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February 3, 2014

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

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

Dear Ms. Jurgens:

On behalf of our law firm, McDermott Will & Emery LLP (“McDermott”), and clients of our firms, I am writing to provide comments and seek clarification with respect to CME Group’s proposal to modify Rule 538 of the Chicago Mercantile Exchange Inc., the Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc. (“NYMEX”) Commodity Exchange, Inc., and the Board of Trade of Kansas City, Missouri, Inc. (collectively, the “Exchanges” and each an “Exchange”) (the “Rule 538 Proposal”) and to issue CME Group Market Regulation Advisory Notice RA 1311-5. The Commodity Futures Trading Commission (“Commission”) issued a notice on November 6, 2013, requesting public comments on the Rule 538 Proposal. Although this letter is being submitted after the official comment period closed on December 6, 2013, we respectfully request that the Commission consider these comments in light of their narrow scope and importance. McDermott represents a number of businesses that regularly engage in exchange for physicals (“EFPs”) involving petroleum products. Our clients would be directly affected by the proposed changes to Exchange Rule 538.

As set forth in more detail below, McDermott requests that the Commission provide a clarification or exception to the requirement that Exchange for Related Position (“EFRP”) transactions be submitted to the Clearing House within one hour after the relevant terms are determined for EFPs where an underlying physical leg is tied to the physical delivery of a petroleum product.

Background

Current NYMEX Rule 538.G and proposed Rule 538.I provide that each EFRP transaction “shall be submitted to the [CME] Clearing House within the time period and in the manner specified by

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the Exchange.” Proposed Market Regulation Advisory Notice RA 1311-5 (“MRA 1311-5”) would require that trades be submitted “within one hour after the relevant terms have been determined.” This requirement applies for EFRPs executed between 6:00 a.m. and 6:00 p.m. Central Time or 7:00 a.m. and 5:45 p.m. Eastern Time, depending on the Exchange. EFRPs executed outside of these hours must be submitted by 7:00 a.m. Central Time or 8:00 a.m. Eastern Time, depending on the Exchange. According to MRA 1311-5, “[t]he relevant terms of the EFRP are considered to have been determined at the time the price and quantity of the Exchange contract and the corresponding related position component of the transaction are agreed upon by the parties to the EFRP.” MRA 1311-5 would also require that, with respect to those transactions where the actual quantity is not precisely determined until the time of delivery, the parties to the EFRP must submit the transaction to the CME Clearing House at the time of pricing unless they contractually agree to submit the transaction to the Clearing House within one hour after the actual quantities delivered are determined. As explained in more detail below, the requirement for EFP counterparties to post trades to the relevant Exchange within one hour is impracticable, if not impossible, under most circumstances. Furthermore, requiring EFP parties to specifically agree in their contracts to submit transactions within the reporting period after actual delivery quantities are determined creates an unnecessary burden for the entire market place and would require the renegotiation of documents for an entire market segment without any justification for this burden and expense.

How EFPs Work For Petroleum Products Traders

Our clients regularly enter into EFPs in which a party agrees with its counterparty to buy (or sell) physical product and simultaneously agrees to exchange at a future date a like amount of short (long) NYMEX futures. When negotiating the cash transaction, the parties agree to a fixed spread against a particular NYMEX futures contract and delivery month. The exact quantity of product in the physical position is not known until the parties receive an inspection report or a pipeline ticket confirming the actual volume and other specifications. For example, on the execution date, Company A purchases 100,000 barrels of gasoline at \$.03 over the March 2013 RBOB futures price. The actual quantity is not fixed until after physical delivery of the gasoline and receipt of the pipeline ticket or inspection report. The trade is not complete until the parties agree to the physical quantity and it is not possible to post the EFP until the parties both agree. Upon agreement, each party provides the EFP information to their respective brokers, which, in turn, contact each other and register (*i.e.*, post) the EFP with the CME Clearing House. As we discuss below, it can take several days after physical delivery for the parties to receive the independent inspection report needed to confirm the physical quantity actually delivered. When the parties receive the independent inspection report or pipeline ticket, they review the report and confirm its accuracy.¹ At the conclusion of this process, the parties’ traders communicate with each other to fix the final price and quantities. In most cases, the traders are the only ones authorized to set prices and finalize EFP contract terms once the final price and quantities are fixed.

¹ In most cases, the pipeline tickets are not deal-specific, and the parties therefore must match the information in the pipeline tickets with their internal transaction information as part of this process.

How the EFP Process Actually Works

Finalizing EFP transactions in the petroleum industry is quite cumbersome and takes time. In the case of physical commodities transferred by barge, ship or tank transfer, once physical movement is complete, an independent inspector prepares a report on the quantity and quality of the physical product. Frequently, a barge or ship delivers petroleum products at multiple locations, which can add to the uncertainty about actual delivered quantities. In addition to confirming the actual quantity delivered, the inspector may take samples back to the lab to run tests for specifications. In some cases, quantities must be compared to other relevant information, such as shore tank figures or load figures, to ensure that the data is reasonable. The quantities are often large and must be analyzed for compliance with specifications and accuracy. Readings can require vessel and shore tank readings and comparisons to other data before the independent inspector will confirm the quantity. And, the inspection report is the only way to confirm the quantity of the physical leg of an EFP transaction.

The inspection company sends the inspection report to both parties.² Even though the parties know the date the product moved, they do not know the exact quantity that has moved until the inspection report is issued and confirmed. It is not until the inspection report has been confirmed that the parties agree to the material terms of the EFP for posting and physical product is invoiced. Once the company receives the inspection report, it is sent to the trader, while also being reviewed by the company's operations department before invoicing. With respect to pipeline movements, the pipeline issues a pipeline ticket, which is usually received by the company much faster than an inspection report, often taking less than one day to receive. Once the company receives the pipeline ticket, usually by e-mail, it is both sent to the trader and entered into the company's computer systems.

Each party reports (typically by IM or phone) in batches of transactions the final price and quantity to its respective floor brokers (who are independent and not employed by either of the parties, unless one side of the trade is entered into by a futures commission merchant with its own brokers). Each broker must confirm the information it receives from its customer with the broker for the other side of the trade. This means that a party has no control over a counterparty's traders or brokers and has only limited control over its own (independent) floor broker.

It is not unusual for a company to execute hundreds of EFPs in any given month. After all material terms have been confirmed, the trader sends the EFP posting data to its floor broker (usually by IM).

Requested Relief

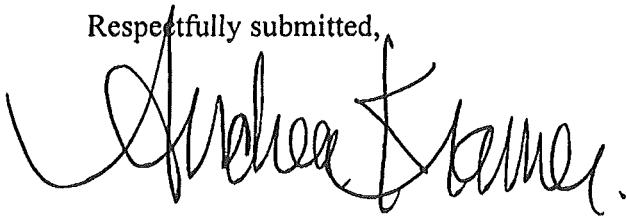
² The inspection report is sent to the party by an independent inspection company, and the timing of receipt of the report is out of each company's control. The report is usually sent by email, although a few reports are still sent by fax. Parties often call the inspector's office to try to expedite inspection reports.

Given that EFPs on petroleum products are legitimate transactions and serve an important economic purpose for a number of our firm's clients, we respectfully request that the Commission provide clarification of the interpretation of the one hour requirement or an exception from the one hour requirement in the proposed modifications to Exchange Rule 538 for EFPs. Specifically, for entities for which the use of EFPs is a significant component of their business, we request that the Commission permit a modification of the one hour reporting requirement in the following way. If the terms of an EFP are confirmed between the parties on or before 12 PM Eastern Prevailing Time on a business day, the EFP must be submitted to CME Clearing House on that same business day. If a trade is confirmed after 12 PM Eastern Prevailing Time on a business day (or on a day the Exchange is not open for business), the EFRP must be submitted to CME Clearing House no later than 12 PM Eastern Prevailing Time on the following business day.

McDermott also requests that the Commission and CME Group clarify that in the case of petroleum product EFPs, "all relevant terms" are not determined until the final price and quantity are fixed by the parties, following receipt of the inspection report or pipeline ticket and that the action of a party directing its floor broker to confirm the terms of a transaction with a counterparty's floor broker within one hour of receipt of the pipeline ticket or inspection report is sufficient for purposes of demonstrating compliance with the one hour requirement. In other words, EFP participants should not be penalized for actions required to be taken by third parties that are outside of the reasonable control of the participants.

McDermott appreciates the opportunity to provide the Commission with comments and recommendations concerning the CME Group's request for approval to amend Rule 538 and issue MRA 1311-5.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrea S. Kramer". The signature is fluid and cursive, with a large initial "A" and "K".

Andrea S. Kramer

cc: Honorable Mark Wetjen, Acting Chairman
Honorable Scott O'Malia
Honorable Bart Chilton