CME Group

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VIA ELECTRONIC MAIL

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

Re: Sequencing of Adoption of Final Regulations Proposed Under the Dodd-Frank Act

Dear Mr. Stawick:

CME Group, Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges" or "DCMs"), commend the Commodity Futures Trading Commission's ("CFTC" or "Commission") decision to reopen the comment period on all of its rules proposed under the Dodd-Frank Act ("Dodd-Frank" or "DFA"). CME Group appreciates the opportunity to further comment on the Commission's proposed rules. Sequencing of the adoption and staging of the implementation of rules promulgated under Dodd-Frank is critical to meaningful public comment and effective implementation. Chairman Gensler's outline respecting the sequencing and timing of rulemaking under Dodd-Frank is a start. However, we believe that the Commission must adjust its timing to avoid critical consequences to the market, efficiently effectuate the purposes of DFA, and allow meaningful comment on all of its proposed rules. We are also concerned that rules of broad general impact should not be implemented in a big bang, but should be incrementally staged to permit the industry to create the necessary infrastructure and complete the necessary documentation.

CME Group, the world's largest and most diverse derivatives marketplace, consists of four separate Exchanges: 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 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 also 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®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

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I. Background

In March, Chairman Gensler disclosed his plan for the sequencing and timing of rulemaking under Dodd-Frank.[1] Chairman Gensler grouped the rulemakings into three categories, which he labeled "early," "middle" and "late." We commend Chairman Gensler for directing attention to this critical issue. However, we believe that some rule proposals should be finalized earlier in the process in order to avoid disruption to the markets and to provide context and clarity to other rulemakings. We also believe that the Chairman's list should be expanded to include four related rulemakings that are necessary to fully implement the rules on his agenda, in particular, those rulemakings that relate to implementation of the clearing mandate.

Logical Sequencing of the rules is critical to meaningful public comment and effective implementation as well as preventing uncertainty in futures and swaps markets. DFA requires many intertwined rulemakings with varying deadlines. Market participants, including CME Group cannot fully understand the implications or costs of a proposed rule when that proposed rule is reliant on another rule that is not yet in its final form. As a result, interested parties are unable to comment on the proposed rules in a meaningful way, because they cannot know the full effect. We recommend that the Commission adopt rules in three stages.

The regulatory framework for reducing systemic risk in OTC derivatives was the central focus of DFA and therefore should have the highest priority. Therefore, Phase I should address rules necessary to move forward with voluntary and mandatory clearing of swaps. More specifically, in Phase I, we recommend that the Commission adopt the following: (1) product definitions; (2) rules governing swaps subject to the clearing mandate, which includes rules governing swaps subject to mandatory clearing requirement, defining "class" of swaps, end-user exemption, segregation and bankruptcy, and rules that collectively address conflicts of interest for clearing houses, margin/capital requirements and cross-margining; (3) rules governing new rules/new contracts for clearing houses and exchanges; and (4) large trader reporting.

We recommend that Phase II deal with trading and reporting requirements for swaps, including the definition of and requirements for swap execution facilities ("SEFs"), business conduct standards for swap dealers and requirements for swap data repositories ("SDRs"). While we support efforts to increase transparency in swaps markets, we believe these rulemakings are less critical in time priority than the clearing mandate and related clearing rules that will reduce systemic risk.

Finally, we recommend that the Commission leave those rules governing futures markets, anti-manipulation authority, and position limits for Phase III (late), in each case only to the extent necessary. Put differently, we recommend that the Commission leave for Phase III (late) or later those rulemakings that are not critical to the creation of the regulatory regime that will govern the newly regulated swaps market.

Commissioner O'Malia has suggested that the Commission open a separate comment period as to the sequencing of implementation, as opposed to adoption, of rules adopted under Dodd-Frank. Like the sequencing of adoption of rules, the sequencing of implementation of rules must proceed properly to avoid uncertainty and disruption in the market. As such, CME Group supports Commissioner O'Malia's suggestion and looks forward to the opportunity to comment on the sequencing of implementation of rules adopted under Dodd-Frank.

[1] Remarks, Implementing the Dodd-Frank Act, FIA's Annual International Futures Industry Conference, Boca Raton, Florida, March 16, 2011, available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-73.html.

II. Detailed Comments

Our detailed comments as to the sequencing of specific proposed rules follow. Our comments on sequencing should be viewed as an addition to our substantive comments on the Commission's pending proposals, which can be found in our comment letters.

A. Phase I

As noted above, reducing systemic risk in OTC derivatives was the central focus of DFA. Therefore, the first phase of DFA rulemaking should focus on swaps clearing, both voluntary and mandatory. This requires that the Commission begin with product definitions. It can then adopt rules respecting the clearing mandate, which include rules governing swaps subject to mandatory clearing requirement, defining "class" of swaps, end-user exemption, segregation and bankruptcy, and rules that collectively address conflicts of interest for clearing houses.

1. Product Definitions

The Chairman places this rulemaking in the "late" category. However, in our view it is essential that this rulemaking be proposed in the very near future and finalized and made effective as soon as possible for a number of reasons. First, the exemptions contained in the Commodity Exchange Act ("CEA") that permit the OTC swaps market to operate today will be repealed as of July 16, 2011, *e.g.,* CEA Section 2(h) pursuant to Dodd Frank. Once 2(h) and other related exemptions/exclusions are repealed, without clarity as to whether a product being traded is a "swap" or a "contract for the sale of a commodity for future delivery," market participants may either accidentally engage in illegal off-exchange trading of contracts for the sale of a commodity for future delivery or hesitate to participate in the market for fear of accidentally engaging in such illegal trading. This uncertainty could subject them to prosecution for violating the CEA and could also provide a means for counterparties to such transactions to avoid legal obligations thereunder. Further, it could lead to a chilling of market participation and risk hedging.

The definition of "swap" could arguably describe many products that are listed for trading today on DCMs as futures contracts. The converse also is true. That is, many products traded in the OTC space today mimic products currently traded as futures contracts on DCMs. Thus, to eliminate this uncertainty, the Commission should confirm that a product listed for trading as a futures product by a DCM and that is traded on or subject to the rules of the DCM is a futures contract and that a product is listed for trading by a DCM or any other execution platform or offered for trading in the OTC space as a "swap" is a "swap." We believe that this is exactly what Congress intended.

Additionally, clarifying the definition of "swap" is necessary in order to provide meaning to other rulemakings in this manner, in particular those related to registration and regulation of market participants and reporting and recordkeeping rules. Indeed, without a clear definition of "swap," market participants will not know whether they are subject to certain regulation or what their obligations under those regulations are. The lack of certainty regarding the product definition hinders the ability of market participants to provide meaningful comment on the related rulemakings.

Given that the comment period for product definitions does not close until July 22 – almost a week after the Section 2 exemptive provisions are repealed – the Commission must issue an exemption pursuant to Section 4(c) allowing the OTC market to continue to operate until such time as the Commission has finalized and made effective all relevant rulemakings necessary for the OTC market to transition to the new regulatory regime without disruption. This means that the Commission must exempt market participants from compliance with the provisions of Title VII that would otherwise be automatically effective on July 16, 2011, or as to which such effectiveness is sufficiently unclear as to create significant uncertainty for market participants.

2. Rules Governing Swaps Subject to the Clearing Mandate

Fundamental to the goal of Dodd-Frank to reduce systemic risk by imposing a new regulatory structure on the swaps market are the rules that will implement central clearing for swaps. The Commission has proposed, but not yet finalized, rules that would govern the submission process of swaps for approval for voluntary and mandatory clearing and effectuate the determination of swaps that will be subject to the clearing mandate. As we have discussed at length in our comment letters, we believe that the final rules need several changes in order to achieve this goal. We believe, however, it is essential that these rules be in place and effective at the time that the clearing mandate becomes effective in order to provide market participants with critical information necessary to make informed decisions regarding important issues such as which firms to select as clearing members and which clearing houses to use as their CCP. Our detailed recommendations in this regard follow.

(a) Swaps subject to mandatory clearing requirement

The proposed rule does not state *how* the Commission will decide which swaps will be subject to the mandate. We believe that the Commission is required to make public how it will make this critical determination. This will allow market participants to anticipate which future swaps will be subject to the mandate, and may perhaps incentivize market participants to voluntarily submit those swaps for clearing in advance of any rule that might require that they be submitted for clearing.

In addition, the proposed rule conflates two separate mandates in Dodd-Frank relating to the process for swaps clearing: (1) the determination by a derivatives clearing organization ("DCO") to clear a swap (voluntarily) and (2) the determination by the CFTC that a swap must be cleared as a mandatory matter. Specifically, we are concerned that the proposed regulation improperly treats an application by a DCO to list a particular swap for clearing as obliging that DCO to perform due diligence and analysis for the Commission respecting a broad swath of swaps, as to which the DCO has no information and no interest in clearing. This requires a DCO that wishes to list a new swap to collect and analyze massive amounts of information so that the Commission can perform its statutory duty of determining whether the swap that is the subject of the application and any other swap that is within the same "group, category, type, or class" should be subject to the mandatory clearing requirement. As proposed, the rule eliminates the possibility of a simple, speedy decision on whether a particular swap transaction can be cleared. Indeed, under the proposed rule, no application for voluntary clearing is deemed complete until all of the information that the Commission needs to make the mandatory clearing decision has been received.

We believe making the public aware of how the Commission will decide which swaps are subject to the clearing mandate and separating the voluntary clearing process from the mandatory clearing process strikes an appropriate balance between reducing systemic risk through centralized clearing and preserving customer choice in clearing. Market participants that wish to voluntarily submit for clearing products that are not subject to the clearing mandate but may be in the future will retain flexibility in this regard, and in fact, may still decide to voluntarily clear because of capital and margin requirements, which are proposed to be higher for uncleared swaps.

(b) Defining "Class" of Swaps

With respect to the phasing in of the mandatory clearing rules for swaps, some have suggested that the clearing requirement first be applied to dealer-to-dealer swaps and then later applied to dealer-to-customer swaps. We think that implementing the clearing requirement in this manner may inadvertently limit customer choice in clearing. Once dealers have significant positions at a single clearing house, they will be able to price an instrument different depending on where it is cleared, and the economics of network effects will drive customers to that clearinghouse. This effectively eliminates customer choice in clearing, which Congress expressly provided for in DFA.

The theory behind phasing in dealer-to-dealer swaps first is that dealers will be prepared to begin clearing swaps before buy-side participants are likewise prepared. This rationale, however, is not based in fact. An overwhelming number of buy-side participants are already clearing or ready to clear or will be ready to

clear in the near future. Ten buy-side firms are already clearing at CME Group. Another 30 are testing with us and have informed us that they are planning to be prepared to clear no later than July 15. Another 80 buy-side firms are in the pipeline to clear with us and would like to be ready to clear voluntarily approximately 3-6 months before mandated to do so. Also, UBS recently conducted a comprehensive study (March 10, 2011) of OTC derivatives market participants to gauge the readiness on the buy side for this transition. Their study found that firms are increasingly prepared to clear OTC derivatives, reporting that 73% of firms are already clearing or preparing to clear, 71% expect to begin clearing within 12 months, and 82% expect that a majority of their OTC businesses will be cleared within two years.

We believe that the most efficient way to implement the clearing mandate is to phase in the mandate on a product-class by product-class basis. Once the CFTC defines "class," it can mandate that large classes of instruments, such as such as dollar-denominated mid-term interest rate swaps that meet the contract specifications of a clearing house, be cleared regardless of the counterparties to the trade. This approach will (i) preserve customer choice in clearing, (ii) bring the largest volume of swaps into clearing houses as soon as possible, and (iii) allocate the Commission's limited resources in an efficient manner.

(c) End-user exemption

Persons and entities that qualify for this exclusion have no legal obligation to clear swaps subject to the clearing mandate and we do not believe that the Commission has authority to subject them to any rules or regulations to mandatorily clear any swap. Therefore, in order to provide certainty to market participants, the Commission must finalize rules governing the end-user exemption to the clearing mandate in Phase I.

2. Segregation and Bankruptcy Rules

As noted in our discussion of implementation of the clearing requirement above, we believe that before the Commission begins to implement the clearing requirement, it should re-approve all collateral and risk management practices and procedures, including segregation requirements, pending further notice. This will provide the necessary certainty to market participants and clearing houses as the clearing mandated is implemented. After the Commission has begun implementing the clearing requirement and thus observing its operation in the market it can determine whether additional or altered rules for segregation are necessary and if necessary, re-propose such rules.

3. Conflicts of Interest Rules and Margin/Capital Requirements and Cross-Margining Rules

The market should be provided with final rules addressing these issues so that market participants can make informed decisions as to where to clear swaps subject to the clearing mandate. Also, there may be clearing houses that would fail to comply with any final rules on conflicts of interest and that may be unable – either in the short term or long term – to come into compliance with these rules. It would be contrary to Congress' goals of reducing systemic risk and unfair to market participants to force them to move their positions to another clearing house (assuming that this is how the Commission would handle the open interest in the event that a clearing house did in fact violate final Commission rules) based on conflicts rules implemented after they cleared those positions.

4. Rules Governing New Rules/New Contracts for Clearing Houses and Exchanges

The Chairman noted that the Part 40 rules governing rule submissions from clearing houses and exchanges would be in the "early" group. We agree with the Chairman that the Part 40 rules are among the most important rules to finalize, in particular, as they relate to clearing houses, as these are the rules that clearing houses must comply with when submitting rules to the Commission that would govern swaps they accept for voluntary clearing. With respect to the rules governing voluntary submission of swaps for clearing, we believe that the statute is internally inconsistent; therefore the Commission should use its

rulemaking authority to clarify the rules related to this process in such a manner that comports with Congress' objective of reducing systemic risk. In this regard, we recommend that the Commission clarify that clearing houses can begin clearing immediately upon self-certification of those products that they can adequately price from a risk perspective so long as the certifications comply with pre-established certification requirements. These requirements should not be onerous, but rather ensure that clearing houses are not inappropriately introducing risk into their clearing house through the voluntary clearing process.

With regard to the proposed rules, we believe that they place particularly onerous requirements on registered entities related to submissions for new rules and new contracts. In addition to the significant cost imposed on registered entities from a compliance standpoint, we believe that if the proposed rules are adopted as final it will slow the time to market for new products – both on the clearing and execution fronts – and associated rules, placing U.S. market participants at a competitive disadvantage to foreign competitors. More detail on this rule proposal can be found in our comment letter.

5. Large Trader Reporting Rules

We also agree with the Chairman that the large trader reporting rulemaking should be included in Phase I. In particular, we agree this rule and other swap reporting rules must be finalized before the Commission can adopt other of its proposed rules. We would add that, not only do these rules need to be finalized and effective, but the Commission needs to be able to analyze data collected pursuant to these rules before promulgating certain other rules, including position limits rules.

B. Phase II

CME Group recommends that the Commission finalize rules regarding trading and reporting of swaps, including those rules governing the establishment and operation of SDRs and SEFs, as well as rules addressing business conduct standards for swap dealers and major swap participants, in Phase II.

1. Swap Data Repository and Swap Execution Facility Rules

We largely agree with the Chairman's inclusion of rules related to SEFs and SDRs in the "middle" group. We want to emphasize that final rules on these matters must be effective no sooner than 180 days after adopted. With respect to these rules, significant lead time before the effective date is necessary to allow market participants adequate time to develop/make changes to their technology or otherwise modify their operations in order to comply with the Commission's final rules. More importantly, there are material technology issues that need to be ironed out amongst market participants – such as connection issues between SEFs and clearing houses and SEFs and SDRs – before the relevant entities can determine how they will comply with any final rules governing their obligations under the core principles.

Additionally, adequate lead time before such rules become effective is necessary so as not to competitively disadvantage new market entrants. For example, if final rules governing the exchange trading requirement for swaps are effective, even for some swaps, 60 days after the adoption of final rules, existing trading platforms will be at a competitive advantage to those that might be created in response to the new legislative requirements. The same rationale applies for rules governing SDRs – if market participants are required to begin reporting required information to swap data repositories 60 days after final rules are adopted, then existing data repositories will be at a significant advantage to those that would start-up as a result of this legislative requirement.

We also recommend that real time reporting and block trading rules be adopted in tandem with SEF and SDR rules. These rules are intertwined and collectively will comprise the rules governing the execution of and related reporting of swaps. Indeed, the infrastructure created by market participants to address each of these rules individually likely will be shaped by other rules mentioned in this group.

2. Business Conduct Standards and Other Obligations of Swap Dealers and Major Swap Participants

Rulemakings addressing topics such as back office trading documentation, portfolio reconciliation and compression requirements, recordkeeping, conflicts of interest and risk management should be adopted in conjunction with the swap execution and reporting related rules. It would also be appropriate to adopt at this time rules governing segregation requirements for uncleared swaps as swap dealers and major swap participants likely will be the custodians, in some form or another, for such collateral.

C. Phase III

CME Group recommends that the Commission implement rules governing futures markets, anti-manipulation authority and position limits in Phase III.

1. Rules Governing Futures Markets

To the extent that the Commission believes that new rules governing the futures markets – including rules related to the core principles – are necessary and appropriate in light of Title VII, those rules should be addressed after the Commission has finalized all rules necessary to bringing the previously unregulated swaps market into the fold of a well-established regulatory regime. This approach is consistent with Congress' intent and, we think, would alleviate some of the Commission's budgetary constraints in that it can focus its resources on a much narrower set of rulemakings.

2. Anti-Manipulation Authority and Whistleblower Rulemakings

Included in the Chairman's Phase I are rules related to the Commission's anti-manipulation authority and the new whistleblower provision. However, with respect to anti-manipulation authority, to the extent that the Commission contemplates adopting final rules that would expand the scope of its current authority in terms of conduct that would be unlawful, we agree that the Commission should adopt final rules as soon as possible so that market participants will have certainty as to what type of conduct is permissible.

3. Position Limits

To the extent that the Commission plans to move forward with a final rulemaking on position limits, we recommend that this proposal be addressed in Phase III. We believe that the Commission needs to collect and analyze relevant swap data in order to set and enforce any limits, which information it does not have access to at this time.

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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 **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