

May 03, 2013

Ms. Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Supplemental Comment Letter

Financial Resources Requirements for Derivatives Clearing Organizations  
75 Fed. Reg. 63113 (Oct 14, 2010), RIN 3038-AC98, 3038-AD02

Risk Management Requirements for Derivatives Clearing Organizations  
76 Fed. Reg. 3698 (Jan 20, 2011), RIN 3038-AC98

Dear Ms. Jurgens:

CME Group Inc. ("CME Group") appreciates the opportunity to provide supplemental comments on the Commodity Futures Trading Commission's ("CFTC" or "Commission") notices of proposed rulemakings ("NPR") regarding the regulations intended to establish risk management (the "Risk Management NPR") and financial resources (the "Financial Resources NPR" and, together with the Risk Management NPR, the "NPRs") requirements for derivatives clearing organizations ("DCO") that are systemically important DCOs ("SIDCO") specifically. 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 derivative transactions. CME is registered with the CFTC as a DCO, and is one of the largest central counterparty ("CCP") clearing services in the world. CME is also a registered clearing agency with the Securities and Exchange Commission. Additionally, on July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Customer Protection Act ("Dodd-Frank").

Many of the regulations proposed in the NPRs were finalized as part of the final DCO Core Principle Regulations adopted by the CFTC (the "DCO Core Principle Regulations").<sup>1</sup> This supplemental comment letter addresses certain proposed rules relating to SIDCOs in the NPRs that were not part of the DCO Core Principle Regulations regarding heightened requirements for SIDCO financial resources and system

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<sup>1</sup> 76 Fed. Reg 69334.

safeguards for business continuity and disaster recovery.<sup>2</sup> CME Group previously provided comments on the proposed rulemakings related to SIDCOs, and would like to provide the Commission with updated comments relating to the financial resource requirement proposal for SIDCOs and the business continuity and disaster recovery proposal for SIDCOs.

In April 2012, the Committee on Payment and Settlement Systems (“CPSS”) and the International Organization of Securities Commissions (“IOSCO”) published the final report on the Principles for Financial Market Infrastructures (“PFMIs”) establishing more demanding international risk management and related standards for payment, clearing and settlement systems, including central counterparties.<sup>3</sup> In July 2012, the Basel Committee on Banking Supervision (“BCBS”) published the Capital requirements for Bank Exposures to Central Counterparties (the “BCBS 227”) which recognizes the systemic protections and robustness of designated CCPs who adhere to the PFMIs (“QCCPs”) and provides capital incentives for exposures to such QCCPs relative to non-Qualified CCPs.<sup>4</sup> Generally, a CCP’s regulator will provide a public statement on the status of a CCP as a QCCP. It is important to CME to be designated a QCCP designation in order for our market participants to obtain optimal capital treatment for their business at CME and are providing these supplemental comments to update the Commission on certain aspects of our service that have occurred since our original comment letters.

#### Financial Resources Requirements for SIDCOs

The Financial Resources NPR contains several proposed regulations for satisfaction of DCO Core Principle B (Financial Resources), as amended by Title VII of Dodd-Frank. Proposed Regulation 39.29 would require a SIDCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions<sup>5</sup>. This standard is commonly referred to as “cover 2”.

Since the publication of the Financial Resource NPR, CME began offering clearing services to the OTC markets through uniquely designed services for the IRS and CDS markets. In order to underpin its role as the central counterparty to market participants utilizing products in these various markets, CME Clearing has established three distinct financial safeguards waterfalls incorporating three distinct guaranty funds: one for interest rate swap products (“IRS Guaranty Fund”), one for CDS (“CDS Guaranty Fund”), and one

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<sup>2</sup> The Commission noted in the in the DCO Core Principle final rule that it would consider the proposed rules for SIDCOs in the future.

<sup>3</sup> <http://www.bis.org/publ/cpss101a.pdf>

<sup>4</sup> <http://www.bis.org/publ/bcbs227.pdf>

<sup>5</sup> See also Principle 4 (Credit Risk) of the PFMIs stating a cover 2 standard for CCPs involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions.

for futures and cleared OTC products other than IRS or CDS (“Base Guaranty Fund”). Since the date of the Financial Resources NPR, CME has launched both the IRS Guaranty Fund and the CDS Guaranty Fund sized to the cover 2 standard - the IRS Guaranty Fund is sized to cover a default of the largest two IRS Clearing Members and the CDS Guaranty fund is sized to cover a default of the largest two CDS Clearing Members. CME’s Base Guaranty Fund currently is sized to cover the default by the largest Base Clearing Member and its affiliates consistent with CFTC Regulation 39.11<sup>6</sup>. Each of the CME guaranty funds are pre-funded by contributions from clearing members<sup>7</sup>.

While we have been satisfied with our track record for sizing of the Base Guaranty Fund throughout our history, we expect the CFTC to promulgate a cover 2 standard as part of its implementation of the PFMI. Given the existing difficult economic and low interest rate environment, we are sensitive to requiring clearing firms to allocate their capital to guaranty fund contributions as opposed to other usages of such funds in supporting their businesses. We are also concerned about the timing of imposition of a cover 2 standard over a short period. In light of these concerns, CME suggests that the CFTC consider the impact to clearing firms when specifying the timelines associated with compliance with the cover 2 standard and suggests as long a time horizon as possible for implementation, including a possible phasing in approach. We suggest an effective date of the end of 2013, or later to the extent practicable to maintain QCCP status in accordance with BCBS 227, which we believe would assist in minimizing the impact to the clearing firm community.

#### Risk Management Requirements for SIDCOs

The Risk Management NPR contains several proposed regulations for satisfaction of several DCO Core Principles, including Regulation 39.18 System Safeguards promulgated to comply with DCO Core Principle I (System Safeguards). Core Principle I, as amended by Dodd-Frank, requires DCOs to “establish and maintain a program of risk analysis and oversight that identifies and minimizes sources of operational risk through the development of appropriate controls and procedures, and automated systems that are reliable, secure and have adequate scalable capacity”. Core Principle I also requires “that the emergency procedures, back-up facilities, and disaster recovery plans that a DCO is obligated to establish and maintain specifically allow for the timely recovery and resumption of the DCO’s

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<sup>6</sup> CFTC Regulation 39.11(a)(1) requires a DCO to have sufficient financial resources “to enable the [DCO] to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the [DCO] in extreme but plausible market conditions; Provided that if a clearing member controls another clearing member or is under common control with another clearing member, the affiliated clearing members shall be deemed to be a single clearing member for purposes of this provision.

<sup>7</sup> Proposed § 39.29(b) would require that a SIDCO not count the value of assessments to meet the obligations arising from a default by the clearing member creating the single largest financial exposure and only count the value of assessments, after a 30 percent haircut, to meet up to 20 percent of the obligations arising from a default by the clearing member creating the second largest financial exposure. We note that each of our guaranty funds are pre-funded by the respective clearing members.

operations and the fulfillment of each obligation and responsibility of the DCO". CFTC Regulation 39.18(e)(1), finalized in the DCO Core Principle Regulations<sup>8</sup>, requires a DCO to "maintain a business continuity and disaster recovery plan (a "BC-DR Plan") [defined term added], emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the derivatives clearing organization following any disruption of its operations." CFTC Regulation 39.18(e)(3) defines a recovery time objective ("RTO") by requiring that a DCO's BC-DR Plan have the objective of, and the physical, technological, and personnel resources sufficient to, enable the DCO to resume daily processing, clearing, and settlement no later than the next business day following the disruption.<sup>9</sup>

Proposed CFTC Regulation 39.30 would provide for a two hour RTO for SIDCOs. Similarly, Principle 17 of the PFMIs states that a BC-DR Plan should be designed to ensure that critical information technology systems can resume operations within two hours following disruptive events.<sup>10</sup> CME has previously commented that the two hour RTO standard would impose enormous costs on SIDCOs and should be imposed as a guideline and not a requirement.<sup>11</sup> While CME continues to believe that the 2 hour RTO standard imposes significant costs to SIDCOs and should be implemented as a guideline and not a requirement, in light of the systemic importance of CME's clearing functions and the intended benefits, including compliance with the PFMI requirements for critical information technology, CME has obtained budget approval and allocated resources towards a two hour RTO and will be working throughout 2013 towards achieving a two hour RTO.

#### International Compliance Timelines

CME notes that compliance dates for implementation of PFMI and other standards have been delayed in certain jurisdictions in recent history. CME would like to request that the Commission consider international compliance dates and possible delays to such dates when proposing timelines for adherence to any new standards for SIDCOs in order to avoid any competitive disadvantages for US-based SIDCOs relative to non-US based SIDCOs and eliminate any possibility for regulatory arbitrage.

CME Group appreciates the opportunity to provide these supplemental comments. Should you require further information, please do not hesitate to contact either Tim Doar at [Tim.Doar@cmegroup.com](mailto:Tim.Doar@cmegroup.com) or 312-930-3162 or Jason Silverstein at [Jason.Silverstein@cmegroup.com](mailto:Jason.Silverstein@cmegroup.com) or 212-299-2228.

Sincerely,

Kim Taylor  
President, CME Clearing

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<sup>8</sup> 76 Fed. Reg 69443

<sup>9</sup> Id.

<sup>10</sup> BCBS 227 at 94.

<sup>11</sup> See CME comment letter to the Risk Management NPR, dated March 21, 2011.