



**Futures Industry Association**

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December 6, 2013

*Via Electronic Submission*

Ms. Melissa Jurgens  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Amended Request from CME Group to (1) Amend Rule 538  
(Exchange for Related Positions), and (2) Issue CME Group  
Market Regulation Advisory Notice RA1311-5**

Dear Ms. Jurgens:

The Futures Industry Association (“**FIA**”) appreciates the opportunity to provide the Commodity Futures Trading Commission (“**CFTC**”) with comments and recommendations set forth below in response to the CFTC’s November 6, 2013 request for comment concerning the CME Group’s amended request for approval to (1) amend existing Rule 538 of the Chicago Mercantile Exchange Inc., the Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., Commodity Exchange, Inc., and the Board of Trade of Kansas City, Missouri, Inc. (collectively, the “**Exchanges**”), and (2) issue CME Group Market Regulation Advisory Notice RA 1311-5.

FIA reiterates and incorporates herein by reference the attached comments that it submitted on October 25, 2013 in response to the CFTC’s request for comment regarding the CME Group’s initial request to amend Rule 538. In addition, FIA requests that the CFTC require the CME to amend Proposed Rule 538.K., and carefully consider the potentially adverse effects, in the context of rapidly evolving derivatives markets, of the CME Group’s proposal to prohibit swaps executed on a swap execution facility (“**SEF**”) from constituting the related component of an exchange of futures for risk (“**EFR**”) or exchange of options for options (“**EOO**”) transaction.

**I. The CME Group Should Not Require that the Confirmation of the Cash FX Transaction Reflect the Carrying Clearing Member and Account Number of an Account Controller’s Customers**

The CME Group’s proposed new Rule 538.K addresses documentation requirements for the cash market component of foreign exchange (“**FX**”) exchange of futures for related position transactions (“**EFRPs**”). It provides that:

With respect to EFPs in foreign currency futures wherein the parties immediately offset the cash transaction (“transitory EFPs”), the Exchange would expect to see confirmation statements issued by the bank/foreign exchange dealer party to the Transaction. These confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of currency deals and should indicate, by name, the identity of the counterparty principal to the Transaction. However, in circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller, or other Person acting on behalf of a third party (such as a commodity pool or fund), the cash side confirmation statement must identify, at minimum, the name of the third party’s (or other account specific designation), but need not identify the third party by name.

In the case of FX EFPs between an FX dealer and a commodity trading advisor, account controller or other person acting on behalf of another party (collectively, “**Account Controller**”), proposed Rule 538.K would require the FX dealer to issue a cash transaction confirmation that identifies “at a minimum, the name of the third party’s Carrying Clearing Member and the third party’s account number.” FIA respectfully submits that this requirement is commercially impractical, inconsistent with the Commission’s post-trade allocation rules, and unnecessary.

The name of the third-party customer’s Carrying Clearing Member and the third party’s account number both relate to the futures component of an FX EFP. FX dealers, many of which are not clearing members or affiliated with clearing members, should not be required to include information that relates solely to the futures leg of an EFP in their cash market transaction confirmations. Even if an FX dealer is affiliated with a clearing member, it should not be required to include information related to the Account Controller’s customer’s clearing member or account number on the FX dealer’s cash market confirmations.

**A. The Account Controller’s Customer is Unknown to the FX Dealer  
When it Issues the Cash Transaction Confirmation**

When FX dealers execute transitory FX EFPs with an Account Controller, they treat the Account Controller as their counterparty on the cash market component of the transaction. FX dealers typically do not know the identity of the Account Controller’s customer(s), and consequently do not know those customers’ carrying clearing members or their account numbers. Moreover, Account Controllers typically allocate EFP transactions to sub-funds post allocation.<sup>1</sup> The identity of the customers’ clearing members or their account numbers, if ever provided to the FX dealer, would not be available to the FX dealer when it issues its cash market confirmation. Thus, it is commercially impractical to require an FX dealer to provide this information on the cash confirmation.

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<sup>1</sup> See CFTC Rule 1.35(a)(5)(iv).

**B. The Account Controller's Records Provide the CME Group with a Sufficient Audit Trail**

Under CFTC rule 1.35(b)(5)(v), eligible account managers, which include (among other entities) CTAs, investment advisors, banks, futures commission merchants and introducing brokers, must maintain records of their allocations of positions to customer(s). These recordkeeping requirements apply to transactions executed on a designated contract market or SEF as well as to bilateral transactions.<sup>2</sup> In light of the recordkeeping obligations already in place for allocations under CFTC rule 1.35, the CFTC or the relevant exchange can establish an audit trail of for an EFP transaction between the FX dealer and the Account Controller that would include the Account Controller's allocation of positions to its customer(s).

Imposing an obligation on the FX dealer to identify the carrying clearing member and account number of an Account Controller's customer on the confirmation of the cash component of an EFP transaction would not provide a benefit beyond the currently in effect recordkeeping obligations applicable to the Account Manager. In addition, as described above, at the time of executing the cash confirmation, the name(s) or account number(s) of the Account Controller's customer will not be available to the FX dealer. As a result, the proposed requirement imposes a significant burden on the FX dealer with no apparent incremental benefit to the CFTC or the CME Group because they already have access to Account Controller's records of post-trade allocations of positions.

**II. The Commission Should Carefully Consider the Potential Adverse Effects in an Evolving Derivatives Market of the CME Group's Proposal to Prohibit Swaps Executed on a SEF from Constituting a Permissible Component of an EFRP Transaction**

In the CME Group's proposed frequently-asked-question ("FAQ") document, question 3 asks what types of EFRPs are permitted by CME Group Exchanges. As part of the proposed response to question 3, CME Group states that: "A swap that is traded on or subject to the rules of a designated contract market ("DCM") or . . . SEF is ineligible to be the related position component of an EFR or EOO transaction executed pursuant to Rule 538."

FIA understands from its members that there is a robust over-the-counter ("OTC") market for spread-type and other structured products with two or more legs having exposure to futures and swap prices. Market participants currently exchange the risk associated with these products for futures positions via EFRPs. Moreover, as the infrastructure of the swaps market continues to evolve, SEFs will be listing permissible swaps, many of which could be the swap leg of these structured products. In addition, swap legs could be introduced by registered voice-brokers. FIA believes that the method by which swaps are executed — bilaterally or on a SEF — should not automatically limit their qualification to be the related position component of an EFR or EOO transaction. Limiting the types of swaps eligible to be exchanged as part of an

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<sup>2</sup> See CFTC Rule 1.35(a)(5)

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EFRP based solely on their execution method restricts the product and risk management choices available to market participants and may limit the development and evolution of DCM, SEF and OTC products. The Commission carefully should consider these potentially adverse effects of the CME Group's proposal before permitting it to prohibit the use of swaps executed on DCMs or SEFs as the related position component of an EFRP.

FIA appreciates the opportunity to provide the Commission with comments concerning the CME Group's amended request for approval to amend Rule 538. Please contact Allison Lurton, Senior Vice President and Deputy General Counsel of the FIA at 202-466-5460, if you have any questions about FIA's comments or recommendations.

Respectfully submitted,



Walter L. Lukken  
President & Chief Executive Officer

cc: Honorable Gary Gensler, Chairman  
Honorable Scott O'Malia  
Honorable Mark Wetjen  
Honorable Bart Chilton  
Jonathan Marcus, General Counsel  
Vincent McGonagle, Director, DMO  
Ananda Radhakrishnan, Director, DCR  
Gary Barnett, Director, DSIO