CME Group

ICE

August 13, 2018

VIA ELECTRONIC SUBMISSION

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

Re: Joint CME Group and ICE Response – Notice of Proposed Rulemaking on De Minimis Exception to Swap Dealer Definition [RIN 3038-AE68]

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group") and Intercontinental Exchange, Inc. ("ICE") appreciate this opportunity to provide comments on the Commodity Futures Trading Commission's ("CFTC" or "Commission") Notice of Proposed Rulemaking on "De Minimis Exception to Swap Dealer Definition" (the "Proposal").[1]

CME Group is the parent company of four designated contract markets ("DCMs"): Chicago Mercantile Exchange Inc. ("CME Inc."), the Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX"), and Commodity Exchange, Inc. ("COMEX"). These DCMs offer the widest range of benchmark products available across all major asset classes, including futures and options on futures based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural, and commodities products. CME Inc. operates a clearing house, registered as a derivatives clearing organization ("DCO") with the U.S. Commodity Futures Trading Commission ("CFTC"), which offers clearing and settlement services for exchange-traded derivatives contracts and cleared swap derivatives transactions. In respect of its clearing operations, CME Inc. has been deemed a systemically important financial market utility by the U.S. Financial Stability Oversight Council ("FSOC").

Intercontinental Exchange, Inc. ("ICE") operates regulated derivatives exchanges in the United States, Europe, and Singapore offering derivative trading across energy, agriculture, interest rates, credit, currencies, single stock and equity indexes. ICE additionally owns and operates six clearing houses that serve global markets across North America, Europe and Asia. ICE has a successful history of clearing exchange traded and OTC derivatives across a spectrum of asset classes including energy, agriculture and financial products. ICE Clear Credit, a CDS clearing house, is designated as a FMU under Title VIII of the Dodd-Frank Act.

[1] *De Minimis Exception to the Swap Dealer Definition: Proposed Rule*, 83 Fed. Reg. 27444 (proposed June 12, 2018) (to be codified at 17 C.F.R pt. 1).

I. Exchange-traded and cleared swaps should be exempted from the de minimis calculation

Based on our respective roles in the financial system, we believe it appropriate to focus our comment letter on two questions from the Proposal:

(1) *How would an exception for exchange-traded swaps from a person's de minimis calculation impact the policy considerations underlying SD regulation and the de minimis exception?*

(2) *How would an exception for cleared swaps from a person's de minimis calculation impact the policy considerations underlying SD regulation and the de minimis exception?*

We answer both questions identically as CME Group and ICE (collectively, the "Exchanges) believe that the policy considerations underlying the Swap Dealer ("SD") regulation and the de minimis exception are supported by providing an exception for all cleared swaps from the calculation of the de minimis threshold. These policy considerations are laid out with more specificity in the proposal where it is noted that "[i]n adopting the SD Definition, the Commissions identified the policy goals underlying SD registration and regulation generally to include reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and transparency."[2] We address each of these policy goals in turn below.

Reducing systemic risk

Despite the turbulence observed in the financial system during 2007 and 2008, centrally cleared markets continued to function and served as a firewall against the transmission of risk. This stability during the financial crisis served as a model for post-crisis reforms in the United States and abroad. In part, policy-makers have improved financial stability and reduced systemic risk by introducing incentives for market participants to clear via a variety of avenues including through differential capital and margin requirements for cleared and uncleared exposure consistent with the level of risk and risk management inherent to those markets. While regulators have not always taken consistent steps towards providing incentives to clear,[3] we believe that the reforms to date have in fact reduced systemic risk by transitioning traditionally opaque swaps into the transparent, cleared environment. However, more can be done to move standardized, liquid swaps into the cleared environment, and we believe that exempting exchange-traded and cleared swaps from the swap dealer de minimis calculation would supplement the positive accomplishments in reducing systemic risk by policy makers to date through incentivizing increases to the scope of standardized, liquid products that are centrally cleared.

Increasing counterparty protections

Centrally cleared markets operate under strict regulatory oversight and are risk managed in a consistent and transparent manner by CCPs. Such a rigorous regulatory framework coupled with best practices in risk management provide significant protections to participants in the cleared markets. Thus, smaller, less sophisticated market participants and policy makers can gain comfort that they will receive robust protections in cleared markets based on the transparent and consistent framework provided by central

---

[2] *Id.* at 27446.

[3] *See, e.g., Regulatory Capital Rules: Regulatory Capital, Revisions to the Supplementary Leverage Ratio: Final Rule*, 79 Fed. Reg. 57725 (Sep. 26, 2014) (codified at 12 C.F.R. Pt. 3; 12 C.F.R. Pt. 217; 12 C.F.R. Pt. 324).

clearing. Consequently, we do not see any downside risk for smaller market participants by exempting exchange-traded and cleared swaps from the de minimis swap dealer threshold.

Increasing market efficiency, orderliness, and transparency

CCPs have long maintained robust records of positions that they clear and have reported this information to their primary regulator. Similarly, detailed records have historically been provided to CCP market participants for their own trades and exposures. In fact, the transparency of cleared markets served as a model for the reporting and record-keeping standards that have been incorporated into the regulatory framework for the historically uncleared swaps markets. In addition to these transparency benefits, central clearing also significantly enhances market efficiency. The cleared model with a single central counterparty allows for increased bilateral exposure netting since clearing members have a single counterparty for all their exposures. The Exchanges have also long focused on the reduction of capital efficiency and the reduction of operational risks via a number of different compression exercises internally and with their external partners. We are confident that clearing increases market efficiency, orderliness, and transparency and that providing additional incentives to clear more swaps via the proposed exception for exchange-traded and cleared swaps from the calculation of the de minimis threshold will benefit all participants in the swaps markets.

II. Conclusion

As noted above, the Exchanges believe that the decision to exempt exchange-traded and cleared swaps is consistent with the policy considerations underlying SD registration and regulation and support the Commission's proposal to provide this exception. We appreciate the opportunity to provide these comments on the Proposal and would be pleased to further discuss and clarify the issues described herein with Commission staff.

Sincerely,

Sunil Cutinho
President, CME Clearing
Chicago Mercantile Exchange, Inc.
20 South Wacker Drive
Chicago, IL 60606

Scott Hill
Chief Financial Officer
Intercontinental Exchange, Inc.
5660 New Northside Drive NW
Atlanta, GA 30328