

November 22, 2019

VIA ELECTRONIC SUBMISSION

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

Re: Exemption from Derivatives Clearing Organization Registration; Supplemental Notice of Proposed Rulemaking (RIN 3038-AE65)

Dear Mr. Kirkpatrick:

CME Group Inc. (“CME Group”) appreciates the opportunity to provide comments on the U.S. Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) supplemental notice of proposed rulemaking on exemption from derivatives clearing organization registration (“SNPRM”).¹

Chicago Mercantile Exchange Inc. (“CME”) is a wholly-owned subsidiary of CME Group. CME is registered with the CFTC as a derivatives clearing organization (“DCO”) and is one of the largest central clearing services in the world. CME’s clearing house division (“CME Clearing”) offers clearing and settlement services for listed futures and options on futures (“exchange-traded derivatives”) as well as over-the-counter derivatives transactions, including interest rate swaps.

General Comments

The SNPRM proposes exemption from DCO registration for qualifying foreign central counterparties (“CCPs”) that clear swaps for eligible U.S. participants.² The Commission proposes a corresponding exemption from futures commission merchant (“FCM”) registration for intermediaries that clear swaps for U.S. customers at such exempt DCOs. The Commission has not proposed to extend Part 30 relief to swaps intermediaries – citing in part uncertainty regarding the applicability of customer protections under U.S. law – but requests comment on the advisability of such relief and input on such technical issues of law. CME Group believes that intermediaries, their affiliates and industry groups are best positioned to address those legal

¹ Exemption From Derivatives Clearing Organization Registration, 84 Fed. Reg. 35456 (July 23, 2019) [SNPRM].

² Clearing members, their affiliates and customers meeting the criteria of an Eligible Contract Participant (“ECP”).

issues and does not offer specific comment on them.³ More broadly related to the proposals in the SNPRM, CME Group supports the principle that appropriately informed U.S. customers (e.g., retail and institutional) should be permitted to choose bankruptcy and customer protection regimes; however, we caution that exemptions from CFTC registration are appropriate only where the foreign regulatory framework reciprocates CFTC deference across all relevant areas of regulation and is comparable on an outcomes-basis.

U.S. Customer Access Under CFTC Regulations

Today's Part 30 regulations allow multiple ways for U.S. participants – including customers and clearing members – to efficiently access foreign futures and foreign options (collectively, “foreign listed derivatives”)⁴ and related services of non-U.S. CCPs. The Part 30 framework is highly deferential to foreign regimes that are deemed comparable to the CFTC's regime on an outcomes-basis and removes barriers for U.S. customers' access to foreign listed derivatives and the non-DCO CCPs where those transactions clear.⁵ Today, pursuant to available exemptions, a foreign CCP need only register as a DCO if it clears swaps for U.S. customers or transactions executed on a CFTC-registered U.S. designated contract market (“DCM”). Yet even within the narrow circumstances that necessitate DCO registration for a foreign CCP, the CFTC framework offers a high degree of deference to comparable foreign regulatory frameworks. The CFTC largely defers to the home country regulator's oversight rather than taking the role of a primary regulator and appropriately focuses its oversight of non-U.S. DCOs on the U.S. activities that trigger their DCO registration. In addition to the complete deference already provided to foreign CCPs providing clearing services to U.S. customers accessing foreign listed derivatives, the SNPRM proposes further deference to comparable foreign regulatory frameworks with respect to the clearing of U.S. customer swaps. CME Group generally supports deference, but only where foreign regulators reciprocate by providing coextensive deference to the CFTC's oversight of its DCOs and reciprocal foreign customer access to U.S. markets. Unilateral deference ultimately leads to market fragmentation, which has been shown to increase systemic risk.

The two primary ways for a U.S. customer to access foreign listed derivatives under Part 30 are through: i) an FCM that has established an omnibus account with a foreign broker that is a clearing member of the foreign CCP clearing the contracts; or ii) a foreign broker that is both a clearing member of the foreign CCP clearing the contracts and appropriately exempted by the CFTC. Under either of these Part 30 access models, the Commission does not require registration of or directly oversee the exchange listing or the foreign CCP clearing the foreign listed derivatives – that is, the exchange does not have to register as a DCM and the CCP does not have to register as a DCO.

³ Requests for Comment 1.a.–f., SNPRM.

⁴ Foreign futures and foreign options are defined under CFTC Regulation 30.1(a) and (b), respectively.

⁵ Notably, U.S. law does not require DCO registration as a condition of qualifying central counterparty (“QCCP”) status for non-U.S. CCPs, which permits CCP participants the most favorable capital treatment on their cleared exposures.

CFTC Regulation 30.7 permits an FCM to intermediate U.S. participant access to foreign listed derivatives by maintaining an omnibus account for the customer collateral supporting those exposures (i.e., a “Secured 30.7 Account”) on the books of an intermediary that is a clearing member of the foreign CCP providing clearing for the foreign listed derivatives. Under this access model, the foreign clearing broker, exchange and CCP are not required to be CFTC-registered. Separately, the CFTC establishes an exemption process under Regulation 30.10 that permits foreign brokers subject to comparable regulation to directly intermediate U.S. customers’ access to foreign listed derivatives without registering as an FCM. CFTC Regulation 30.10 allows a foreign person – generally a government agency or exchange with oversight responsibility over local intermediaries – to file a petition for an exemption from FCM registration. An order granted pursuant to such a petition exempts covered foreign brokers from FCM registration, and as a practical matter, also effectively exempts both the foreign exchange and CCP at which the broker is a member from U.S. registration when providing clearing services to U.S. participants for those foreign listed derivatives. As such, U.S. customers may access a wide range of foreign listed derivatives without any of the service providers being CFTC-registered.

The Commission’s Part 30 regulations establish a sensible and long-standing framework that permits U.S. participants to efficiently and safely access global exchange-traded derivatives markets. As a first-mover, the CFTC set an example for other regulators to follow in crafting mutually deferential regulatory regimes that facilitate cross-border market access. In the intervening years, foreign regulators have developed frameworks with varying degrees of deference to other countries’ regulatory regimes, including the CFTC’s. As the CFTC moves forward with its proposal to exempt a range of foreign CCPs and their clearing intermediaries from CFTC registration, CME Group encourages the Commission to account for developments in foreign regulatory regimes and to base its assessments on reciprocity and mutual deference to best ensure that U.S. markets remain robust and resilient.

Mutual Deference

CME Group has previously expressed its view that a policy of mutual deference is central to well-functioning cross-border regulatory regimes.⁶ For decades, such a policy has allowed market participants worldwide to hedge their business risks via exchange-traded derivatives markets. Mutual deference supports robust markets by deepening liquidity, encouraging efficient price discovery and reducing market fragmentation. As described above, the CFTC has long permitted foreign CCPs to clear foreign listed derivatives for U.S. participants without being subject to direct CFTC supervision or oversight. Like the CFTC’s existing Part 30 framework, the exempt DCO proposal relies upon outcomes-based comparability determinations for foreign regulatory frameworks, intermediaries and CCPs.

An outcomes-based approach to mutual deference examines the results from application of a foreign CCP’s regulatory framework, while accommodating local differences in regulatory and

⁶ See e.g., Letter from CME Group to CFTC re: Foreign Futures & Options Transactions; Notice of Proposed Rulemaking (RIN 3038-AE86) (Aug. 5, 2019), *available at* <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62153&SearchText=>.

market structure. CME Group's view is that unreciprocated deference or line-by-line determinations of comparability increase market fragmentation and systemic risk and impose unnecessary and costly impediments to market access. To protect against these negative outcomes, CME Group strongly supports the Commission's continuing discretion to condition an exemption from DCO registration on principles of international comity and the extent to which the relevant foreign regulatory authorities defer to the Commission with respect to oversight of registered DCOs organized in the U.S. that are accessed by local participants. CME Group believes the Commission's efforts to support mutual deference among regulators across the globe will foster efficient markets and cooperative behavior to the benefit of all. Given the central importance of deference and reciprocity to the success of the exempt DCO framework, we respectfully suggest codifying the CFTC's ability to condition an exemption from DCO registration on matters of international comity and reciprocity in the text of the regulation rather than the body of the SNPRM.

CME Group also supports the approach of basing comparability assessments of a foreign CCP's regulatory framework on their locally appropriate adoption of a regulatory framework consistent with the Committee on Payments and Market Infrastructures ("CPMI") and International Organization of Securities Commissions' ("IOSCO") *Principles for financial market infrastructures* ("PFMIs").⁷ Basing its assessments on appropriate local adoption of the PFMIs leverages a widely-adopted benchmark that enables the CFTC to reach an outcomes-based determination on whether mutual deference is warranted.

Specific Comments

In request for comment #13 of the SNPRM, the Commission seeks input on whether to permit non-U.S. customers to clear futures⁸ and swaps through non-FCMs at registered DCOs organized in the U.S. ("Remote Clearing"). In keeping with the preceding discussion on mutual deference and reciprocity, allowing Remote Clearing would make the CFTC regime consistent with the regimes in many other jurisdictions that allow intermediaries to clear customer positions without being registered in the jurisdiction where the CCP is organized. Remote Clearing promotes liquidity and offers benefits to the U.S. markets consistent with those that will likely accrue under the exempt DCO proposal in the SNPRM. Remote Clearing relieves foreign brokers that are subject to comparable regulatory frameworks from FCM registration in essentially the same manner as proposed in the SNPRM for foreign brokers handling U.S. customer swaps funds, with the distinction that Remote Clearing would exempt foreign brokers from FCM registration with respect to their handling of **non-U.S. customer** funds. These **non-U.S. customer** funds have far less nexus to the CFTC's regulatory interest than the U.S. customer funds that the SNPRM proposes to remove from U.S. protections.

⁷ Committee on Payment and Settlement Systems (later renamed the Committee on Payments and Market Infrastructures) and Technical Committee of the International Organization of Securities Commissions, *Principles for Financial Market Infrastructures* (Apr. 2012).

⁸ The SNPRM does not specify options on futures but we assume they are likewise intended to be included in the discussion; CME Group's comments on this topic applicable to futures likewise apply to options on futures.

CME Group further believes that Remote Clearing would be consistent with the aims of the SNPRM, U.S. public interests and principles of international comity, as discussed below.

Promotes responsible financial innovation and fair competition, while also being consistent with the public interest and the purposes of the Commodity Exchange Act. The SNPRM is designed to provide U.S. persons with greater optionality in accessing cleared swaps markets abroad. The release contemplates that the balance of systemic risk and liquidity benefits from permitting non-FCMs to clear customer exposures at exempt DCOs outweighs potential customer protection concerns of removing U.S. customers from the U.S. customer protection regime. Remote Clearing would create similar liquidity and risk diversification benefits at participating DCOs. And because Remote Clearing could be limited to appropriate intermediaries – such as those subject to comparable regulatory frameworks, much as the SNPRM proposes with respect to FCM exemptions – the balance of benefits and considerations for Remote Clearing is analogous to that for exempt FCMs. Lastly, there is no apparent policy rationale for continuing to require U.S. customer protections for non-U.S. customers while permitting U.S. customers, over which the CFTC has a far greater regulatory interest, to opt out of them.

Reduces systemic risk. Remote Clearing would expand the number and geographic diversity of potential intermediaries clearing at DCOs organized in the U.S., which in turn reduces systemic risk.⁹ Diversifying intermediaries also provides greater opportunities for foreign participants to access these DCOs, which promotes deeper pools of liquidity and should enhance both the resiliency of DCO-cleared markets and DCOs' ability to manage future stress events. Remote Clearing also offers the opportunity for increased default management participation. Ultimately, Remote Clearing would benefit end-users of derivatives and make DCOs more resilient in times of stress.

Reduces market fragmentation and application of inconsistent and duplicative regulatory frameworks. Remote Clearing supports the principle of mutual deference by allowing non-U.S. customers to access a U.S. DCO's clearing services via comparable regulatory frameworks with which they are already familiar. Remote Clearing would remove unnecessary barriers to foreign participants' access to DCOs organized in the U.S. and could reduce associated market fragmentation, which in turn provides the benefits of reduced systemic risk, as described above.

⁹ See Dan M. Berkovitz, Comm'r., CFTC, Keynote Address at FIA Commodities Symposium, Houston, Texas (June 11, 2019): *Take It to the Limit, One More Time (Again)*, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaberkovitz4> (noting that the concentration of client clearing services not only presents systemic risks but also provides fewer choices for end-users of derivatives); see also Nahomy Alvarez & John McPartland, *The Concentration of Cleared Derivatives: Can Access to Direct CCP Clearing for End-users Address the Challenge?* 16 (Fed. Reserve Bank Chicago, Working Paper WP 2019-06) ("The prevalent view among policymakers and regulators is that the concentration of financial exposures in a handful of large clearing members (partly due to industry consolidation) can have a number of adverse consequences, some of which may have systemic risk implications."), available at <https://doi.org/10.21033/wp-2019-06>.

Increased efficiency of access to central clearing. As highlighted by the 2008 financial crisis, derivatives markets are global in nature. The benefits of multilateral netting at CCPs are only increasing in importance as capital constraints continue to affect the clearing ecosystem. In evolving global derivatives markets, efficient access to liquidity and multilateral netting remain of paramount importance. Remote Clearing could increase capital efficient access to markets cleared by DCOs organized in the U.S.

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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. Alternatively, you can contact Sean Downey at (312) 930-8167 or Sean.Downey@cmegroup.com.

Sincerely,



Sunil Cutinho
President, CME Clearing

cc: Honorable Heath Tarbert, Chairman
Honorable Brian D. Quintenz, Commissioner
Honorable Rostin Behnam, Commissioner
Honorable Dan Berkovitz, Commissioner
Honorable Dawn Stump, Commissioner
Clark Hutchison III, Director, Division of Clearing and Risk