well during the crisis. Specifically, many of the Commission's proposed rulemakings, if adopted, would convert the regulatory system for the futures markets from the highly successful principles-based regime that has permitted U.S. futures markets to prosper as an engine of economic growth for this nation, to a restrictive, rules-based regime that will stifle growth and innovation. The Commission's action in this regard would be contrary to both the letter and spirit of the Commodity Exchange Act ("CEA"). In fact, not only did Congress preserve principles-based regulation in DFA, it reinforced the vitality of that regime by expanding the list of core principles applicable to DCMs and DCOs and creating a regulatory regime for swap execution facilities ("SEFs") and swap data repositories ("SDRs") cemented in core principles. Although DFA granted the Commission the authority to adopt rules with respect to core principles, it did not direct the Commission to eliminate principles-based regulation. DFA made clear that SROs were granted "reasonable discretion in establishing the manner in which the [SROs] compl[y] with the core principles."

Congress' decision to maintain principles-based regulation for the futures market and extend that regime to the newly-regulated swaps market makes sense when one considers the transformative effect that principles-based regulation has had on the U.S. futures market over the last decade. Since the adoption of the Commodity Futures Modernization Act of 2000 ("CFMA") — which converted the CEA from a rules-based regime to a principles-based regime — the regulated U.S. futures markets have experienced unparalleled growth and innovation. We believe strongly that principles-based regulation of futures exchanges and clearing houses permitted U.S. exchanges to regain and maintain their competitive position in the global market. Specifically, it allowed U.S. futures exchanges to keep pace with rapidly changing technology and market needs by introducing new products, new processes and new methods by certifying compliance with the CEA and thereby avoiding stifling regulatory review. U.S. futures exchanges operate more efficiently, more economically and with fewer complaints under this system than at any time in their history.

Moreover, abandoning this successful regulatory regime, as the Commission proposes in the Release, would convert the Commission's role from an oversight agency, whose role is to assure compliance with sound principles, to a front line decision-maker that imposes its business judgments on every operational aspect of derivatives trading and clearing. This role reversal will require doubling of the Commission's staff and budget and impose astronomical costs on the industry and the end users of derivatives. Yet, the Commission fails to offer any evidence that DFA supports this approach or that such an approach will be beneficial to the public or to the functioning of the markets. In fact, the Commission totally abdicates its statutory obligation to perform a "cost benefit analysis." *See* 7. U.S.C. §15(a). To be sure, in requiring the CFTC to consider costs and benefits of its action, Congress is calling for an actual and concrete estimate of costs of agency action. *See Public Citizen v. Federal Motor Carrier Safety Administration*, 374 F.3d 1209, 1221 (D.C. Cir. 2004). ("The agency's job is to exercise its expertise to make tough choices about which of the competing estimates is most plausible, and to hazard a guess as to which is correct, even if . . . the estimate will be imprecise.") The mere uncertainty of cost estimates does not excuse the CFTC from issuing such an estimate. *See Public Citizen*, 374 F.3d at 1221. ("Regulators by nature work under conditions of serious uncertainty, and regulation would be at an end if uncertainty alone were an excuse to ignore a congressional command to 'deal[] with' a particular regulatory issue.").

It is clear that this prescriptive, rules-based approach will unnecessarily deplete the agency's limited resources, while also stifling innovation and competition. In keeping with the President's Executive Order to reduce unnecessary regulatory cost, the CFTC should reconsider the proposed rules included in the Release, with an eye toward performing those functions that are clearly mandated by DFA. As discussed in more detail below, in many instances we believe that this can comply with the President's directive by making the proposed rules acceptable practices or safe harbors.

A. Core Principle 9

One example of the Commission's unnecessary and problematic departure from the principles-based regime is its proposed rule under Core Principle 9 for DCMs – Execution of Transactions, which states that a DCM "shall provide a competitive, open and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market." Core Principle 9, however, expressly authorizes off-exchange futures transactions so long as those transactions are executed pursuant to DCM rules. Specifically, Core Principle 9 provides that "the rules of a board of trade may authorize . . . (i) transfer trades or office trades; (ii) an exchange of (I) futures in connection with a cash commodity transaction; (II) futures for cash commodities; or (III) futures for swaps; or (iii) a futures commission merchant, acting as principle or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if that contract is reported, recorded, or cleared in accordance with the rules of the contract market or [DCO]." That off-exchange futures transactions are permissible and not limited in any fashion is further supported by CEA § 4(a), which expressly prohibits any person to execute or even offer to enter into a futures contract unless such transaction is "conducted on <u>or subject to the rules of</u> a board of trade which has been designated or registered by the Commission as a contract market." 7 U.S.C. § 4(a) (emphasis added).

Proposed rule 38.502(a) would require that 85% or greater of the total volume of any contract listed on a DCM be traded on the DCM's centralized market, as calculated over a 12 month period. Specifically, in relevant part, proposed rule 38.502 provides that no DCM "may continue to list a contract for trading unless an average of 85% or greater of the total volume of such contract is traded on the designated contract market's centralized market, as calculated over a 12 month period" (the "85% Requirement"). This proposed rule would apply to contracts that are listed as of the effective date of the rule and any products listed subsequent to the effective date of the rule. If a contract fails this test, the DCM is required to delist the contract and transfer the open positions in the contract to a SEF (either one it operates or one operated by another) or liquidate the contract within 90-days of performing the requisite calculation.

The Commission asserts that the proposed 85% Requirement is necessary to "balance the goal of protecting the price discovery process of trading in the centralized market, with the goal of allowing off-exchange transactions for bona fide business purposes." 75 Fed. Reg. at 80588. As an initial matter, as Commissioners Sommers and O'Malia note in their dissent, Core Principle 9 does <u>not</u> require that every contract listed for trading on a DCM "trade in the centralized market. Nor does it require that every contract listed for trading serve a price discovery function. Rather, it requires a mechanism for protecting the price discovery function for those contracts that do trade in the centralized market." 75 FR 80635.

Moreover, Congress gave no indication in DFA that it considered setting an arbitrary limit as an appropriate means to regulate under the Core Principles. Indeed, in other portions of DFA, where Congress thought that a numerical limit could be necessary, it stated so. For example, in Section 726 addressing rulemaking on Conflicts of Interest, Congress specifically stated that rules "may include numerical limits on the control of, or the voting rights" of certain specified entities in DCOs, DCMs or SEFs. Thus, we agree with Commissioners Sommers and O'Malia that, with the proposed rules relating to Core Principle 9, the Commission is "interpreting Core Principle 9 in a way that does not comport with the plain language of the statute." 75 FR 80635.

The 85% centralized market trading requirement is completely arbitrary. The Commission justifies the requirement only with its observations as to percentages of various contracts traded on various exchanges — it provides no support for a position that the 85% Requirement provides or is necessary to provide a "competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade." In fact, to better understand the Commission's proposal, on December 10, 2010, CME Group filed a request pursuant to the Freedom of Information Act ("FOIA") seeking the data and analysis relied on to support the Commission's proposed 85% Requirement. 75 FR 80589. As of February 22, 2011 – the date on which the comment period closed for this proposed rulemaking – we had not yet received a substantive response from the Commission to our FOIA request. The Commission was obligated to provide the data it reviewed and the analysis it conducted in conjunction with this rulemaking to the public in the Release. By omitting that information from the Release, the Commission has not afforded the public notice and meaningful opportunity to comment on the proposed rulemaking.[2] *See*, *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C.Cir. 2008) (noting that "it would appear to be a fairly obvious proposition that studies upon which an agency relies in promulgating a rule must be made available during the rulemaking in order to afford interested persons meaningful notice and an opportunity for comment" and requiring the FCC to produce empirical data relied upon in a rulemaking in response to a FOIA request).

Moreover, certain off-exchange transactions executed pursuant to appropriately tailored DCM rules — which are expressly authorized by DFA — enhance the price discovery process.[3] For example, if the Commission forces transactions which would normally be executed as blocks through the centralized market, which its proposed rule would do, prices on the screen would chase large orders and then would bounce back after the order is filled, increasing volatility in the market. Congress certainly did not intend

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[2] We note for the record, that when we do receive a substantive response to our FOIA request that includes the data the Commission reviewed and the analysis it performed in arriving at the 85% Requirement, we may have further comment on the Release.

[3] With respect to appropriate rules, we submit that "one-size-fits-all" does not apply to off-exchange transactions. Stated differently, the rules that govern permissible off-exchange transactions need to be tailored to the characteristics of each particular market and periodically adjusted in response to trading activity in the respective markets. DCMs are in the best position to evaluate and establish the rules that should govern these transactions and should retain the flexibility to make changes to such rules during the lifecycle of a product.

the Commission to interpret Core Principle 9 in a manner that introduces unwarranted volatility into the market.

Further, the Commission's proposed rule would seem to arbitrarily limit the number of exchange of derivatives for related position ("EDRP") transactions that can occur in a particular product as those transactions are negotiated outside the central market. EDRPs are not part of the price discovery process for the related futures or options contract. Price discovery for the underlying has already occurred before and during the physical or OTC transaction and the EDRP is simply an efficient way to liquidate or transfer the underlying hedge protection. Moreover, these transactions have a bona fide business purpose and must not be artificially constrained by the Commission's rules as they preserve the basis relationship between the two component legs of the EDRP. Without EDRPs, the basis can be altered by changes in the futures price during the time required to execute separate cash and futures transactions creating what many market participants refer to as "slippage," significantly increasing risk and costs for the parties involved.[4]

The Commission does not assert in its proposal that the 85% Requirement has any regulatory benefit for either it or market participants. Indeed, there is no such benefit. The Commission does not receive any additional information regarding the market by implementing the proposed 85% Requirement. That is, if an instrument does not meet the 85% Requirement and therefore cannot be traded on an exchange, it will in many cases simply be traded on an SEF or in the OTC market as a swap. Following DFA, the swap and OTC markets, like the futures market, are regulated by the Commission. Thus, the Commission will not receive any additional information for use in regulation by forcing the instrument to trade on a SEF or in the OTC market, and market participants will not obtain any benefit; on the contrary, market participants may lose access to a vibrant and liquid centralized market that simply failed the arbitrary 85% test.

Further, imposition of the proposed 85% exchange trading requirement will have extremely negative effects on the industry. The 85% requirement will significantly deter the development of new products by existing exchanges like CME Group, and likewise deter any new futures exchanges from being established. New futures products often initially build open interest and gain trading momentum in off-exchange transactions, and in many instances, it takes years before trading on the centralized market becomes the predominant mode of trading. Based on our internal studies on new product performance, we have found that on average, it takes approximately 36 months for most new products to "achieve traction," which was defined as ADV>1,000 contracts. Specifically, the study showed that:

- New Ag and FX Products follow the overall trend, although their growth from months 6 to 36 is less pronounced so it takes them longer on average to achieve traction.

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[4] EDRPs transactions are particularly important in many of our financial products. With respect to Treasury futures, EDRPs typically are a convenient method to execute a "basis trade" by traders that wish to express a view on the value of the embedded delivery options within Treasury futures. With their participation in both cash and futures markets, Treasury basis traders provide an important source of liquidity to both markets and also serve an integral part of the cash-futures price convergence that occurs upon physical delivery. Including EDRPs in the calculation that could ultimately cause the removal of Treasury futures from the DCM would potentially remove a vital risk management tool that primary dealers rely on, allowing them to competitively bid at U.S. Treasury security auctions.

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- Equity and Interest Rate products exhibited above-average growth and generally needed less time to achieve traction.
- Alternative investment products exhibited sporadic growth, possibly due to their reliance on seasonal factors like weather and their lack of correlation with existing successful products.

However, with a prescriptive rule requiring a futures product to be delisted if it fails the centralized market trading requirement threshold, customers likely will not establish new futures positions if there is any risk that in 12 months, the product they were utilizing to hedge their position would no longer be available as a futures contract on a DCM. Customers prefer trade certainty, and, instead, likely will trade the same product on a SEF with a "swap" label, assuming the product is not a physically-delivered futures contract that would be ineligible to trade on a SEF.

Indeed, several of our highly successful and long-standing products would have failed the Commission's arbitrary proposed rule. For example, the foreign exchange suite of products developed and offered by CME Group would not have met the 85% Requirement until four years after it was initially offered. Specifically, these products collectively traded 32% off-exchange when the suite was first offered in 2000; 31% off-exchange in 2001; 25% in 2002; 20% in 2003; finally moving within the 85% Requirement at 13% off-exchange in 2004; 10% in 2005; 7% in 2006; 5% in 2007; 3% in 2008; and 2% in 2009 and 2010.[5] Other examples include our flagship S&P 500 futures, NASDAQ 100 futures, S&P 400 Midcap futures, $10 Dow futures, and $25 Dow futures, which would all fail the 85% test.[6] These contracts have large notional contract sizes designed to appeal to particular customer segments, and privately negotiated transactions comprise more than 15% of the overall contract volume for these instruments. Under the proposed rule, CME Group would have to delist these products for no apparent regulatory or public purpose.[7]

Additionally, imposition of an 85% exchange trading requirement would have substantial adverse effects on market participants. As an initial matter, the cost of executing large orders, which often times are placed on behalf of hedgers or retail investors through pension funds, will increase and that cost will be passed down to the very group of people the Commission seeks to protect with this rule. Moreover, if transactions that are presently cleared as futures are forced to clear as swaps, customers will lose cross-margin efficiencies that they currently enjoy and will be forced to post additional cash or assets as margin.

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[5] As this data demonstrates, permitting DCMs to seek an exemption from the Commission to allow a new contract that fails the 85% Requirement to continue trading for another 12 months <u>if</u> at least 50% of the contract's volume is transacted on the centralized market does not address our concerns.

[6] Clearly linked or related products should be considered together for purposes of any centralized market trading calculation.

[7] Another adverse consequence of an arbitrary centralized market trading requirement is that where a listed futures contract fails the requirement and a listed option on that futures contract satisfies the requirement, both the futures contract and the option thereon would have to be delisted. Again, we fail to see any regulatory or other public benefit from such a result.

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For example, customers who currently hold open interest in CME Clearport® products will be required to post approximately $3.9 billion in additional margin (at the clearing firm level, across all clearing firms). These customers may also experience a taxable event and/or substantial operational difficulties in converting their open positions to swaps. Finally, the new "swap" label may also require these market participants to register as swap dealers or major swap participants. These important ramifications of the Commission's proposal are not addressed in the Release, nor are they considered as part of the Commission's "Cost Benefit Analysis."

Significantly, the 85% Requirement may undercut the overarching objectives of DFA, including mitigating systemic risk. To be sure, some of our currency products would fail the Commission's arbitrary 85% Requirement. These products, which are considered foreign exchange products, may be exempted from the definition of "swap" in DFA by the Treasury Department, which would mean this class of products may be exempted from the trading and clearing mandates. Consequently, products that are voluntarily traded pursuant to the rules of a CFTC-regulated DCM and voluntarily submitted for clearing to a CFTC-regulated DCO today might, in the future, be executed in an unregulated OTC space and subject to counterparty credit risk if the 85% Requirement is adopted as a final rule. Surely, Congress did not intend such a result.

With no regulatory or public benefit resulting from this proposed rule, the Commission is not justified in imposing such substantial costs on market participants, competitively disadvantaging DCMs and potentially increasing systemic risk to the financial system. While the Commission might propose a certain percentage of trading volume be transacted on the centralized market as a safe harbor or an acceptable practice demonstrating compliance with Core Principle 9, for the reasons stated above, it should not be the exclusive means of compliance. Indeed, as the Commission is aware, every market is different and the value of the core principles regime is that it allows registered entities the flexibility to tailor rules to fit the characteristics of the various markets it hosts. No public benefit is gained by one-size-fits-all rules, whether set by DCMs or the Commission. We submit that if a DCM makes a good faith effort to support a competitively traded market and has in place meaningful market maker programs or other incentives aimed at gaining traction in the centralized market, it has fulfilled its obligations under Core Principle 9 to "provide a competitive, open and efficient market and mechanism for executing transactions."

B. Core Principle 2

In the case of certain proposed fee restrictions to be placed on DCMs, the Commission not only retreats needlessly from principles-based regulation but also greatly exceeds its authority under DFA. DCM Core Principle 2, which appears in DFA Section 735, states, in part, that a DCM "shall establish, monitor, and enforce compliance with rules of the contract market including . . . access requirements." Under this Core Principle, the Commission has proposed rule 38.151, which states that a DCM "must provide its members, market participants and independent software vendors with impartial access to its market and services including . . . comparable fee structures for members, market participants and independent software vendors receiving equal access to, or services from, the [DCM]."

The CFTC's attempt to regulate DCM member, market participant and independent software vendor fees is unsupportable. Nothing in Core Principle 2 or the CEA confers authority on the Commission to set or

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limit the fees charged by DCMs. Although the CEA expressly authorizes the CFTC to charge reasonable fees to recoup the costs of services it provides, 7 U.S.C. 16a(c), the Commission may not bootstrap that authority to set or limit the fees charged by DCMs or to impose an industry-wide fee cap that has the effect of a tax. *See Federal Power Commission v. New England Power Co.*, 415 U.S. 345, 349 (1974) ("[W]hole industries are not in the category of those who may be assessed [regulatory service fees], the thrust of the Act reaching only specific charges for specific services to specific individuals or companies."). To the extent the CFTC believes it has authority to oversee impartial access to DCMs – an authority conferred upon the Commission with respect to SEFs, not DCMs – we believe that the Commission would need to read the CEA to confer upon it new and significant powers not provided therein. The Commission does not have the authority to *sua sponte* expand its regulatory reach in this manner.

II. Provisions Common to Registered Entities

Before providing our detailed comments on the proposed rules in the Release, we believe another of the Commission's proposals — Provisions Common to Registered Entities[8] — bears noting here. The CFMA streamlined the procedures for listing new products and amending rules that did not impact the economic interests of persons holding open contracts. These changes recognized that the previous system required massive, worthless paper pushing efforts by exchanges and by the CFTC's staff. It slowed innovation and offered no demonstrable public benefit. Our ability to compete on a global scale, which had been progressively eroded by the disparity between the U.S. process and the rules under which foreign competitors operated, was restored.

Under current rules, before a product is self-certified or a new rule or rule amendment is proposed, DCMs and DCOs conduct a due diligence review to support their conclusion that the product or rule complies with the Act and Core Principles. Registered entities that list new products have a self-interest in making sure that the new products meet applicable legal standards: Breach of this certification requirement potentially subjects the DCM or DCO to regulatory liability. In addition, in some circumstances, a DCM or DCO may be subject to litigation or other commercial remedies for listing a new product, and the avoidance of these costs and burdens is sufficient incentive for DCMs and DCOs to remain compliant with the Act.

Nothing in the last decade of self-certification suggests that this concept is flawed or that registered entities have employed this power recklessly or abusively. During 2010, CME Group launched 438 new products and submitted 342 rules or rule amendments to the Commission. During this time, there were no substantive issues with the process. Put simply, the existing process has worked, and there is no reason for the Commission to impose additional burdens to impair that process.

In fact, DFA retains the self-certification process. Specifically, section 745 of DFA states, in relevant part, that "a registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve or implement any new rule or rule amendment, by providing to the Commission a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act)."

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[8] 75 Fed. Reg. 67282 (proposed Nov. 2, 2010) (to be codified at 17 C.F.R. pt. 40)

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Nowhere is the Commission directed to require the submission of all documents supporting such a certification nor to require a review of the legal implications of the product or rule with regard to laws other than DFA. Essentially, it requires exactly what was required prior to the passage of DFA—a certification that the product, rule or rule amendment complies with the CEA.

Even as the Commission complains about a funding shortage, it nevertheless proposes to rewrite a rule that it is neither required to rewrite nor is justified in rewriting. As discussed in more detail below, the new requirements are likely to significantly impair the speed and value of innovation by U.S. exchanges and clearing houses, which will find themselves watching their innovations brought to market by foreign competitors while the U.S. agency checks boxes to ensure that filings are complete. Moreover, given the volume of filings required by the Notice of proposed rulemaking, the Commission will require significant increases in staffing and other resources. The Commission's resources should be better aligned with the implementation of the goals of DFA rather than "correcting" a well-functioning and efficient process.

These proposed rules greatly and unnecessarily increase the documentation burden associated with this submission process, and it seems inevitable that they will greatly slow the process of new rule and product introduction. First, a registered entity must submit "all documentation" relied upon to determine whether a new product, rule or rule amendment complies with applicable Core Principles. To begin with, this requirement is vague, and will likely result in the submission of unnecessary and non-useful information. More importantly, this requirement imposes an additional burden on both registered entities, which must compile and produce all such documentation, and the Commission, which must review it. Any benefits to be gathered by this requirement would be significantly outweighed by the costs imposed both on the marketplace and the Commission.

Second, the proposed rules require registered entities to examine potential legal issues associated with the listing of products and include representations related to these issues in their submissions. Specifically, a registered entity must provide a certification that it has undertaken a due diligence review of the legal conditions, including conditions that relate to contractual and intellectual property rights. The imposition of such a legal due diligence standard is clearly outside the scope of DFA and is unnecessarily vague and impractical, if not impossible, to comply with in any meaningful manner. An entity such as CME Group, involved in product creation and design is always cognizant of material intellectual property issues that might arise. An amorphous and potentially vast legal diligence requirement could require registered entities to expand what could reasonably be considered to be a material or colorable intellectual property analysis, and instead undertake extensive, cumbersome intellectual property analysis, including patent, copyright and trademark searches, in order to satisfy the regulatory mandates. This would greatly increase the cost and timing of listing products without providing any true corresponding benefit to the marketplace. Indeed, the Commission itself admits in its NOPR that these proposed rules will increase the overall information collection burden on registered entities *by approximately 8,300 hours per year*. 75 Fed. Reg. at 67290.[9]

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[9] Further, these rules steer the Commission closer to the product and rule approval process currently employed by the SEC, about which those regulated by the SEC complained at the CFTC-SEC harmonization hearings. Indeed, William J. Brodsky of the Chicago Board of Options Exchange testified that the SEC's approval process "inhibits innovation in the securities markets" and urged the adoption of the CFTC's certification process.

III. Detailed comments on proposed rules

A. PART 38 – DESIGNATED CONTRACT MARKETS

§ 38.3 – Procedures for designation.
38.3(d) – Request for Transfer of Designation: The proposed revisions to Regulation 38.3(d) require that a DCM's request for transfer of its contract market designation be submitted to the Commission no later than three months prior to the anticipated transfer date unless the DCM reasonably could not have known of the anticipated change three months prior; in the latter circumstance, the DCM is required to "immediately" file the request. The proposed regulation would also require that a DCM, at the time of its request, provide the Commission with a narrative description of the corporate change giving rise to the transfer request which addresses the reason for the change and its impact on the DCM, including the impact on its governance, operations and the rights and obligations of market participants holding positions. Additionally, the request must include, among other submissions, the underlying agreement governing the corporate change, a discussion of the transferee's ability to comply with the Act, the governing documents of the transferee, the transferee's rules marked to show changes from the current rules of the DCM, as well as a number of specific representations.

As a practical matter, if the DCM reasonably could not have known of the anticipated change three months prior to the anticipated transfer date, then it cannot "immediately" file both the request and all of the required submissions once it does know. Preparing the required submissions manifestly takes time and does not lend itself to meeting the "immediately" standard that is proposed; "promptly" would be an improved word choice in this context that conveys a more appropriate reasonableness standard.

Although CME Group appreciates the need for the Commission to properly understand the circumstances of the transfer and evaluate its impact on the DCM's capacity to comply with the Act, we do not believe that a prescriptive "one-size-fits-all" approach is appropriate given that the circumstances and complexity of each such transfer is likely to be unique. We have no dispute with the minimum three-month standard for initial notification to the Commission prior to the anticipated change, provided it is known at that time, but requiring the broad scope of additional documentation to be submitted simultaneously is unnecessary, may result in later notification to the Commission than would otherwise be the case, and may impede the DCM's ability to act with appropriate dispatch to protect its interests and those of its customers. The Commission should instead take into account the particular circumstances giving rise to the transfer and the nature of the requested transfer, and then tailor the information required as necessary to satisfy the Commission that the transferee will comply with all applicable provisions of the Act and the Commission's regulations.

38.3 (g) – Requirements for Existing Designated Contract Markets: Under proposed Regulation 38.3(g), each DCM will be required to provide the Commission with a signed certification representing that it is in compliance with each of the 23 new or amended core principles and all associated Commission regulations under Part 38 within 60 days of the effective date of the publication of the final rules in order to maintain its designation status.

The Dodd-Frank Act amended the majority of the existing DCM core principles and added five new core principles, and the Commission has separately elected to promulgate a host of new and very prescriptive regulations. These proposed changes are significant and substantial, and we do not agree with the Commission's assertion that the proposed new regulations simply codify requirements and practices that are commonly accepted in the industry. Given the scope and highly prescriptive nature of the proposed new regulations and their impact on existing DCMs, CME Group believes that 60 days is a patently unreasonable timeframe in which to expect that DCMs will have implemented the necessary strategic, operational, system and rule changes that would be required in order for such a certification to be made to the Commission - assuming such certification could be made at all given the sweeping and absolute language contained in certain of the new prescriptive regulations.

Notwithstanding CME Group's view that it broadly models best practices for DCMs today, it cannot in the context of this comment period reliably estimate the time that it would take to implement all of the required changes. Should the proposed rules become final, CME Group estimates that it would need a minimum of 180 days to assess the impact of the new requirements and to identify, design and appropriately plan the projects necessary to implement them; DCMs would further require the flexibility to certify compliance with the broad core principles subject to a petition for relief from certain prescriptive regulations for which the DCM would identify timelines in which it reasonably expected to be able to achieve compliance.

As noted previously in this letter, Congress, by virtue of the Dodd Frank Act, clearly preserved the fundamental philosophy of principles-based regulation and did so for good reason based upon the very clear success of that model over the past decade. During that period, CME Group's exchanges have made tremendous advancements in their product offerings, risk management services and in their regulatory and operational capabilities to protect market integrity. This growth, innovation and commitment to continuous improvement did not occur because it was prescriptively required by regulation; it occurred because we were motivated to better serve the marketplace, and thereby the interests of our stakeholders, and because the regulatory structure fostered the freedom and flexibility to innovate within the boundaries of ensuring compliance with the core principles.

The discretion Congress afforded the Commission was not intended to be used to devitalize the principles-based paradigm, to impose unnecessary costs and inefficiencies that fail to create commensurate value, or to support a level of market oversight that arbitrarily intrudes upon the independent exercise of a DCM's business judgment and self-regulatory authority. The Commission, the exchanges and market participants would be much better served if the Commission exercised significantly greater discretion in its use of the rulemaking discretion afforded by Dodd-Frank and focused instead on employing a robust core principles framework designed to promote market confidence, customer protection and the reduction of systemic risk in a manner that facilitates efficiency, innovation and competition.

§ 38.4 – Procedures for listing products and implementing designated contract market rules.
The Commission indicates in its proposed rulemaking that the proposed amendments to § 38.4 are largely intended to conform the instant rule to the changes previously proposed by the Commission to §§ 40.3 (Voluntary submission of new products for Commission review and approval) and 40.5(b) (Voluntary submission of rules for Commission review and approval). CME Group filed a comment letter with

respect to that proposal on January 3, 2011, in which it argued that the proposed rules would very significantly and unnecessarily increase the burdens associated with new product submissions and rule changes. The proposed rules create substantial new and costly bureaucratic inefficiencies, competitive disadvantages in the global marketplace, and impediments to innovation, despite there having been no showing that the current streamlined process has proved in any way to be defective or to undermine market integrity. On the contrary, the current model has facilitated growth and innovation in exchanges' risk management offerings, leading to enhanced transparency and the reduction of systemic risk. CME Group reasserts the arguments outlined in its January 3, 2011 comment letter and reiterates its strong view that these new requirements are neither necessary nor related to the issues that Dodd-Frank intended to address and therefore should be reconsidered by the Commission.

§ 38.5 – Information relating to contract market compliance.

Proposed Regulation 38.5(c), Equity Interest Transfers, would require a DCM to file notice of an equity interest transfer of 10% or more to the Commission no later than the business day after the DCM enters into a firm obligation to transfer the equity interest, and also to notify the Commission of the consummation of the transaction on the day on which it occurs. While CME Group does not object to this general notification requirement, the submissions that are required to be simultaneously filed with the initial notification again may not lend themselves to preparation within the prescribed 24-hour time frame, nor is it clear why that level of immediacy is required. For example, the requirement that the initial notification include submission of any associated changes to relevant corporate documents fails to appreciate that such changes are unlikely to be finalized until nearer the transfer date. Additionally, CME Group is uncertain as to the purpose served by requiring the initial notification to include a representation that the DCM meets all the requirements of Section 5(d) of the Act and Commission regulations adopted thereunder; that notification is more properly required upon consummation of the equity interest transfer.

§ 38.7 – Prohibited use of data collected for regulatory purposes.

CME Group publishes both its Exchange Privacy Policy and its Confidentiality Policy for the Market Regulation and Audit Departments on its website. The latter policy specifically defines confidential regulatory information as data collected via the reporting of large trader positions, clearing member position data, financial records and source documents used in the production of financial reports or to demonstrate compliance with exchange rules, detailed transaction data at the account level that includes information from which market positions or profit and loss might be derived, and investigative materials. Such information is treated as highly sensitive confidential information and may be used only by authorized personnel in fulfillment of CME Group's self-regulatory responsibilities.

As proposed, however, § 38.7 precludes a DCM from using *any* proprietary data or personal information that it collects or receives for the purpose of fulfilling its regulatory obligations for business or marketing purposes. This is too broad a restriction as it does not account for data and information that a DCM collects for both regulatory and non-regulatory purposes. For example, the rules of the CME Group exchanges require the submission of numerous audit trail elements on each transaction record. We also require registration of Globex User ID and account identification information from market participants who voluntarily enter into membership agreements or into fee-related or other contractual arrangements with the Company. CME Group of course has policies and procedures in place to appropriately protect such

confidential information, but this type of information is necessary for and may be used for both business purposes and for regulatory purposes.

The proposed rule should distinguish between proprietary and personal information that is provided to a DCM exclusively for regulatory purposes and information that is provided to a DCM for both regulatory and non-regulatory purposes. A DCM should be permitted to use the latter for business or marketing purposes provided that the DCM has transparent rules and/or policies which disclose what data and information collected by the DCM is to be used exclusively in furtherance of its self-regulatory obligations and how such other confidential information may be used by the exchange and is protected. Additionally, a DCM should not be precluded from using proprietary or personal information that is provided for regulatory purposes for business and marketing purposes where the market participant has specifically agreed in writing to such use.

§ 38.9 – Boards of trade operating both a designated contract market and a swap execution facility.

Proposed § 38.9(b) requires that a board of trade which operates both a DCM and a SEF and which uses the same electronic platform for executing and trading instruments on the SEF and the DCM clearly identify to market participants for each swap whether the execution or trading of the swap is taking place on the SEF or the DCM. The rules of the DCM and SEF would make such distinction clear, and the Commission should clarify whether this regulation intends to create any more substantive obligation on the part of DCMs and SEFs given that market participants typically interface with electronic platforms through proprietary or third party front end systems that are not controlled by the DCM.

§ 38.10 – Reporting of swaps traded on a designated contract market.

CME Group provided substantive comments to the Commission on February 7, 2011, with respect to its proposed rulemakings under Part 43 (Real-Time Public Reporting of Swap Transaction Data) and Part 45 (Swap Data Recordkeeping and Reporting Requirements) and refers the Commission to its comments therein.

Subpart B – Designation as Contract Market

§ 38.100 – Core Principle 1.

Amended Core Principle 1 provides that unless otherwise determined by the Commission by rule or regulation, a DCM will have reasonable discretion in establishing the manner in which it complies with the core principles. The origin of this amended language is the Dodd-Frank Act, and it is clear that the statute established the Commission's authority, *not its obligation*, to promulgate regulations regarding compliance with core principles. In fact, Congress explicitly determined to maintain a fundamentally principles-based approach to regulation of the futures industry and, further, to adopt that same approach as the foundation for the new regulatory structure of the swaps market because it understood the substantial benefits of that model in terms of efficiency, innovation and regulatory effectiveness.
The Commission argues in its release that promulgation of clear-cut and definite requirements or practices in those areas where a standard industry practice has developed will provide greater legal certainty to the industry in demonstrating compliance with the CEA. The Commission, however, through this rulemaking and others, not only goes well beyond Dodd-Frank's mandates and standard industry practices with its prescriptive rules in many cases, but also fails to recognize that even if it were the case

that certain standard practices are now being codified, those practices evolved through continuous improvement and innovation that was allowed to flourish because DCMs were focused on achieving desired outcomes rather than on complying with the letter of government-mandated prescriptive regulations.

It simply is not necessary to choose between core principles and legal certainty where the Commission provides appropriate application guidance and acceptable practices for core principles, while simultaneously allowing DCMs the flexibility to choose or design a more efficient or more effective path to compliance. Core principles do not in any way obviate a DCM's accountability, but they do promote innovation and continuous improvement while mitigating the creation of inefficient, bureaucratic processes and procedures that sap resources from more productive uses. The results in our industry over the past decade speak volumes, as does our industry's performance throughout the financial crisis, and it should be no surprise that Congress looked to the futures industry as the model for the new regulatory structure for the over-the-counter market. The Commission should embrace its thoughtful foresight and success in this regard rather than reverse course at this important juncture in the evolution of U.S. financial markets.

CME Group strongly urges that the Commission reconsider its approach and implement the robust core principles framework endorsed by Congress that has proved to be successful rather than return to a bureaucratic, prescriptive approach that was previously jettisoned because of its ineffectiveness and inefficiencies. While CME Group acknowledges that there may be limited circumstances in which a specific regulation is warranted to address compliance with a core principle, the Commission should exercise significant restraint and give very careful consideration to the cost/benefit equation and the potential unintended consequences of choosing a prescriptive path.

Subpart C – Compliance With Rules

§ 38.150 – Core Principle 2.
Proposed § 38.150(c) requires that DCMs establish rules that provide the board of trade with the "capacity to carry out such international information-sharing agreements, as the Commission may require." CME Group Exchanges' Rule 415 ("Cooperation With Other Exchanges and Clearing Organizations") authorizes the sharing of information with another exchange or clearing organization with which CME Group has an information sharing agreement, in accordance with the terms and conditions of the agreement. CME Group has, for example, long been a member of the Intermarket Surveillance Group, an information-sharing network of self-regulatory organizations from around the world. However, a DCM cannot be expected to carry out international or other information-sharing agreements to which it is not a party and should not be unequivocally compelled by CFTC regulation to enter into agreements, the terms of which are determined by other parties, and which conceivably could include terms or conditions that a particular DCM is not agreeable to or capable of abiding by.

§ 38.151 – Access requirements.
(a) Jurisdiction. Proposed § 38.151 requires a DCM, prior to granting any member or market participant access to its markets, to require the member or market participant to consent to its jurisdiction and participate in its investigative and disciplinary processes. The Commission contemplates that DCMs will

adopt rules to implement this requirement, and acknowledges that implementation would require DCMs to require their clearing firms to amend all of their existing customer agreements and secure their customers' consent to submit to the jurisdiction of each DCM on which they seek to trade. In suggesting this approach, the Commission does not address the fact that certain customer accounts may not be disclosed on the books of the clearing member.

Clearly, requiring clearing firms to obtain every customer's consent to the regulatory jurisdiction of each DCM will be costly and the Commission suggests that DCMs allow their clearing members up to 180 days to secure the necessary modifications to all of their existing customer agreements. More importantly, however, even if such consent were to be obtained, CME Group believes the regulation will be entirely ineffective in achieving the Commission's desired outcome.

Under CME Group rules, clearing members are required to assist CME Group in any investigation into potential rule violations which occur with respect to a Globex connection guaranteed by the clearing member. By rule, such assistance must be timely and may include requiring any non-member customer to produce documents, to answer questions from the Exchange, and/or to appear in connection with an investigation. CME Group's rules allow it to deny access to any non-member who has violated its rules or who refuses to cooperate in an investigation, and clearing members must suspend or terminate a non-member's access if the Exchange determines that the actions of the non-member threaten the integrity or liquidity of any contract, violate any Exchange rule or the Act, or if the non-member customer fails to cooperate in an investigation (*see* CME Group Exchanges' Rule 574, Globex Access Restrictions, and Rule 402.D., Actions Against Non-Members).

Non-member participants who desire not to be permanently barred from trading in CME Group's markets are therefore strongly incentivized to consent to the Exchange's jurisdiction upon its request and to participate in its investigative and disciplinary processes. This occurs routinely at CME Group and, in such circumstances, the relevant Exchange disciplinary panel which hears the matter can, if appropriate, take disciplinary action, including imposing a fine, suspension or other action, against the non-member.

The fact that a non-member has consented to the DCM's jurisdiction in a customer agreement form, however, does not make it more likely that the non-member will in fact participate in the investigative or disciplinary process if requested to do so. If a non-member who had consented to the Exchange's jurisdiction under this proposed new rule committed a rule violation and subsequently elected not to cooperate in the investigation or disciplinary process, the Exchange's only recourse would be to deny the non-member's access and, if appropriate, refer the matter to the CFTC. DCMs simply do not have subpoena power or criminal authority and therefore cannot compel a non-member's participation in the investigative or disciplinary processes, irrespective of whether or not they have previously consented to the DCM's jurisdiction. The leverage a DCM has in this regard is control over access to its markets.

Consequently, the DCM's enforcement options and the regulatory outcomes do not change based on whether or not there is a record of the non-member consenting to jurisdiction, but rather on whether the non-member chooses to participate in the DCM's investigative and disciplinary processes; and there is no reason that this cannot occur on an as-requested basis. A regulation such as the one proposed here that requires every customer to affirmatively submit to DCM jurisdiction prior to accessing the DCM's

markets would impose significant costs and burdens on clearing member firms without offering any perceptible regulatory value.

In the event CME Group's ability to deny access to its markets is ineffectual in securing the non-member's participation in the investigative and disciplinary processes, and the DCM's resulting trading ban is an inadequate sanction given the conduct, the Commission is in the best position to prosecute the matter. As a government agency, the Commission has the legal and regulatory relationships, both domestic and foreign, subpoena power and access to the courts that better position it to compel non-member market participants to participate in an investigation. It also has the ability to enforce any penalty that results from a corresponding disciplinary action. Therefore, instead of seeking to impose an ineffectual and costly additional burden on DCMs and their clearing members, the Commission should reallocate scarce resources that are currently duplicating the efforts of the self-regulatory organizations, in matters the self-regulatory organizations are equipped to handle, to the investigation and prosecution of those matters which the Commission is uniquely empowered to address. This would be a more productive use of the industry's collective regulatory resources and enhance the industry's overall regulatory effectiveness. CME Group therefore urges the Commission withdraw part (a) of this regulation and, if deemed necessary, propose a new regulation that is cognizant of the reach of the DCM's investigative and disciplinary authority.

(b) Impartial access by members, market participants and independent software vendors.

We refer the Commission to our comments in Section I (b) above.

§ 38.152 – Abusive trading practices prohibited.

Proposed § 38.152 requires that a DCM prohibit abusive practices on its markets by members and market participants and also enumerates a number of specific trading practices that DCMs must prohibit, although it does not specifically define those practices or the scope of the intended prohibition with respect to each enumerated practice. Further, the proposed regulation requires that the DCM prohibit any other manipulative or disruptive trading practices prohibited by the CEA or by Commission regulation.

As an initial point, this regulation appears superfluous as Core Principle 12 already requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices. Consistent with a core principles approach, DCMs should have reasonable discretion to establish rules appropriate to their markets that are consistent with the CEA and that satisfy the core principle, and be appropriately accountable for doing so. The Commission might offer guidance in terms of acceptable practices in this regard, but there appears to be no value in promulgating a regulation prescriptively enumerating specific practices in this way. DCMs do establish rules to protect their markets and market participants and are incentivized to maintain regulatory infrastructures that promote fair and efficient markets. Core principles allow their rule sets and interpretations to continually evolve in response to the changing dynamics of markets and market practices.

Additionally, there is a danger in promulgating regulations that are simultaneously both prescriptive and ambiguous. For example, the prescriptive rule requires, without qualification, that pre-arranged trading be prohibited, but DCMs may have rules that allow for block trading, for exchange for related position

transactions, and for pre-execution communications subject to specified conditions. Similar types of arguments could be made with respect to several of the other enumerated trading practices.

DCMs are required to certify with the Commission that their rules and any associated interpretative advisories comply with the Act and are also required to comply with the core principle that they establish and enforce rules that protect markets and market participants from abusive practices. Simply put, DCMs are in the best position to define the appropriate rules and practices for their markets that are not otherwise specifically prohibited by the Act or Commission regulation. In the latter regard, CME Group refers the Commission to its January 3, 2011 response to the Commission's Advance Notice of Proposed Rulemaking on Disruptive Trade Practices and reasserts its overarching comment that the Commission, to the extent it must, by statute, promulgate certain prescriptive rules in this area, must also ensure that it provides appropriate clarity to market participants regarding the conduct that is prohibited; further, it must do so in a manner that does not impair legitimate market behavior that contributes to liquidity and serves the price discovery and risk management functions of the market.

§ 38.153 – Capacity to detect and investigate rule violations.

Proposed § 38.153 requires a DCM to have the authority to collect information and documents and to examine the books and records kept by the DCM's members and by market participants. Under its existing rules, CME Group compels its members and those customers with direct market access to the Exchange to meet specific recordkeeping requirements and to produce relevant books, records and information necessary to enforce its rules upon request. Additionally, clearing members must require any non-member customer to produce documents or answer questions from the Exchange if requested to do so. The failure of a non-member to cooperate fully in an investigation may result in the denial of the non-member's access to CME Group markets. Modifying this model in accordance with the Commission's proposed prescriptive regulation will not, as described in the response to proposed § 38.151(a) above, enhance the effectiveness of the DCM's investigative and enforcement regime.

Although proposed § 38.153 does not detail which books, records and information the DCM must be able to obtain from non-member market participants, it appears to imply that the entire class of non-member, non-registered market participants will be subject to the panoply of recordkeeping requirements heretofore applicable only to members or registrants, and, in CME Group's case, direct access clients of the DCM. Given that there has been no showing that that such a requirement will further the DCM's ability to effectively carry out its self-regulatory responsibilities, it appears imprudent to impose these onerous burdens and costs on market participants.

§ 38.154 – Regulatory services provided by a third party.

The CEA allows a DCM to comply with applicable core principles by delegating relevant functions to a registered futures association or another registered entity, but the DCM remains responsible for the performance of any regulatory services received and for compliance with the DCM's obligations under the CEA and Commission regulations.

The proposed regulation, however, imposes a new requirement that the DCM conduct periodic reviews of the adequacy and effectiveness of the services provided and that such reviews "must be documented carefully" and made available to the Commission upon request. Further, the Commission not only finds it

necessary to prescribe by regulation that the DCM and the service provider hold regular meetings, but also to establish required agenda topics for such meetings. It is difficult to imagine that this is what Congress had in mind when granting the Commission rulemaking discretion where necessary to buttress the core principles framework. While it may well be that it is constructive for the DCM to hold regular meetings with its service provider and "discuss market participants," the core principle should stand on its own and the DCM should have the flexibility to determine how best to demonstrate compliance with the core principle. Again, CME Group does not object to the use of application guidance and appropriate acceptable practices by the Commission provided they are treated as such and not deemed to be the exclusive means for demonstrating compliance with the principle.

Proposed § 38.154(c) requires that the decision to open an investigation must always reside *exclusively* with the regulatory service provider rather than the DCM. While the regulatory service provider should have the independence to open an investigation at its discretion, CME Group sees no reason why the DCM cannot also direct the regulatory service provider to open an investigation, particularly given that it is the party responsible for compliance with the DCM's obligations under the CEA. It appears counterintuitive to make the DCM responsible but not give it the authority to direct that an investigation be undertaken. No conflict exists here and the DCM should always have the discretion to direct its service provider to open an investigation.

Proposed § 38.154(c) also requires that all decisions concerning the cancellation of trades remain as the exclusive authority of the DCM. In other words, the regulatory service provider cannot make such decisions subject to delegated authority. This proposal runs counter to current practices in the marketplace and the reality of the critical need for prompt decision making in such circumstances. CME Group, for example, currently hosts other exchanges on its electronic trading platform and the Globex Control Center ("GCC") provides related services to those DCMs. The DCM, of course, has the flexibility to establish its trade cancellation rules as it deems appropriate and to take ownership of trade cancellation decisions if it chooses, but there is no rational reason why the DCM should not also have the flexibility to determine that it is in the best interest of the market, market participants and the DCM to delegate that authority if it concludes that the GCC has the resources, expertise and technology that puts it in the best position to make those decisions and to do so expediently in order to mitigate potential market exposures.

The DCM is ultimately responsible for the decision of the GCC notwithstanding its delegation of decision making authority to the GCC, and it is unclear why the Commission would desire to mandate that the DCM satisfy the core principle in a manner that the DCM deemed to be less efficient and less effective. This again points to the reason why a core principle framework that provides for appropriate flexibility in determining how best to achieve desired objectives leads to superior outcomes. CME Group urges the Commission to retract this provision.

§ 38.156 – Automated trade surveillance.

Proposed § 38.156 states that a DCM must maintain an automated trade surveillance system capable of "detecting *and investigating* potential trade practice violations." Although CME Group has been proudly at the forefront of developing trade surveillance capabilities in our industry, we unfortunately have not yet

been able to design a system that automates the actual investigation of potential trade practice violations and we do not anticipate being able to do so within 60 days of the final rules becoming effective.

The proposed regulation further states that the system must be able to "maintain all data reflecting the details of each order entered into the trading system, including all order modifications and cancellations and maintain all data reflecting transactions executed on the designated contract market." CME Group maintains such capabilities in the context of its Globex platform, databasing in excess of 4 billion order and market data messages a month, but we in fact maintain several different databases and applications that make up our suite of surveillance systems, each of which have particular datasets and distinct analytical capabilities. Although it is not clear from the language in the regulation, we presume that with respect to order information, the regulation refers only to the electronic trading venue as CME Group does not capture order details, modifications or cancellations in an automated manner in the open outcry venue, unless such orders are transmitted to the floor via the exchange's order routing system, or with respect to privately-negotiated transactions.

The regulation further specifies a litany of capabilities the automated trade surveillance system must have including the capability to detect and flag specific trade execution patterns and trade anomalies, compute, retain and compare trading statistics; compute trade gains, losses and futures-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data. To the extent that we presume to fully understand the breadth of what is intended to be required by this regulation, CME Group has these capabilities, but it is inappropriate to use such broad and ambiguous terms to describe capabilities that a DCM's automated trade surveillance system is prescriptively required to have, and which it must unequivocally certify to the Commission that it does have, in order to maintain its designation status. We are confident the Commission has an appreciation for this point based on its own efforts to build its automated surveillance systems, and we would urge the Commission to reconsider the requirements of this regulation and again consider employing a more flexible core principles approach. As the Commission is well aware, the cutting edge regulatory infrastructure and applications that CME Group has developed and its continuing innovations in this area all occurred under a core principles regime, and it would be unfortunate if our continuing efforts in this regard now had to be recalibrated to focus on meeting prescriptive requirements dictated by the Commission rather than exercising our own business judgment about regulatory priorities and risks in our markets and how best to employ technology to continue to advance our regulatory effectiveness.

§ 38.157 – Real-time market monitoring.

Proposed § 38.157 obligates the DCM to conduct real-time market monitoring "of *all* trading activity on its electronic trading platform(s) to *ensure* orderly trading and identify *any* market or system anomalies." Such all-encompassing and absolute language in a prescriptive regulation that a DCM must certify to the Commission that it is in full compliance with is problematic. Although CME Group has what it believes to be is a market-leading framework for monitoring trading activity that includes real-time access to all electronic order and trading activity and market data, tools to query and analyze the data, various forms of live alerting capabilities and a multi-functional approach which incorporates staff in Market Regulation, the Globex Control Center and Clearing House Risk Management, it is not clear that we or any exchange could reasonably comply with the standard as set forth in this regulation. We again urge the Commission

to reconsider the utility and effectiveness of establishing prescriptive regulations such as these, and particularly so in areas of technology development that continue to rapidly evolve. We recommend that the Commission focus instead on providing reasonable application guidance within the framework of the core principles in a manner that is designed to promote continued innovation and advance regulatory effectiveness.

§ 38.158 – Investigations and investigation reports.

(a) *Procedures*. The proposed regulation requires that a DCM "must" commence an investigation upon a referral from the Commission or upon the discovery or receipt of information that, in the judgment of the DCM's compliance staff, indicates "a possible basis" for finding that a violation has occurred or will occur. Although perhaps not intended as such, this regulation as proposed effectively eviscerates any discretion the DCM has in determining which matters warrant a formal investigation because at the time of discovery or upon receipt of information, and before any review has occurred, there will always be "a possible basis" that a violation has occurred or will occur.

Formal written referrals from the Commission, law enforcement authorities, other regulatory agencies or other self-regulatory organizations should result in a formal investigation in every instance. However, a DCM should have reasonable discretion to determine how it responds to complaints, leads and other types of referrals. A DCM should be required to follow up on these referrals, but it should also have discretion in determining what level of review is required, how its resources are most effectively utilized to mitigate risks to market integrity, and at what point there is a sufficient basis to open a formal investigation.

For example, a DCM should have the discretion to follow up with a less formal "inquiry" or "research-based" review to determine whether a simple analysis of trading activity or perhaps trading floor video corroborates a complaint of illicit activity in a particular market during a specific time period. If that review clearly reveals that the alleged illicit activity did not occur, there is no need to conduct a formal investigation. If the review indicates that there is a possible basis for finding a rule violation, a formal investigation would be opened. This may be the intention of the "in the judgment of the DCM's compliance staff" language in the proposed regulation, but it is not framed in such a way that appears to allow for this initial review and consideration before opening a formal investigation.

(b) *Timeliness*. CME Group generally has no objection to this proposed subsection, however it recommends that the list of possible mitigating factors include the domicile of the subjects and the degree of DCM control over the progression of the investigation. Investigations involving market participants who live abroad, particularly when they do not speak English, almost always take greater time and resource to complete than they do when the investigation involves an English speaking person within the United States. Additionally, with respect to cooperative enforcement matters, the Commission should recognize that the DCM may not have independent control over the pace of the investigation.

The Commission has also previously distinguished between the time period of completion for the investigative phase of a matter and the time period of completion for the enforcement phase of a matter. This proposed subsection references only the investigation review period, and the Commission should

make clear that the time period necessary to prosecute an investigation once it is referred for enforcement action is independent of the 12-month period referenced in the regulation.

(c) *Investigation reports when a reasonable basis exists for finding a violation*. This subsection requires DCM staff to submit an investigation report "*for disciplinary action in every instance*" in which compliance staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. As the Commission is well aware, rule violations can range from very minor to egregious and clearly not every instance of a rule violation merits formal disciplinary action. Minor transgressions may be effectively addressed by the issuance of a warning letter issued by CME Group's regulatory staff. To the extent that a prescriptive regulation is necessary in this context, the Commission should amend the language accordingly. However, this again points to the danger of a prescriptive, one-size-fits-all approach to regulation. DCMs should have flexibility to develop rules and procedures that best serve the objectives of the core principle, and accountability for demonstrating their compliance. CME Group has made many changes to its disciplinary rules and procedures over the past three years in the interest of continually enhancing its disciplinary processes and programs; mandating prescriptive approaches only serves to impede further such improvements.

This subsection also requires the DCM to include a respondent's disciplinary history in the investigative report that is submitted to the Review Panel. CME Group strongly opposes this requirement and its opposition is discussed further in response to NOPR § 38.703.

(d) *Investigation reports when a reasonable basis exists for finding a violation*. CME Group's Market Regulation Department currently has the authority to administratively issue letters of warning in cases where it determines that there is not a reasonable basis for making a referral to a disciplinary committee. Staff does not need a disciplinary committee's approval in order to issue a Letter of Warning, but can seek such approval if it chooses. As such, this subsection should be modified to account for a DCM's ability to close a case administratively and still issue a letter of warning without disciplinary committee approval.

(e) *Warning letters*. This proposed subsection states that no individual or entity may be issued a letter of warning by a DCM "for the same potential violation" during a rolling 12-month period. This is unduly prescriptive and fails to take into consideration important factors that are relevant to a DCM when evaluating potential sanctions in a given disciplinary matter. Generally speaking, sanctioning in disciplinary matters does not fit well within a prescriptive set of requirements such as this and there is no basis for the Commission to substitute its judgment, absent any facts, for the reasoned judgment of the DCM regulatory staff or disciplinary panel reviewing the facts of the matter. Each matter, and the putative sanctions resulting therefrom, must be evaluated and considered with a mind to the totality of the circumstances, and the DCM should have discretion as to the appropriate sanction in all circumstances.

Consider, for example, a firm with hundreds of traders around the world that receives a letter of warning related to a single employee who used another person's user ID to access an electronic trading platform. This is a violation of the DCM's rule that requires each person to utilize his own unique user ID when entering orders into the electronic trading platform. (*e.g.*, CME Rule 576). The DCM consequently issues a letter of warning to the firm which reiterates the importance of complying with the unique user ID

requirement. Twelve months minus one day later, a different trader – who has no knowledge of the previous letter of warning because he has only been working at the company for two months; works in a different office; has a different manager; and trades different products – enters an order using someone else's user ID. The DCM notices this and brings it to the attention of the firm. The firm promptly addresses the issue with the trader. There are no other instances of improper user IDs by the firm's employees.

Under this proposed provision, the DCM is not permitted to issue a second letter of warning to the firm in the above referenced scenario despite the fact that the only overlapping nexus between the two instances is that the firm is the same. The Commission's proposed regulation would have the DCM allocate its regulatory resources to conduct a full-scope investigation, prepare the prosecution of the case, convene a Probable Cause Committee, issue charges, resolve the matter via settlement or contested hearing before the Business Conduct Committee and prepare a decision in the matter. Clearly, this would be a grossly ineffective and inefficient use of regulatory resources given the alleged misconduct. Not allowing the DCM to take the circumstances of a matter into consideration and to exercise its informed judgment in its handling of investigations would be unduly burdensome and unfair to market participants.

§ 38.159 – Ability to obtain information.
See comments with respect to § 38.150.

Subpart D – Contracts Not Readily Susceptible to Manipulation

§ 38.200 – Core Principle 3.
See comments with respect to Appendix C.

Subpart E – Prevention of Market Disruption

§ 38.250 – Core Principle 4.
Dodd-Frank changed the title of Core Principle 4 from "Monitoring of Trading" to "Prevention of Market Disruptions," and the Commission notes that the corresponding amendments are intended to emphasize that DCMs must take an active role, not only in monitoring trading activities within their markets, but in preventing market disruptions. Under the revised core principle, the DCM "shall have the capacity and responsibility to prevent price manipulation, price distortion and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including: (1) methods for conducting real-time monitoring of trading; and (2) comprehensive and accurate trade reconstructions."

As detailed in its comment letter regarding the Commission's advance notice of proposed rulemaking on Disruptive Trading Practices, CME Group employs significant human and technological resources and capabilities throughout the company to identify and mitigate the risk of market disruptions and also provides an array of tools designed to assist customers in effectively managing and mitigating these risks. These capabilities have been constantly evolving and improving over time as we have developed innovative solutions to regulatory and risk management challenges arising from the dynamic changes in our industry.

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Despite the fact that this growth and innovation in capabilities has flourished under a core principles regime and in the absence of prescriptive government mandates, the Commission has elected to propose a number of new regulations to “clarify and strengthen” DCMs’ responsibilities under the core principle.

§ 38.251 – General requirements.

The proposed rule establishes a number of mandates for DCMs. One of those mandates, for example, requires that the DCM have the capacity to conduct real-time monitoring of trading, adding that, “the monitoring of intraday trading must include the capacity to detect abnormal price movements, unusual trading volumes, impairments to market liquidity and position-limit violations.”

As an initial matter, the regulation does not appear to distinguish in any way between trading conducted on an electronic venue and trading conducted in an open outcry venue. As the Commission is aware, the operational infrastructure of open outcry trading is substantially different from that of electronic trading and is not amenable to capturing trading data in real time. CME Group does, however, employ operations staff who monitor trading in the pits in order to report prices, specialized trading floor investigators who monitor activity throughout the day on the trading floor, and comprehensive video surveillance. That said, the Commission should, in any prescriptive regulation, be clear to appreciate the unique aspects of different types of trading venues and distinguish where requirements are different.

The Commission’s requirements are also overly broad, and it is unclear what specific capabilities a DCM must have in order to certify that is compliant with the regulation within 60 days of publication of the final rule. CME Group trades tens of thousands of unique instruments and spread relationships, and requiring real-time monitoring capabilities across every instrument for such vague terms as “abnormal price movements,” “unusual trading volumes,” and “impairments to market liquidity” does not provide DCMs with sufficient clarity with respect to what specific capabilities satisfy the standard. CME Group has developed numerous technological capabilities, including a number of real-time monitoring capabilities, which have been iteratively evolving as we experiment with new regulatory and monitoring methods and technologies and respond to dynamic changes in our industry; we have also patented new ideas such as stop logic functionality to help address potential disruptions caused by the election of cascading stop orders during a transitory liquidity gap. But absent an understanding of what, for example, the Commission considers an “impairment to market liquidity” and the obligations of a DCM having identified such an “impairment,” this type of vague rulemaking is not helpful.

This provision also requires that the DCM have the real-time capacity to detect position limit violations on an intra-day basis. The Commission is well aware of the challenges in this regard given the fact that the identical contract frequently trades in multiple competitive venues as well as through privately negotiated means and the fact that option deltas are changing throughout the day. These types of factors add complexity to the regulatory analysis conducted after the fact, and certainly do not allow for effective real-time monitoring given that the data from all of the venues is not available in real-time.

The Commission also invited comments on whether DCMs should be required to monitor the extent of high frequency trading and whether automated trading systems should include the ability to detect and flag high frequency trading anomalies. As an initial point, there is no formal or uniform definition of high

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frequency trading and there are many different strategies that can be characterized as high frequency trading. There are also forms of automated trading that may generate high messaging traffic but only over discrete periods of time, and manual or grey box trading that may exhibit very high frequency messaging. DCMs should be expected to monitor activity on their markets, but it is unclear why the Commission should mandate DCMs to specifically monitor the extent of high frequency trading, whatever definition is ultimately ascribed to that term. The Commission has not articulated what the purpose would be for doing so, but the suggestion appears to have a pejorative undertone when, in fact, empirical studies have consistently demonstrated that high frequency trading fosters tighter markets, greater liquidity and enhanced market efficiency. As a practical matter, however, CME Group, and we imagine other DCMs, certainly have the capability to monitor the messaging frequency of participants in their markets and can quickly and easily identify which participants generate high messaging traffic. CME Group also requires registered users who predominantly enter orders via an automated trading system to be identified as automated traders and their orders are identified in the audit trail as originating from automated systems.

With respect to whether a DCM's "automated trading systems," (which we presume to mean "automated surveillance systems,") should include the ability to "detect and flag" high frequency trading anomalies, it again is unclear what specific types of anomalies the Commission has in mind that would be uniquely of concern in the context of a high frequency trader as opposed to any other type of trader. Automated surveillance systems are designed to identify anomalies or transaction patterns that potentially violate exchange rules or that may be indicative of some other type of risk to the orderly functioning of the market, and as the markets have evolved so too have these systems; we believe they will continue to do most effectively if the DCMs have the freedom to pursue those initiatives which best serve the interests of protecting the integrity of their markets rather than allocating resources to fulfill mandates for which the utility has not been demonstrated.

§ 38.252 – Additional requirements for physical delivery contracts.
Proposed §38.252 embodies long-standing practices of CME Group's DCMs. While we think that it is sound business practice as a DCM to, among other things, monitor a contract's terms and conditions as to whether there is convergence between the contract price and the price of the underlying commodity and to monitor deliverable supply to make sure it is adequate, as previously discussed, we oppose the Commission's eradication of principles-based regulation through prescriptive rules such as these. In substance, proposed §38.252 can be found in the current acceptable practices and we think that they should remain acceptable practices moving forward. We think this is equally applicable to proposed §38.253.

§ 38.253 – Additional requirements for cash-settled markets.
If a contract listed on a DCM is settled by reference to the price of a contract or commodity traded in another venue, this proposed regulation would obligate a DCM to require that all traders, including non-member traders, on the DCM provide the DCM with "their positions in the reference markets as the traders' contracts approach settlement," or, in the alternative, to have an information sharing agreement with the other venue or DCM.

One of the areas in which the Commission is uniquely situated to add regulatory value to the industry is in the context of reviewing for potential cross-venue rule violations as it is the central repository for position information delivered to it on a daily basis in a common format across all venues. In the interest of efficient and effective industry regulation that minimizes the costs of redundant efforts, CME Group believes this is an appropriate area in which the Commission should allocate resources. The proposed alternative is for the Commission to impose onerous burdens on DCMs and their customers by requiring the reporting of information the Commission is already privy to; however, this would clearly be the more inefficient option, may impair liquidity because participants do not desire to take on the burden of reporting or the regulatory risk of failing to do so, and is also less effective because the trader may not report the positions to DCM as timely or as accurately as the clearing firm will report to the Commission via its routine reporting. The regulation also provides that instead of requiring the duplicative reporting, the DCM could instead enter into an information-sharing agreement with the other venue, but this too has additional costs to both entities and it may not be practical or prudent for a DCM to enter into such an agreement with the other venue.

CME Group rules already allow it to request such information on an as-needed basis from market participants and it is also a party to various information sharing agreements with other entities. When a market position is of concern to CME Group's regulators, they have the ability to request such information in one of these ways. The benefit of mandating duplicative reporting by all participants, even where there is no identified basis for concern, is burdensome and a poor use of regulatory resources.

§ 38.254 – Ability to obtain information.
Proposed rule § 38.254 requires DCMs to have rules in place that require traders to keep records of their trading, including records of their activity in the underlying commodity and related derivatives markets. The Commission provides no guidance as to the types records DCMs must require to be kept under this rule. We recommend that the Commission provide guidance to DCMs in the form of acceptable practices on the types of records that DCMs should require traders to keep under this rule.

§ 38.255 – Risk controls for trading.
Although CME Group broadly concurs that risk control mechanisms such as price limits, circuit breakers or halts in linked or substitute contracts should be coordinated "to the extent practicable," DCMs must retain the flexibility to determine and to implement risk controls that it believes are necessary to protect the integrity of its markets given that it is the DCM that is responsible for reducing the risk of potential disruptions in its markets. Further, CME Group is not aware that the national securities exchanges currently have a similar obligation to coordinate these types of risk controls with DCMs. For the foregoing reasons, CME Group does not believe that the Commission should mandate coordination by regulation. Instead, the Commission should work constructively with registered entitities to facilitate coordination, where appropriate, and also exercise leadership in facilitating dialogue with the SEC to accomplish this objective with respect to linkages among the various forms of equity securities and derivatives. The latter point, in particular, is a critical undertaking, and CME Group has previously expressed its strong support for elevating the level of collaboration and coordination in this area.

The Commission notes further in the rulemaking that it is considering mandating that DCMs employ other specific types of pre-trade risk controls in electronic trading environments that are appropriate and/or

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necessary to reduce the risk of market disruptions and invited comment on which risk controls should be mandated and how. As outlined in its comment letter to the Commission's advance notice of proposed rulemaking on Disruptive Trading Practices, CME Group incorporates a broad array of risk and volatility mitigation tools, provides numerous risk management services and capabilities to its customers, and establishes and enforces rules and policies designed to mitigate the risk of disruptions to its markets.

CME Group believes that the marketplace would benefit from some level of standardization with respect to the types of pre-trade risk controls employed by DCMs, as well as by other trading venues, and is supportive of the Commission including as part of an acceptable practices framework, pre-trade quantity limits, price banding and messaging throttles; however, CME Group also believes that the determination of the specific parameters for these types of functionality should remain with the DCM which is in the best position to assess the parameters appropriate for its markets. It is, of course, equally important that clearing firms and trading firms with direct access have similar responsibilities to implement appropriate pre-trade risk controls; clearly, redundant risk mitigation checks that are appropriately calibrated at the various levels of the electronic trading supply chain will offer the most robust protection to markets and market participants. CME Group strongly encourages the Commission to continue its dialogue with the industry in formulating its approach in this area.

§ 38.256 – Trade reconstruction.
This proposed regulation would obligate the DCM to make all audit trail data and reconstructions available to the Commission in a form, manner and time as determined by the Commission, in its sole discretion. As the Commission is aware, audit trail information from electronic trading venues is extremely detailed and voluminous, and the DCM needs adequate time to prepare the data in the form the Commission requests and to ensure that the data it provides, particularly when requested to be produced in other than its native form, is accurate and complete. Although the Commission staff is typically reasonably flexible in regard to the timing of its requests, the volume of requests has increased substantially as the Commission staff has grown and various new initiatives have been undertaken. We therefore recommend that the Commission modify the language to "such reasonable time as determined by the Commission."

Subpart F – Position Limitations or Accountability

§ 38.300 – Core Principle 5.
§ 38.301 – Position limitations and accountability
The Commission has proposed a new and far more expansive and prescriptive position limit regime in a separate rulemaking without either having made a proper finding that its proposed rules are necessary or appropriate to achieving the mandates of the Dodd-Frank Act or having the information regarding the OTC market that would be necessary to calibrate appropriate limits should there be a finding that limits were justified. CME Group requests that the Commission give careful consideration to the comments CME Group will file in connection with that proposed rulemaking and carefully evaluate the ramifications of its proposed approach to price discovery, the efficiency of risk transfer and the vitality of U.S. markets.

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Additionally, to the extent that Proposed Appendix C addresses issues that overlap with the proposal on Part 151, the Commission should ensure that the two rulemakings are consistent to avoid confusion to market participants.

Subpart G – Emergency Authority

§ 38.350 – Core Principle 6.
CME Group DCMs currently have rules in place that provide for the exercise of emergency authority and which are consistent with the types of emergencies contemplated in Core Principle 6. However, the Commission's proposed amended guidance and acceptable practices reflect a new emphasis on cross-market coordination of emergency actions, on the ability to address emergencies in real-time should the need arise, and on more significant involvement of the Commission with respect to exchange emergency actions. The Commission has only very generically articulated the basis for these proposed amendments and it is not clear that the Commission has fully considered the real-world implications of its guidance. There are a wide variety of possible types of emergencies, and a DCM must have the flexibility to respond to an emergency in the manner and time frame that it believes is necessary to protect the integrity of its markets. Certain types of emergencies might appropriately lend themselves to coordination, consultation and a comprehensive evaluation of the possible effects of the DCM's actions on all underlying, linked or similar markets, but clearly that is not universally, much less usually, the case, and doing so in fact may hinder the prompt implementation of the necessary action – creating rather than mitigating risk. Additionally, depending on the nature of the emergency, there may also be issues a DCM must consider with respect to sharing confidential and potentially market impacting information in advance of taking an emergency action.

The Commission's guidance also states that where a swap is traded on more than one platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the Commission or the Commission's staff. It is not clear from the guidance whether the Commission is referencing in this context all of the DCM's open interest in a particular swap or the swap positions of a particular participant; in the latter case, it is not clear why prior Commission approval is necessary or appropriate as requiring such prior approval will unequivocally impair the DCM's ability to take prompt action.

For these reasons, CME Group believes that the Commission should re-craft its guidance to make clear that DCMs have the flexibility and independence necessary to address market emergencies. The objective should be to ensure that DCMs have the rules, procedures and capabilities to respond to emergencies in an effective and timely manner consistent with the nature of the emergency and that all such actions taken by the DCM be made in good faith to protect the integrity of the market.

Subpart H – Availability of General Information

§ 38.400 – Core Principle 7.
Proposed regulation 38.401(c) would require DCMs to post regulatory submissions filed with the Secretary of the Commission simultaneously on its website where such filings concern new product listings, new rules, rule amendments or other changes to previously-disclosed information. This

requirement is duplicative given that the Commission already maintains an area on its website for all such filings for the express purpose of providing transparency and a centralized repository of such information to the marketplace. Further, CME Group, for example, already has in place vehicles such as its Special Executive Reports, Market Regulation and Clearing Advisories and Globex Bulletins, among others, that are posted on our website to clearly and timely communicate information regarding these matters to the public, and we also provide a service that allows the public to subscribe from our website to receive any such notifications via email.

Notwithstanding the foregoing, to the extent that the Commission elects to prescriptively mandate that a DCM make such filings available on its website, the DCM should have a minimum of one business day to post such filings rather than having to post "simultaneously" with the Commission filing. CME Group notes that even this one-day standard would be a significantly higher standard than the Commission holds itself to with respect to posting the filings it receives from DCMs today.

Subpart I – Daily Publication of Trading Information

§ 38.450 – Core Principle 8.
§ 38.451 – Reporting of trade information.
The Commission is proposing certain changes to § 16.01 that will require DCMs to report the total of volume of block trades that are included in the volume of trading of each contract. Although CME Group does not object to reporting this information to the Commission, the compilation of new mandates such as these throughout this rulemaking will require assessment once the final rules are published to ascertain what systems changes will be necessary and how long such changes will take to implement.
The Commission also seeks comment in its rulemaking on the appropriate end-of-day price reporting of swaps. CME Group believes that this topic is better addressed by the Commission as a separate initiative given the state of change with respect to how this market is expected to evolve in the context of the regulatory reform initiatives being undertaken and the broad diversity of swap products.

Subpart J – Execution of Transactions

§ 38.500 – Core Principle 9.
§ 38.502 – Minimum centralized market trading requirement
As described in greater detail at the outset of this letter, CME Group strongly believes that the statutory language of Dodd-Frank with respect to Core Principle 9 did not suggest in any way that Congress intended for the Commission to establish a prescriptive and arbitrary percentage of volume threshold that a particular contract must trade in the centralized market in order to be permitted to trade on a DCM. Further, the Commission has not demonstrated how establishing this arbitrary minimum threshold and potentially forcing contracts off of DCMs provides any public or regulatory benefit or serves the broader marketplace with respect to the fundamental price discovery and risk management objectives these markets serve. There can be little question that block trades, for example, contribute to price discovery and serve the risk management needs of market participants, just as it is clear that exchange of futures for related position transactions have flexibly served the risk management needs of end-users for more than a century.

In this proposed rulemaking, the Commission seeks to impose a single prescriptive standard across an incredible diversity of products that serve particular risk management needs for varying customer segments, and without any consideration for the unique characteristics of different products, their place in the product maturity cycle or the substantial costs to market participants of its proposed approach. The proposed regulation does, however, impose onerous burdens with respect to constantly evaluating compliance with thresholds, transferring open interest, liquidating contracts and endless paperwork related to reporting and exemption petitions – all for hypothetical benefits that have yet to be articulated or empirically supported.

CME Group strongly urges the Commission reconsider its prescriptive approach to this core principle.

§ 38.503 – Block trades on futures contracts.
Among other provisions, this proposed rule provides that a DCM's rules must limit block trades to "large transactions, and impose minimum size requirements on such transactions that are appropriate for each listed contract subject to a block trading provision." As discussed in Section I (a) above, and in response to proposed § 38.505, Core Principle 9 places no size limitation on off-exchange transactions executed pursuant to contract market rules. Specifically, subsection (b)(iii) states that the rules of DCMs may permit "a futures commission merchant, acting as principle or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if that contract is reported, recorded, or cleared in accordance with the rules of the contract market or [DCO]." Subsection (b)(iii) grants DCMs discretion in setting block thresholds so long as such thresholds do not undermine price discovery that may be occurring in the centralized market. Thus, to the extent that the "large transactions" language in proposed § 38.503 is intended to impose a size requirement on block transactions executed pursuant to DCM rules, such language should be omitted from a final rule as it is inconsistent with the plain language of subsection (b)(iii) of Core Principle 9 and inconsistent with the proposed requirement that DCMs set block levels that "are appropriate for each listed contract."

This new regulation also mandates that in all cases block trades must be reported to the contract market within five minutes of its execution, again applying a one-size-fits-all approach to regulation. DCMs should retain the flexibility to determine appropriate reporting periods based on appropriate factors, for example, the liquidity profile of the contract and the size of the block. One of the principal reasons for allowing block trades is that transactions that are large in size relative to a contract's liquidity have the potential to be disruptive if entered directly into the centralized market. In some circumstances, allowing only 5 minutes for the party facilitating the block to hedge that position may not be sufficient to mitigate potentially disruptive effects. Provided that the DCM can reasonably justify its minimum reporting period, it should have the flexibility to establish a period that in its judgment best serves the needs of the marketplace.

The regulation further requires that a DCM publish the details of each block trade "immediately" upon receipt. DCMs should instead be held to an "as soon as is practicable" standard given that DCM staff must first review the report for accuracy given its potential market impact and then execute the operational procedures necessary to publish the block report. Additionally, the regulation calls for separately identifying block trade volume in DCM's daily volume reports. CME Group does not fundamentally object to this additional mandate, but it will require changes to current systems and a

retooling of daily publications which will require time to implement that, again, will be longer than the proposed 60-day period that DCMs are proposed to have to certify compliance with all of the amended core principles and Commission regulations.

With respect to block trades between affiliated parties, the Commission proposes a more stringent pricing standard that requires the price of the block trade to either fall within the contemporaneous bid/ask spread on the centralized market or be based on a contemporaneous market price in a related cash market. It remains unclear, as it did when this requirement was initially proposed by the Commission in 2008, why affiliated parties should be held to a different standard in this regard than other market participants and be denied the ability to enter into valid transactions that are available to other market participants who are not affiliates. The regulation requires that each party have a separate and independent legal, bona fide business purpose for engaging in the trades and each party's decision to enter into the trade must be made by a separate and independent decision maker. Consequently, there is no reason that such affiliated parties should not be held to the same "fair and reasonable" pricing standard that applies to other market participants.

§ 38.505 – Exchange of derivatives for related position ("EDRP").

Proposed § 38.505 requires that the price differential between the futures leg and the cash or derivatives leg of an EDRP "should reflect commercial realities and at least one leg of the transaction should be priced at the prevailing market price." Current industry practice is to require EDRPs to be executed at commercially reasonable prices that are mutually agreed upon by the parties to the transaction and do not require that one leg be priced at the prevailing market price as proposed by the Commission. The Commission has not articulated any defect with this practice and we do not believe that the Commission should impose such a requirement.

The effective price of an EDRP is the price differential between the component legs of the transaction rather than the specific prices of each component leg and neither component price is reported. Parties to such transactions may have commercially appropriate reasons for pricing the legs of an EDRP at other than the prevailing market price at the time of the transaction, just as there are with futures spread transactions for which the component legs are routinely priced away from the prevailing market. The proposed regulation already requires that the EDRP be bona fide, and in the absence of any compelling basis to limit pricing flexibility in this regard, the Commission should modify this provision of the regulation to conform to current standards.

The Commission further notes that "given the continuous changes and advancements in electronic trading over the years," it believes EDRP trades should be reported within 5 minutes of consummation, the same time period as is proposed for block trades. The advancements in electronic trading have no bearing with respect to the reporting of EDRPs. These are privately-negotiated transactions, often between end-users, but unlike blocks do not inform price discovery and consequently do not require the same degree of reporting urgency. Block trade reports are currently typically called into the exchange to facilitate price reporting, but they are not required to be submitted for clearing within the time that they are required to be price reported. EDRPs are not price-reported and therefore are not called into the exchange, but rather are reported to the customers' clearing firms who subsequently input the exchange-leg into the clearing system. Thus, not only is it grossly impractical for EDRPs to be submitted for

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clearing within five minutes of consummation, it is unnecessary. DCMs should continue to have the flexibility to establish clearing submission standards that are appropriate to supporting their business needs and the needs of market participants. It is also worth noting that blocks and EDRPs may be executed during time periods when the centralized market is closed and the prescriptive regulations proposed by the Commission do not contemplate this.

These are additional examples of why the Commission should be focused on implementing an appropriate core principles framework that allows a DCM flexibility in determining rules appropriate for its markets that are certified to the Commission and comply with core principles. The Commission simply is not in a position to appreciate all of the idiosyncrasies of the panoply of products traded on each DCM's market, the needs of the DCM's customers and the operations of the DCM in the same way that the DCM is able to. Further, every time there is an innovation that might create value for market participants that does not comply with the prescriptive standards established by the Commission, but which otherwise complies with the core principles, the DCM will have to petition the Commission for a rule change that will require Commission staff to examine the issue, publish a proposed rule change in a federal register release, review comments and publish a final rule. This is not the type of flexible regime that Congress contemplated and would represent a significant step backward for the industry.

Proposed § 38.505 also prohibits all "contingent" EDRP transactions. Specifically, subsection (c) of Proposed § 38.505 provides that "[a]n exchange of derivatives for a related position transaction must be bona fide such that the exchange of derivatives for the related position is not contingent upon an offsetting transaction." The Release does not identify any perceived regulatory or public concerns created by such transactions in markets where there is no established liquidity in a centralized market. On the contrary, in their dissent Commissioners Sommers and O'Malia note that, for the past decade, such transactions have provided significant regulatory and public benefit in the energy space:

> Over the past decade, a long list of non-standardized, illiquid contracts in the energy sphere have been executed off-exchange and cleared on-exchange through the exchange of futures for swaps (EFS) mechanism. The availability of clearing for these contracts added a level of safety, soundness and transparency to the marketplace that did not exist before. If the Commission had not permitted these contracts to be listed for clearing through the EFS process it is highly doubtful that the level of clearing that exists today for these contracts would have been achieved, and highly likely that this activity would have remained opaque to market participants and regulators.

75 FR 80636. There is nothing in Core Principle 9 or any other provision of DFA that requires the elimination of such transactions. We agree with Commissioners Sommers and O'Malia that "Congress was aware of this specialized marketplace when it amended Core Principle 9" and if it had "intended to outlaw this activity it could have done so by explicitly requiring all DCM contracts to trade in the centralized market." Id.

To the extent that there is an unstated philosophical issue with the continued use of such EDRP transactions, we submit that DCMs may allow market participants to achieve the same result by adopting rules pursuant to subsection (b)(iii) of Core Principle 9, which states that the rules of DCMs may permit "a futures commission merchant, acting as principle or agent, to enter into or confirm the execution of a

contract for the purchase or sale of a commodity for future delivery if that contract is reported, recorded, or cleared in accordance with the rules of the contract market or [DCO].” Subsection (b)(iii) grants DCMs discretion in setting block thresholds so long as such thresholds do not undermine any price discovery that may be occurring in the centralized market. The validity of such off-exchange transactions is underscored by CEA § 4(a), which expressly prohibits any person to execute or even offer to enter into a futures contract unless such transaction is “conducted on <u>or subject to the rules of</u> a board of trade which has been designated or registered by the Commission as a contract market.” 7 U.S.C. § 4(a) (emphasis added). Congress certainly was aware of this language in Section 4(a) the CEA when it passed DFA and chose not to eliminate it from the Act.

Subpart K – Trade Information

§ 38.552 – Elements of an acceptable audit trail program.
Proposed § 38.552 requires that a DCM's audit trail program include an electronic transaction history database that, among other things, includes “a history of all orders and trades.” CME Group maintains such a database in the context of electronic trading; however, the open outcry venue does not support an electronic transaction history database that captures *the history of all orders*, including orders that may be cancelled prior to execution. In those circumstances that open outcry orders are entered to the trading floor via an electronic order routing system, such information is captured and retained by CME Group. However, the majority of such orders are not entered in such manner and the Commission should ensure that any prescriptive regulations it chooses to promulgate in this area reflect the distinctions in the operations of different trading venues.

§ 38.553 – Enforcement of audit trail requirements.
The Commission's proposed § 38.553 requires that a DCM enforce its audit trail and recordkeeping requirements through at least annual reviews of “all members <u>and market participants</u>” to verify their compliance with all applicable audit trail requirements. In light of the manner in which the Commission has characterized the term market participant in other parts of this rulemaking and, incorrectly we believe, sought to require all market participants to be subject to all DCM rules in the identical manner as are members, the all-encompassing language of this regulation would suggest that DCMs have an obligation to conduct annual audit trail reviews of every participant who enters an order into the DCM's electronic trading system. This would be exceptionally onerous, costly and unproductive and we do not believe that this is what the Commission intended; however, given that this is a prescriptive regulation with which a DCM must certify compliance to maintain its designation status, we urge the Commission to clarify the language such that the required electronic audit trail reviews apply at the clearing firm level rather than the market participant level.

As the Commission notes, audit trail programs in the area of electronic trading have been evolving well ahead of any rulemaking by the Commission as DCMs have taken the initiative to develop new programs that are designed to support their regulatory objectives. CME Group again urges that the Commission recognize the value of a core principles regime in this context and allow DCMs the flexibility to design and execute audit trail programs that best serve the objectives of the core principle and provide the greatest regulatory benefit rather than focusing their efforts on fulfilling prescriptive mandates. For example, given that CME Group reviews front-end audit trail capabilities at the time a participant connects to Globex, the

allocation of resources to reviewing such capabilities in an audit relative to other factors that are more impactful to our regulatory capabilities may not be the best use of those resources from a regulatory risk point of view. As we have consistently seen, principles based regulation allows DCMs to determine the most efficient and effective way to achieve the desired outcomes, and they are accountable if they do not satisfy the relevant core principle.

Subpart L – Financial Integrity of Transactions

§ 38.600 – Core Principle 11.
§ 38.601 – Mandatory Clearing.
The mandatory clearing requirement should not apply to swaps traded on a DCM. As the Commission knows, not all swap contracts will be required to be cleared. Specifically, foreign exchange swaps may be exempt from the clearing mandate and end users may exercise their right not to clear swaps that may otherwise be subject to the clearing mandate. By requiring all contracts executed on a DCM – including swaps – to be cleared by a DCO, the Commission is putting DCMs at a competitive disadvantage to SEFs without justification in law or otherwise. Accordingly, the Commission should revise proposed § 38.601 to exclude swaps from its coverage.

§ 38.607 – Direct access.
Proposed § 38.607 requires that DCMs which permit direct electronic access by customers (defined as allowing customers of futures commission merchants to enter orders directly into a DCM's trade matching system for execution) have in place effective systems and controls reasonably designed to enable the FCM's management of financial risk, such as automated pre-trade controls that enable member futures commission merchants to implement appropriate financial risk limits. The regulation also requires that the DCM implement and enforce rules requiring the member futures commission merchants to use the provided systems and controls.

CME Group has established numerous systems, controls and services to assist its clearing members in managing financial risk associated with clearing direct access business as well as other business submitted through its systems. We support the Commission's objective and its approach of providing DCMs with reasonable discretion over the control model for access to a particular marketplace and for appropriate flexibility in determining the specific types of pre-trade controls to be implemented in this context.

The Commission requested comment on what specific direct access controls and procedures DCMs should implement to permit futures commission merchants to manage their risks and whether such controls should be mandatory. As noted previously, CME Group believes that the marketplace would benefit from some level of standardization with respect to the types of pre-trade risk controls employed by DCMs in the context of an acceptable practices framework and we encourage the Commission to continue its dialogue with the industry in formulating a holistic approach that incorporates appropriate risk controls at the DCM and DCO levels, as well as at the clearing firm and direct access client level.

Subpart N – Disciplinary Procedures

§ 38.700 – Core Principle 13.
§ 38.702 – Disciplinary panels.
The Commission's regulations mandate a disciplinary structure that includes Review Panels, which are responsible for determining whether a reasonable basis exists for finding a violation of contract market rules and authorizing the issuance of notices of charges, and Hearing Panels, which are responsible for adjudicating disciplinary cases pursuant to a notice of charges authorized by a Review Panel. CME Group again believes the Commission should rely on a core principles rather than prescriptive approach in this context as DCMs may have established structures or develop new structures that clearly satisfy the objectives of the core principle, but may not precisely comply with the language of the prescriptive regulation. CME Group rules, for example, authorize its Market Regulation staff to determine whether certain non-egregious rule violations merit referral to a Review Panel and to issue warning letters on an administrative basis or to take certain summary actions when appropriate; the Hearing Panel may also adjudicate a disciplinary case prior to the issuance of charges pursuant to a supported settlement offer. Although this type of flexibility appears to be contemplated by other regulations under this core principle, the prescriptive language of this regulation appears to mandate a different approach.

§ 38.703 – Review of investigation report.
Section 38.158 proposes that all investigation reports be required to include the disciplinary history, if any, of the market participant against whom the DCM's compliance staff seeks charges. This proposed § 38.703 states that a "Review Panel" should review that investigation report when contemplating whether to issue formal charges. CME Group agrees that the investigation report should include the disciplinary history so that compliance and enforcement staff can sufficiently evaluate whether to seek charges from the Review Panel. However, it disagrees that the disciplinary history should be included in the version of the investigation report sent to the Review Panel. Nor should it be considered by the Review Panel when determining whether to issue formal charges. Whether a market participant has a disciplinary history is not relevant to the consideration of whether that person or entity, in the new matter, has committed a further violation(s) of the DCM's rules. An exception would be where the prior disciplinary offense is an element of proof for the rule violations that compliance staff is asking the Review Panel to issue charges, such as violation of a previously issued cease and desist order or broker ban. Prior disciplinary history is relevant to the sanctioning phase of a disciplinary hearing and should appropriately be addressed at that juncture in the disciplinary process.

§ 38.705 – Right to representation.
The proposed provision states that a market participant should be able to be represented by counsel "or any other representative of its choosing in all succeeding stages of the disciplinary process." Similar language appears in § 38.716. Consistent with current CME Group rules and in order to avoid conflicts, this should be limited to legal counsel or anyone other than a member of the DCM's disciplinary committees, a member of the DCM's Board of Directors, an employee of the DCM or a person substantially related to the underlying investigation, such as material witnesses or respondents.

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§ 38.710 – Hearings.
Section (a)(2) of this regulation states that the respondent "must be entitled" to review all evidence and documents to be relied upon by compliance staff at a contested hearing or that is "relevant" to the issued charges. To the extent the Commission believes it is necessary to promulgate regulations rather than rely on core principles, this should be revised to exclude protected attorney work product, attorney-client communications, and investigative work product, including, but not limited to, the investigation report and any exception reports.

§ 38.715 – Summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities.
CME Group makes the same objection to the proposed requirement that no more than one letter of warning issue to a market participant in a 12-month rolling period as it did for proposed § 38.158(e).

§ 38.850 – Conflicts of Interest.
The Commission has published two separate NOPRs containing proposed rules that would govern DCMs obligations to comply with Core Principle 16. CME Group's comments on the Commission's proposed rules governing conflicts of interest issues at DCMs are contained in the letters submitted or to be submitted in response to those NOPRs[10].

§ 38.1050 – Core Principle 20.
§ 38.1051 – General requirements.
CME Group believes that it follows generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of its automated systems. We also concur that disruptions to markets should be minimized, and that market providers must have strong BC-DR plans and processes. However, in setting standards for recovery time objectives ("RTO"), CME Group believes that it is imperative that impacts on all market participants and independent technology services providers be considered in each catastrophic situation in the context of determining the proper RTO. As a "critical financial market" CME Group would be subject to more stringent business continuity requirements and it previously commented on the Commission's proposed rule on this topic under Section 40.9.

Proposed regulation § 38.1051 mandates that DCMs notify Commission staff promptly of <u>all</u> electronic trading halts and systems malfunctions. CME Group widely publishes notices of electronic trading halts and agrees that this is necessary. However, the requirement for notice of all systems malfunctions is overly broad and would require onerous reporting of mundane and trivial incidents. CME Group's system architecture is highly redundant and scalable, and most minor incidents are corrected without disruption or cause for concern and do not merit reporting. Further, some market-related automated functionality such as stop logic may pause markets pursuant to published parameters, and these types of normal market events should not be subject to routine reporting. The Commission should therefore limit required reporting to any material system failures.

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[10] These NOPRs also contain the proposed rules relating to Core Principle 15 (Governance Fitness Standards) and Core Principle 22 (Diversity of Board of Directors). As such, CME Group's comments on these issues also will be addressed in these other comment letters.

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Proposed regulation § 38.1051 also mandates that DCMs provide the Commission with timely advance notice of *all* planned changes to automated systems that *may* impact the reliability, security, or adequate scalable capacity of such systems. Here again, the Commission has gone too far with its reporting requirements, creating an extremely onerous burden for DCMs and adding significant costs that are not at all commensurate with any value created. Any change to a system, if implemented incorrectly, could conceivably impact the operation of the system and it would be grossly inefficient and unproductive to report every planned change to the company's automated systems. The Commission should be focused on requiring DCMs to have proper change control processes and procedures, not on requiring advance reporting of the details of each and every system change.

The Commission further requires that DCMs provide timely advance notice of *all* planned changes to the DCM's program of risk analysis and oversight. As with the aforementioned mandates, this is an extraordinarily broad requirement that speaks more to excessive and stifling regulation rather than prudent oversight. It is neither necessary nor productive for the relationship between the Commission and DCMs to be defined in this way and we urge the Commission to consider a far more measured and practical approach that appropriately considers context and relative risks.

Disaster recovery tests generally involve the clearing community, member firms, and major liquidity providers connected in the Globex environment. However, while CME Group obtains representations that its major vendors have disaster recovery plans, CME Group does not control, or generally have access to, the details of the proprietary plans of these entities.

Subpart V – Financial Resources.

§ 38.1101 General requirements.

Proposed § 38.1101 seeks to implement Core Principle 21, which states that DCMs shall have adequate financial, operational, and managerial resources to discharge each responsibility of the DCM. Core Principle 21 further states that the financial resources of the DCM "shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis." 7 U.S.C. §7(d)(21). Though the statute does not define "financial resources" we believe Congress intended the term to be construed broadly to include anything of value that the DCM has at its disposal, including operating revenues. Indeed, had Congress wanted to exclude operating revenues from financial resources available to the DCM for purposes of satisfying its obligations under Core Principle 21, it could have incorporated an equity concept. Moreover, unlike subsection (e) of proposed § 38.1101, which appears to be concerned with DCMs having adequate resources to wind-down the business, subsection (a) appears to be addressing the going concern of the business, which would naturally include estimated operating revenues.

With respect to subsection (e), we believe that the measurement of liquidity of financial resources is relevant only in the context of winding-down of operations. In that context, we believe a more accurate assessment of how long it would take for a DCM to wind-down is 3 months, rather than 6 months. Therefore, we recommend that the Commission revise subsection (e) accordingly.

Moreover, we believe that it is not feasible for DCMs to comply with the reporting requirement imposed under this rule within 17 business days after the end of the DCM's fiscal quarter, as proposed by the Commission. We strongly urge the Commission to revise this aspect of its proposed rule and grant DCMs 40 calendar days after the end of the DCM's fiscal quarter, and 60 calendar days after the end of the fiscal year, to comply with its filing obligations. This suggested time period is consistent with the SEC's reporting requirements.

Finally, CME Group recommends that the Commission clarify that all filings made pursuant to § 38.1101 be kept confidential by the Commission.[11] The data the Commission is requesting under this rule contains sensitive commercial information that the DCM is otherwise under no obligation to publicly disclose. We see no value in making this information publicly available. If the Commission were to make this information publicly available, we would object to the substantive filing requirements as well.

§ 38.1200 – Core Principle 23.
The proposed section states that the DCM must keep any records relating to swaps defined in § 1a(47)(A)(v) of the Act open for inspection for the SEC. The Commission's proposed rule does not provide any guidance as to what records will need to be retained nor how long such records must be retained in order to satisfy its obligations under Core Principle 23. Thus, DCMs will have no way of knowing whether it is in compliance with this core principle without further guidance from the Commission.

Appendix C, § (b)(i)(C)
This proposed rule provides that "…an appropriate estimate of deliverable supply excludes supplies that are committed to some commercial use." The Commission's proposal in this regard is overly restrictive and inconsistent with long-standing practice in the industry. Specifically, since the adoption of the 25% formula for the grain and livestock markets in the 1980s, DCMs have estimated deliverable supplies by including in their calculations all supplies that are stored in the delivery territory or that move through the delivery territory. The Release identifies no problems with using this methodology in these markets, and in fact, there are none. If this standard is adopted, it will impose additional costs on exchanges and market participants with no defined benefit, including requiring exchanges to survey market participants annually.[12]

Appendix C, §§ (c)(3)(ii) & (g)(ii).
Both proposed rules provide "The cash-settlement survey should include a minimum of four independent entities if such sources do not take positions in the commodity (e.g., if the survey list is comprised exclusively of brokers) or at least eight independent entities if such sources trade for their own accounts (e.g., if the survey list is comprised of dealers or merchants)." For many commodities, including certain parts of the livestock/meat/dairy sector, there may not be eight independent entities in the entire industry. Therefore, we believe that these rules should be modified to provide that where there are less than eight

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[11] CME Group recommends that the Commission also clarify that consolidated financial statements covering multiple DCMs, and DCOs where relevant, comply with § 38.1101.

[12] Since this concept is related to the Commission's proposal under Part 151 regarding position limits, the Commission should ensure that the definition of deliverable supply is the same in the final rules under both Parts.

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independent entities, that the cash-settlement survey should include transactions representing at least 51% of total production for the commodity in question.

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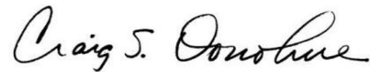
CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or via email at Craig.Donohue@cmegroup.com, or Christal Lint, Director, Associate General Counsel, at (312) 930-4527 or Christal.Lint@cmegroup.com.

Sincerely,



Craig S. Donohue

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