CME Group

Craig S. Donohue
Chief Executive Officer

VIA ON-LINE SUBMISSION

April 14, 2011

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

Re: Risk Management Requirements for Derivatives Clearing Organizations – 76 Fed. Reg. 16587 (Mar. 24, 2011), RIN 3038-AC98

Dear Mr. Stawick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") notice of proposed rulemaking ("NPR") regarding a proposal to require derivatives clearing organizations ("DCOs") to report end-of-day positions for each clearing member, by customer origin and house origin,[1] and for each customer origin, the gross positions of each beneficial owner. CME Group is the parent of Chicago Mercantile Exchange Inc. ("CME"). CME's clearing house division 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.

The NPR was issued in order to correct a purported error in proposed Regulation 39.19(c)(1)(iv), which, as originally proposed on January 20, 2011,[2] omitted text that would require each DCO to report, for each customer origin of each clearing member, separately, "the gross positions of each beneficial owner." According to the NPR, this proposal relates to proposed Regulation 39.13(g)(8)(i), which would require each DCO to "collect initial margin on a gross basis for each clearing member's customer account equal to the sum of the initial margin amounts that would be required by the [DCO] for each individual customer within that account if each individual customer were a clearing member." Ours is one voice in a chorus of commenters that has raised serious concerns with proposed Regulation 39.13(g)(8)(i).[3] We will not repeat those concerns here, but we again urge the CFTC to amend its proposed regulations so as not to require

[1] The "house origin" contains positions and collateral of a clearing member and any other "proprietary account" (as defined in CFTC Regulation 1.3(y)) carried by the clearing member. As the name implies, a "customer origin" contains positions and collateral of the clearing member's customers. Customer origins generally align with the customer account classes identified in the CFTC's Part 190 Bankruptcy Rules. The three primary customer origins are futures accounts, foreign futures accounts and cleared OTC derivatives accounts.

[2] 76 Fed. Reg. 3698 (Jan. 20, 2011).

[3] Letter from CME Group Inc. (Craig Donohue, Chief Executive Officer) to the CFTC (Mar. 21, 2011), at 7-8; Letter from IntercontinentalExchange, Inc. (R. Trabue Bland, Vice President and Assistant General Counsel) to the CFTC (Mar. 21, 2011), at 2-4; Letter from Kansas City Board of Trade Clearing Corp. (Charles M. Savage, Assistant Vice President and Manager) to the CFTC (Mar. 21, 2011), at 10; Letter from New York Portfolio Clearing (Walter L. Lukken, Chief Executive Officer) to the CFTC (Mar. 30, 2011), at 3-4; Letter from the Options Clearing Corp. (Wayne P. Luthringshausen, Chairman and Chief Executive Officer) to the CFTC (Mar. 21, 2011), at 10-11; Letter from Futures Industry Association (John M. Damgard, President) to the CFTC (Apr. 7, 2011), at 8.

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DCOs to calculate and collect initial margin on a gross basis for each customer account, and to allow DCOs to retain the flexibility to create margin regimes that are effective from a risk perspective without imposing unnecessary costs on market participants.

Moreover, even if the CFTC were to require DCOs to collect margin on a gross basis for customer accounts, there would be no logical reason to mandate reporting of end-of-day positions for each *beneficial owner* of each customer account. When the CFTC previously proposed to collect account ownership and control information via a weekly "Ownership and Control Report" ("OCR"),[4] the responses demonstrated that reporting of information at the beneficial-owner level is not feasible for certain types of accounts. For example, accounts of collective investment vehicles ("CIVs"), such as hedge funds and commodity pools, may have dozens if not hundreds of beneficial owners/investors.

A comment letter submitted by the Futures Industry Association ("FIA") describes the impediments to reporting information at the beneficial-owner level for CIV accounts:

> An FCM currently collects only limited information on certain ultimate beneficial owners of an account. This information is obtained only when the account is opened and is generally not updated.
>
> For example, when an account is opened for a managed fund (*e.g.*, a commodity pool), the FCM generally will ask the fund manager for the identity of any investor that holds more than a 10 percent interest in the fund. The FCM employs its customer identification program to verify the identity of these investors. However, FCMs have no means to independently verify the fund's beneficial owners and rely completely on the fund manager to identify these investors.
>
> Moreover, investors may increase or decrease their investment throughout the life of the fund (or may withdraw entirely), and new investors will be accepted on a regular basis. FCMs generally do not receive information with respect to changes in the composition of the investors in a fund once an account is opened. Although FCMs will ask for a copy of the fund's annual report, this report does not reflect changes in the composition of investors.[5]

Similar issues arise in connection with customer omnibus accounts carried on behalf of non-clearing member FCMs and foreign brokers, for which clearing members generally do not know the underlying customers (let alone the beneficial owners of the underlying customers). As the FIA and other commenters observed, requiring clearing members to report to DCOs the identity and positions of underlying customers in an omnibus account would severely undermine the regulatory and operational synergies that have developed over the years and that are essential to efficient operation of global financial markets:

> If the Commission were to require clearing member FCMs to know and report to the relevant clearing organization the identity of each customer that comprises an omnibus account and their respective positions, the carefully crafted provisions of law and rules that have governed the conduct of omnibus accounts for decades would be destroyed. We do not believe—and more importantly, do not believe that the Commission has ever taken the position—that an FCM can know the identity of customers in an omnibus account, as well as the positions that are attributable to such

[4] 75 Fed. Reg. 41775 (July 19, 2010).
[5] Letter from FIA (John M. Damgard, President) to the CFTC (Oct. 7, 2010), at 15.

> customers, with incurring the concomitant obligations of treating those customers as customers of the FCM for all purposes.[6]

In sum, clearing members do not know each beneficial owner of each customer account they carry. Thus, they cannot reasonably be expected to report to DCOs the end-of-day "gross positions of each beneficial owner" of each customer account on their books. It stands to reason that DCOs cannot reasonably be expected to report to the CFTC the end-of-day positions of each beneficial owner of each customer account of their clearing members.

Even if daily reporting of end-of-day positions at the beneficial-owner level were feasible, the CFTC has articulated no ostensible benefit to be gained from requiring information to be reported at that level of detail. The data is not needed to calculate margin requirements for customer accounts, even under a gross-margining regime. Nor has the CFTC provided any analysis with respect to costs that would be imposed on DCOs, clearing members and market participants if such reporting were mandated. The CFTC does, however, have cost information at its disposal from comments submitted by CME Group,[7] the FIA and others in response to the OCR proposal. Those comment letters make clear that the costs associated with the OCR proposal would be significant, and we expect that the costs associated with mandatory reporting of end-of-day positions of each beneficial owner of each customer account of each clearing member of each DCO would easily meet or exceed those estimates. For all of these reasons, CME Group strongly urges the CFTC to adopt Regulation 39.19(c)(1)(iv) as originally proposed, and to refrain from adopting any regulation that would require DCOs to report information regarding beneficial owners of customer accounts.

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 Lisa Dunsky, Director and Associate General Counsel, at (312) 338-2483 or Lisa.Dunsky@cmegroup.com.

Sincerely,

Craig S. Donohue

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)
Ananda Radakrishnan (via e-mail)
Phyllis Dietz (via e-mail)
Jacob Preiserowicz (via e-mail)
Anne Polaski (via e-mail)

[6] Letter from FIA (John M. Damgard, President) to the CFTC (Dec. 23, 2010), at 21.
[7] Letter from CME Group Inc. (Kathleen M. Cronin, Managing Director, General Counsel and Corporate Secretary) to the CFTC (Oct. 7, 2010).