

December 19, 2016

VIA ON-LINE SUBMISSION

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

Re: Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants; Proposed Rule 81 Fed. Reg. 71946 (Oct. 18, 2016); RIN 3038-AE54

Dear Mr. Kirkpatrick:

CME Group Inc. (“CME Group”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) notice of proposed rulemaking (“NPR”) to establish rules and interpretations addressing the cross-border application of certain swap provisions of the Commodity Exchange Act (“CEA”).

CME Group is the parent of Chicago Mercantile Exchange Inc. (“CME”). CME is registered with the CFTC as a derivatives clearing organization (“DCO”) and its clearing house division (“CME Clearing”) is one of the largest central counterparty (“CCP”) clearing services for regulated derivatives contracts. CME Clearing offers clearing and settlement services for exchange-traded derivatives contracts and for over-the-counter (“OTC”) derivatives transactions, including interest rate swaps, credit default swaps, agricultural swaps, and other OTC contracts.

CME Group supports the Commission’s approach in the NPR of proposing the subject of previously issued guidance¹ for notice and comment. We believe that utilizing the rulemaking process will benefit market participants, registrants and infrastructures by clarifying the application of cross-border regulatory provisions and their enforceability under the CEA.

In particular, CME Group supports the view expressed in footnote 88 of the NPR, which provides that swap legs novated by a DCO do not count toward the de minimis threshold calculation. A swap created by virtue of novation does not implicate swap dealing and we agree with the proposition that the mere act of clearing a swap at a DCO should not impact the

¹ See Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (Jul. 26, 2013).

registration status of a market participant. The Commission's explanation provides certainty for market participants whose activities do not implicate swap dealing but who, absent such assurance, may choose to avoid clearing transactions with non-US persons at DCOs in order to avoid potential registration under the CFTC regime. Such an outcome could negatively impact liquidity in the OTC swap markets and create barriers to non-US persons clearing OTC transactions at DCOs, resulting in inappropriately prejudicial treatment of US DCOs.

CME Group also supports the clarity and consistency provided by the Commission in proposing a definition of "US Person" that is coextensive with the definition established in the CFTC's uncleared margin rules. We believe this approach avoids the risk of unnecessary confusion among market participants when determining their respective compliance obligations.

Although we generally support the overall goal of consistency across Commission rules, CME Group echoes concerns voiced by commenters regarding application of the Foreign Consolidated Subsidiary ("FCS") construct to registration thresholds and external business conduct standards for swap dealers and major swap participants. We note the potential chilling effect on liquidity in markets where Other Non-US Persons are active and may seek to avoid transacting with FCSs so as to avoid counting swaps toward the US registration threshold. The global nature of derivatives markets necessitates cooperation and regulators' adherence to the principle of international comity. Failing to do so increases the likelihood of regulatory retaliation, fragments participation across borders and creates unnecessary burdens on global markets and market participants. Consequently, we strongly urge the CFTC to reconsider its approach to the FCS construct to avoid the extraterritorial application of its rules where such application is not specifically contemplated in Section 2(i) of the CEA.

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with CFTC staff. If you have any comments or questions, please feel free to contact me at (312) 634-1592 or Sunil.Cutinho@cmegroup.com, or Sean Downey at (312) 930-8167 or Sean.Downey@cmegroup.com.

Sincerely,



Sunil Cutinho
President, CME Clearing