

VIA ON-LINE SUBMISSION

April 11, 2011

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

Re: Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants– 76 Fed. Reg. 6708 (Feb. 8, 2011), RIN 3038-AC96

Dear Mr. Stawick:

CME Group Inc. (“CME Group”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) notice of proposed rulemaking (“NPR”) regarding swap trading relationship documentation requirements for swap dealers (“SDs”) and major swap participants (“MSPs”).

CME Group is the parent of four DCMs: the Chicago Mercantile Exchange Inc. (“CME”), the Board of Trade of the City of Chicago, Inc. (“CBOT”), the New York Mercantile Exchange, Inc. (“NYMEX”) and the Commodity Exchange, Inc. (“COMEX”). These DCMs 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’s clearing house division (“CME Clearing”) offers clearing and settlement services for exchange-traded futures contracts, and for over-the-counter (“OTC”) derivatives transactions through CME ClearPort. CME is registered with the CFTC as a DCO, and is one of the largest central counterparty clearing services in the world.

A. Proposed Swap Trading Relationship Documentation Rule After Submission of Swap for Clearing – Agency v. Principal Model

As proposed, Regulation 23.504(b)(6)(v)(B) would require, upon acceptance of a swap by a DCO, each swap dealer and major swap participant to create a record containing certain items of information along with a statement that in accordance with the rules of the DCO, the original swap is extinguished and replaced by “equal and opposite swaps between clearing members and the DCO.” This provision appears to presume the use of a “principal” model for all cleared swaps, including those that an FCM clears on behalf of its customers. However, an FCM clearing customer business acts as an agent for undisclosed principals (i.e., the FCM’s customers) vis a vis CME Clearing and guarantees its customers’ performance to CME Clearing. This is codified in CME Rule 8G05 (Substitution), which states that a clearing member is deemed the principal to a swap transaction executed for its own account, but is the guarantor and “agent when [the transaction is] executed by the clearing member for the account of....[a]

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customer of that Clearing Member.” The rule further provides that, once the transaction is accepted for clearing, there are “two equal and offsetting positions for each original transaction as follows: one between the original buyer and the Clearing House, as seller and one between the original seller and the Clearing House, as buyer.”

Use of the FCM-customer agency model is critical because it facilitates portability of customer positions, as well as customer segregation protections and favorable capital treatment for FCMs. It also facilitates operational simplicity and efficiency by avoiding the necessity of an FCM booking a string of back-to-back transactions first between the FCM and DCO and second between the FCM and its customers. It also reduces the amount of documentation, including master agreements, required among swap dealers, major swap participants and customers. The agency model also improves systemic risk protection by providing bankruptcy protections and certainty to the DCO in the event of an FCM clearing member default. In order to preserve the agency model for customer cleared swaps, the CFTC should revise Regulation 23.504(b)(6)(v)(B) to provide that “The original swap is replaced by equal and opposite swaps with the derivatives clearing organization”

B. Proposed Swap Trading Relationship Documentation Rule After Submission of Swap for Clearing – Record of Information

Proposed Regulation 23.504(b)(6)(iii) would require, upon acceptance of a swap by a DCO, each swap dealer and major swap participant to create a record containing certain items of information including “the name of the clearing member clearing for the swap dealer or major swap participant.” Proposed Regulation 23.504(b)(6)(iv) would require the record also contain “the name of the clearing member clearing for the customer, if known.” It is unclear in the proposed Regulation if the “record” in the proposed regulation would form part of the swap trading relationship documentation and be shared among the parties to such swap trading relationship or if the record would be held solely by the swap dealer and/or major swap participant and not form part of the swap trading relationship documentation. If the record forms a part of the swap trading relationship documentation, is shared among both parties to the original transaction and maintains the requirement to include the identity of one or both clearing members, it will eliminate the anonymity between clearing members and the counterparties of its customer’s as further discussed below.

Due to the nature of the legal relationships established by the FCM agency model, the CME agency model (discussed above) preserves anonymity between a party’s clearing member and such party’s counterparty to the original transaction. The clearing member does not know the identity of the counterparty to its customer’s original bilateral transaction and, likewise, the counterparty does not know the identity of the customer’s clearing member. In an agency model where clearing members are never exposed to the credit risk of their customer’s counterparty, anonymity prevents clearing members from receiving unnecessary information regarding their customers’ counterparties. The proposed regulations are fundamentally inconsistent with the anonymity embedded in the agency model by requiring that a party disclose the identity of its counterparty to its clearing member and the identity of its clearing member to its counterparty. CME does not believe the identity of either clearing member should be required as part of the swap trading documentation requirements for swap dealers and major swap participants.

CME suggests that the CFTC clarify whether the information in the “record” required by Regulation 23.504(b)(6) is to be kept solely by the swap dealer and/or major swap participant or is intended to be part of the swap trading relationship documentation and shared with the trading counterparty of such

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swap dealer and/or major swap participant. In the event that the “record” is intended to be shared with the counterparty, in order to preserve the anonymity embedded in the agency model for customer cleared swaps, the CFTC should either delete both informational requirements to disclose clearing members as set forth in proposed Regulations 23.504(b)(6)(iii) and Regulations 23.504(b)(6)(iv) or provide market participants with the option (and not the requirement) to provide the identity of their respective clearing members.

CME Group thanks the CFTC for the opportunity to comment on this matter. We would be happy to discuss any of these issues with CFTC staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or Craig.Donohue@cmegroup.com; or Jason Silverstein, Director and Associate General Counsel, at (212) 299-2228 or Jason.Silverstein@cmegroup.com.

Sincerely,

Craig S. Donohue

cc: Chairman Gary Gensler (via e-mail)
Commissioner Michael Dunn (via e-mail)
Commissioner Bart Chilton (via e-mail)
Commissioner Jill Sommers (via e-mail)
Commissioner Scott O'Malia (via e-mail)
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