



Sunil Cutinho
President, CME Clearing

August 28, 2018

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Via CFTC Portal: <https://comments.cftc.gov>

RE: Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations
RIN 3038-AE73

Dear Mr. Kirkpatrick:

Chicago Mercantile Exchange Inc. ("CME") on behalf of the CME Group¹ exchanges appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") proposal to amend the regulations governing the minimum standards for a self-regulatory organization's ("SRO") financial surveillance examination program of futures commission merchants (the "Proposal").²

I. Scope of Exam Expert Report

As noted in the Proposing Release, Commission Regulation 1.52 currently requires an SRO to obtain a report from an examination expert which evaluates an SRO's supervisory program (including its design to detect material weaknesses in internal controls) and the application of such supervisory program. Under the Proposal, the scope of this evaluation would be revised to focus only on whether the SRO's examination standards are consistent with any relevant new or amended auditing standards issued by the Public Company Accounting Oversight Board ("PCOAB") since the examination expert's last review.

The Exchanges fully support this aspect of the Proposal and agree with the reasoning set forth in the Proposing Release for revising Commission Regulation 1.52 in this manner. As the Commission notes, this revision would strike the proper balance between reliance on the Commission's expertise in its oversight of an SRO's examination program and the expertise of the examination expert. The Exchanges also believe that requiring the examination expert to focus on recent changes to the PCAOB auditing standards as they would apply to a non-financial statement audit could provide additional enhancements to the FCM examination standards.

II. Timing of Exam Report

Under the Proposal, Regulation 1.52 would be revised to require an SRO to engage an examination expert to evaluate the FCM examination standards at least once every five years, rather than every three years, as currently required. While the Exchanges believe this is a cost-efficient improvement over the current three-

¹ CME Group is the parent company of four U.S.-based designated contract markets ("DCMs"): Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX") (collectively, the "Exchanges").

² See 83 Fed. Reg. 128, at 31078 (July 3, 2018) (the "Proposing Release")

year timeframe, we respectfully request the Commission consider a ten-year timeframe. There are currently approximately fifty-seven PCAOB auditing standards, and the public accounting firm that assisted us in developing the FCM examination standards identified approximately twenty-five that would apply to these standards. PCAOB auditing standards are adopted and/or revised very infrequently, and the Exchanges believe it would be rare for any such adopted or revised standards to pertain to a “non-financial audit” and thus require modification of the FCM examination standards. In this regard, we note the Securities and Exchange Commission (“SEC”) has only approved two amendments to the PCAOB auditing standards since October 2015³ neither of which applied to the FCM examination standards.

In any event, the Proposal would require an SRO to review any new or amended PCAOB auditing standards and “promptly” revise the FCM examination standards, if appropriate. In addition, the Proposal contains a “catch-all” provision under which the Director of the Division of Swap Dealer and Intermediary Oversight (the “Director”) can require an SRO to engage an examination expert. Thus, if the Director believes that an SRO needs to take action before the proposed 10-year timeframe has passed, the Director’s ability to require the SRO to engage an examination expert ensures that there will be no gaps in the SRO’s FCM examination standards.

Regardless of the timeline adopted for the hiring of an examination expert by the Commission, and, given how infrequently the relevant PCAOB auditing standards change, the Exchanges request that the final rule provide the Director with the authority to waive the five-year expert engagement requirement upon a petition by an SRO or the Joint Audit Committee. The Exchanges believe that such a waiver should be considered by the Director in instances where it is readily apparent that any PCAOB standards adopted or revised since the most recent engagement would not affect an SRO’s FCM examination standards. As Commission and SRO staff regularly participate in industry and AICPA Stockbrokerage and Investment Banking Expert Panel discussions, all are knowledgeable on best practices being utilized by public accounting firms and PCAOB auditing standards being considered or adopted. The PCAOB’s audit standard setting process activities are transparent with proposed amendments and new standards subject to discussions, consultation papers, comment periods and a time-line for implementation upon SEC approval which can take several years.

The Exchanges also request that the Commission continue to monitor the development and the adoption of auditing standards by the PCAOB and consider eliminating the requirement for an examination expert’s evaluation in future rulemaking. As Commission staff become more familiar with the substance and frequency of auditing standards adopted by the PCAOB and the effectiveness of the SROs’ existing FCM examination standards, it may determine that such periodic review is not necessary.

III. Miscellaneous Items

In addition to the requests made above, the Exchanges respectively requests the Commission consider amending the following provisions of Regulation 1.52:

1. Commission Regulations 1.52(c)(2)(i) and 1.52(d)(2)(ii)(E) require an SRO’s supervisory program to, among other requirements, “address *all* areas of risk to which the futures commission merchant can reasonably be foreseen to be subject” (*emphasis added*). While the Commission has not raised any issues or concerns in the Exchanges’ current supervisory program during their routine reviews, the Exchanges continue to believe that this language is vague and overly broad. In addition, Commission

³ On October 23, 2017, the SEC approved amendments to PCAOB auditing standards pertaining to an Auditor’s Report on an Audit of Financial Statements when the Auditor Expresses an Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards; and on May 9, 2016, it approved amendments Requiring Disclosure of Certain Audit Participants on a New PBAOB Form and Related Amendments to Auditing Standards.

Regulation 1.11 and the FCM's enterprise risk management processes require it to identify and manage its risks. Such procedures are evaluated by the FCM's public accounting firms when preparing their annual report on an FCM's internal controls. Thus, the concerns intended to be addressed by the language highlighted above are sufficiently addressed in other Commission regulations, and do not need to be reiterated in Commission Regulation 1.52.

2. Commission Regulation 1.52(d)(2)(iii)(B)(6) and proposed Regulation 1.52(d)(2)(iii)(B)(3) provides that the JAC members must consider issuing risk alerts, in part, for their "designated self-regulatory organization examiners on an as-needed basis" as issues arise. Best practice and the FCM examination standards already require an SRO's examiners to have adequate technical training and proficiency, thus making this risk alert requirement as it relates to designated self-regulatory organization examiners unnecessary. The Exchanges fully support the issuance of risk alerts for futures commission merchants on an as needed basis as industry issues arise.
3. Commission Regulation 1.52(k) requires an SRO to provide notice to the Commission when a FCM, a registered retail foreign exchange member, or a registered introducing broker ceases to be a member in good standing of that SRO. Members of the Exchanges include both clearing members, which are subject to the supervisory procedures specified in Regulation 1.52 and "corporate members". Corporate members of these exchanges, whose accounts are carried by clearing members and only receive benefits of membership (i.e. reduced exchange fees), may include (non-clearing) FCMs, registered retail foreign exchange members and introducing brokers who are primarily regulated by the NFA. The Exchanges request that Regulation 1.52 be amended to align with existing practice by clarifying that such reporting applies only to such entities when they are also clearing members of the Exchanges and otherwise is left to the registered futures association.
4. The Exchanges request that the Commission confirm that if an interim examination expert evaluation is required due to amended or new PCAOB auditing standards which require an SRO to promptly engage an examination expert, or if an SRO is directed to obtain such an evaluation by the Director, the time-line for the next required examination expert evaluation would be reset.
5. Regulation 1.52 indicates that all aspects of an SRO's supervisory program, including the FCM examination standards, must conform to auditing standards issued by the PCAOB "as such standards would be applicable to a non-financial audit". The Exchanges wish to confirm that when auditing standards of the PCAOB are referenced in this regulation, this reference refers to the standards that would be applicable to a non-financial statement audit.

In conclusion, the Exchanges appreciate the opportunity to offer the foregoing comments on the Proposal and appreciates the Commission's efforts in considering the comments that it has submitted in response to their request for input on Project KISS. We hope that the views expressed herein prove to be helpful to the Commission and are available to answer any questions the Commission may have. If you would like to discuss this further, please contact me at 312.634.1592 or Debbie Kokal at 312.930.3235.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen", is located at the bottom left of the page.

Commodity Futures Trading Commission

August 28, 2018

Page 4

cc: Honorable J. Christopher Giancarlo, Chairman
Honorable Rostin Behnam, Commissioner
Honorable Brian D. Quintenz, Commissioner

Mr. Matthew Kulkin, Director, Division of Swap Dealer and Intermediary Oversight
Mr. Thomas Smith, Deputy Director, Division of Swap Dealer and Intermediary Oversight