Kathleen Cronin
Senior Managing Director, General Counsel
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November 13, 2015

VIA CFTC PORTAL

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Aggregation of Positions: Supplemental Notice of Proposed Rulemaking

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group")[1] respectfully submits this letter in response to the Supplemental Notice of Proposed Rulemaking on "Aggregation of Positions" (the "Supplemental Aggregation NPRM") issued by the Commodity Futures Trading Commission ("Commission" or "CFTC").[2] CME Group commends the Commission for taking the positive step of eliminating the special conditions that originally were proposed for disaggregating the positions of a majority-owned entity. We believe this revised approach to apply the same "owned entity exemption" for majority and minority-owned entities would be beneficial to derivatives market participants and members of the CME Group Exchanges. However, if the Commission decides to adopt an owned entity aggregation requirement, we believe that certain additional changes or clarifications to the Commission's proposal should be made, which we identify below.

I. CME Group Supports the Elimination of the Special Conditions for Disaggregating Positions of Majority-Owned Entities

CME Group supports the Commission's supplemental proposal to expand the owned entity exemption which was originally proposed for minority-owned entities in the Original Aggregation NPRM to instead apply to all owned entities, regardless of ownership interest. As noted by many commenters,

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[1] CME Group is the holding company for four separate U.S.-based 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"). 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 Exchanges' market surveillance monitoring tools.

[2] *See* Aggregation of Positions, 80 Fed. Reg. 58365 (Sept. 29, 2015); *see also* Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013) (the "Original Aggregation NPRM").

the originally-proposed owned entity exemption would have imposed an unworkable standard with respect to majority-owned entities and their corporate parents, thereby making it very difficult (and potentially impossible) for such entities to disaggregate their positions. We therefore urge the Commission, if it adopts an owned entity aggregation requirement, to adopt the revised owned entity exemption as proposed in the Supplemental Aggregation NPRM, with the following further modifications:

II. The Commission Should Make Additional Revisions to the Proposed Owned Entity Exemption

A. The Second Condition of the Owned Entity Exemption Should Focus on Trading Strategies, Not Trading Systems

The Commission has proposed that the owned entity exemption be established by a filing that includes a description of the relevant circumstances that warrant disaggregation, and a certification by a senior officer that five conditions demonstrating trading independence between the owner and the owned entity have been met.

The second condition to establish trading independence under the proposed owned entity exemption is that the owner and the owned entity "[t]rade pursuant to separately developed and independent trading systems." We believe this focus on the *systems* used for trading is misplaced.

The focus of the owned entity exemption should be on ensuring that the relevant entities do not have knowledge of, or control over, each other's derivatives trading in order to prevent coordination of that trading. We do not believe these concerns are implicated merely because entities trade pursuant to commonly-developed trading systems.

Instead, the second condition should provide that the entities must "trade pursuant to separately developed and independent trading *strategies*." This would more directly address concerns regarding coordinated trading, and would allow corporate groups to take advantage of economies of scale by having one trading system developed for multiple companies within that group.

B. The Owned Entity Exemption Should Expressly Permit Sharing of Transaction and Position Information with Employees Who Perform Risk Management, Accounting, Compliance or Similar Mid- and Back-Office Functions

The fourth condition to establish trading independence under the proposed owned entity exemption is that the owner and the owned entity "[d]o not share employees that control the trading decisions of either." The fifth condition is that the owner and the owned entity "[d]o not have risk management systems that permit the sharing of trades or trading strategy."

In connection with the fourth condition, the Original Aggregation NPRM explained that "the sharing of attorneys, accountants, risk managers, compliance and other mid- and back-office personnel . . . between entities would generally not compromise independence so long as the employees do not control, direct or participate in the entities' trading decisions." It further stated that the fifth condition

"generally would not prohibit sharing of information to be used only for risk management and surveillance purposes, when such information is not used for trading purposes and not shared with employees that . . . control, direct or participate in the entities' trading decisions."[3]

CME Group supports these views. We request that the Commission add rule text to any final owned entity exemption that would expressly permit the sharing of transaction and position information with and among employees who perform risk management, accounting, compliance or similar mid- and back-office functions. Such a provision in rule text would give greater regulatory certainty to market participants.

C. Market Participants Should Have a Reasonable Period of Time to Make Disaggregation Filings and Should be Allowed to Rely on the Exemption in Good Faith

In the Original Aggregation NPRM, the Commission explained that, in certain circumstances, the required disaggregation filing could be made after an ownership or equity interest in another entity is acquired (*e.g.*, where a parent lacks information about a newly acquired subsidiary). It added, though, that disaggregation in these circumstances would not be retroactive.[4]

We request that *all* entities claiming the owned entity exemption be afforded a reasonable period of time to submit the required filing in order to perform due diligence and gather information necessary to make the certification required therein. We believe it would be reasonable to include a 90-day grace period, beginning upon the acquisition of an ownership or equity interest in another entity, before aggregation is required based on that acquired ownership interest.

In a separate but related vein, if market participants rely on the owned entity exemption in good faith, but the Commission subsequently determines that disaggregation is not warranted (either after submission of the requisite filing or at any point thereafter), then the Commission should only require aggregation of positions from the date of the Commission's determination. We request that the Commission include such grace period and good faith provisions in any final aggregation rules.

D. Timing on Disaggregation Filing

If a market participant is eligible to rely upon the owned entity exemption but fails to make the required filing prior to exceeding a position limit, it should not be liable for a position limit violation. We believed that market participants should be afforded five business days to make the appropriate filing after exceeding a position limit. We request that the Commission include such five-day period in any final aggregation rules.

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[3] *See* Original Aggregation NPRM, 78 Fed. Reg. at 68962.

[4] *Id.* ("where a prior filing is impractical (such as where a person lacks information regarding a newly-acquired subsidiary's activities), the Commission proposes that the filing under proposed rule 150.4(c)(1) should be made as promptly as practicable. Even though a filing under proposed rule 150.4(c)(1) may be made after an ownership or equity interest is acquired, the Commission proposes that the exemption from aggregation would not be effective retroactively because the filing is a pre-requisite to the exemption.").

E. Disaggregation Filings Should Not Have to be Updated Periodically

Proposed rule 150.4(c)(4) provides that a disaggregation filing must be updated or amended in the event of a material change to the information provided in such filing. The Commission's cost-benefit and Paperwork Reduction Act analyses in the Supplemental Aggregation NPRM, though, could be read to suggest that the Commission expects disaggregation filings to be re-submitted on an annual or other periodic basis.[5]

In response to Commissioner Giancarlo's request for comment, we urge the Commission to clarify that any filing that is required in order to rely on the owned entity exemption need only be updated in the event of a material change in the originally submitted information on which that reliance is based. Such filings should not be required on an annual, or any other periodic, basis. We do not believe that the Commission intended to require market participants to update, amend or re-certify disaggregation filings on any type of periodic basis, but we request that the Commission clarify this intent in any final aggregation rules.

III. Conclusion

CME Group appreciates the steps the Commission has taken in the Supplemental Aggregation NPRM to improve its proposed owned entity aggregation requirement and the proposed exemption therefrom. We believe that the further clarifications and revisions outlined above would make this aspect of the Commission's proposed aggregation rules more practical and workable for market participants, without adversely affecting the policy objectives the Commission seeks to achieve.

CME Group thanks the Commission for the opportunity to comment on the Supplemental Aggregation NPRM. Should you have any comments or questions regarding this submission, please contact me by telephone at (312) 930-3488 or by e-mail at Kathleen.Cronin@cmegroupcom; Thomas LaSala, Managing Director, Chief Regulatory Office by telephone at (212) 299-2897 or by e-mail at Thomas.LaSala@cmegroup.com; or Bruce Fekrat, Executive Director and Associate General Counsel by telephone at (212) 299-2208 or by e-mail at Bruce.Fekrat@cmegroup.com.

Sincerely,

Kathleen M Cronin

Kathleen Cronin
Senior Managing Director
General Counsel and Corporate Secretary

[5] *See* Supplemental Aggregation NPRM, 80 Fed. Reg. at 58375, 58378.