

August 27, 2012

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: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act
Proposed Rule 77 FR 41213 (RIN 3038-AD57) (Federal Register, Volume 77 Issue 134)

Dear Mr. Stawick:

CME Group Inc. ("CME Group")¹ appreciates the opportunity to comment on the guidance proposed by the Commodity Futures Trading Commission (the "Commission") on the applicability of certain provisions the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "DFA") to entities and markets outside the U.S. (the "cross-border release" or "Release").

¹ For the record, CME Group is the holding company for four separate Exchanges, including 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") (collectively, the "CME Group Exchanges" or "Exchanges"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options on futures based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. Moreover, the Exchanges serve the hedging, risk management, and trading needs of our global customer base by facilitating transactions through CME Globex[®] electronic trading platform, our open outcry trading facilities in New York and Chicago, and privately negotiated transactions. CME Clearing is one of the largest central counterparty clearing services in the world; it provides clearing and settlement services for exchange-traded contracts and over-the-counter ("OTC") derivatives contracts through CME ClearPort[®]. The CME ClearPort[®] service mitigates counterparty credit risks, provides transparency to OTC transactions, and brings to bear the exchange's market surveillance monitoring tools.

We agree with the Commission that it is important to ensure an orderly transition to DFA's regulatory framework and provide greater certainty to market participants with respect to U.S. regulation of their cross-border activities. We also acknowledge the difficulty the Commission faces in adopting and implementing an effective rule that would give effect to the DFA's objective of providing oversight to a previously unregulated swaps market while balancing issues of international comity. With this in mind, CME Group respectfully submits this comment on one narrow question raised in the Release-- whether the location of clearing the swaps should be a factor in assessing whether a non-U.S. person qualifies as a swap dealer ("SD") or major swap participant ("MSP") for purposes of the DFA and the Commission's regulations. We submit that the location of clearing should not be a factor in assessing whether a non-U.S. person qualifies as an SD or MSP and the final interpretation should unambiguously state that clearing a swap with two non-U.S. persons as the counterparties through a clearing house registered in United States is irrelevant for purposes of assessing either counterparties' status as an SD or MSP under Commission regulations.

Neither the act of clearing nor the location of the clearing house is relevant under DFA or the Commission's final regulation to assessing a market participant's status as an SD or MSP. Rather, the definitions of SD and MSP hinge on the trading activity of these market participants. In particular, these definitions focus on the registrants' swaps activities vis-à-vis "counterparties". For example, the definition of "swap dealer" in DFA covers any person who, inter alia, "regularly enters into swaps with counterparties as an ordinary course of business for its own account." Similarly, the definition of "major swap participant" in DFA covers any person who is not an SD and, inter alia, "whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or markets."

Although through central counterparty clearing, the credit of the clearing house is substituted for the credit of each counterparty through the novation process, a clearing house is not a "counterparty" as contemplated by these definitions. To treat the clearing house as a "counterparty" within the meaning of SD and/or MSP would render every person who clears an SD under DFA and Commission regulations. Congress clearly did not intend such an extreme result. The definition of "derivatives clearing organization" in DFA underscores this point; indeed, there is no indication from the plain text or otherwise of an intention to treat a DCO as a "counterparty."

Moreover, we believe the Commission should encourage persons located both in and outside the U.S. to use clearinghouses that are governed by U.S. regulation and whose customers are afforded the robust protections of U.S. law. Based on feedback we have received thus far, we believe that if the Commission's final regulation does not unambiguously state that clearing a swap with two non-U.S. persons as the counterparties through a clearing house registered in United States is irrelevant for purposes of assessing either counterparties' status as an SD or MSP under Commission regulations, then the Commission will be discouraging foreign counterparties from clearing with U.S. clearing houses and placing such clearing houses at a competitive disadvantage with respect to their foreign colleagues. We do not believe the Commission intends to adopt such a policy.

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CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss this issue with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-3488 or via email at Kathleen.Cronin@cmegroup.com, or Christal Lint, Executive Director, Associate General Counsel, at (312) 930-4527 or Christal.Lint@cmegroup.com.

Sincerely,



Kathleen M. Cronin
Senior Managing Director, General Counsel
Legal Department