CME Group

October 11, 2022

VIA ELECTRONIC SUBMISSION

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

Re: RIN 3038-AF15 Governance Requirements for Derivatives Clearing Organizations

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") Notice of Proposed Rulemaking on Governance Requirements for Derivatives Clearing Organizations (the "NPR").[2]

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") ("CME Clearing" or "the Clearing House"). CME Clearing offers clearing and settlement services for listed futures and options on futures contracts, including those listed on CME Group's CFTC-registered designated contract markets ("DCMs"), and cleared swaps derivatives transactions, including interest rate swaps ("IRS") products. These DCMs are CME, Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX"), and the Commodity Exchange, Inc. ("COMEX") (collectively, the "CME Group Exchanges"). On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). As a SIFMU, CME is also a systemically important DCO ("SIDCO").

I. INTRODUCTION

We commend the CFTC for its work with the Market Risk Advisory Committee ("MRAC") and its subcommittee, the Risk and Governance Subcommittee (the "MRAC Subcommittee"). We were

[1] As a leading and diverse derivatives marketplace, CME Group enables clients to trade in futures, cash and over-the-counter markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME Group's exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products, and metals. CME Group offers futures trading through the CME Globex platform, fixed income trading via BrokerTec, foreign exchange trading on the EBS platform. In addition, it operates one of the world's leading central counterparty clearing providers, CME Clearing.

[2] 87 FR 49559.

encouraged to see that the industry's collaboration through the MRAC Subcommittee and their agreed recommendations on a number of best practices in risk governance were included in the NPR.[3] CME Group also appreciates the Commission continuing to take a principles-based approach to regulation consistent with its statutory mandate, allowing each DCO to retain appropriate latitude to account for differences in size, clearing offerings, and governance structures.

Consistent with the DCO Core Principles[4] and current CFTC regulations[5], CME Clearing's existing governance arrangements are designed to "prioritize the safety and efficiency of the Clearing House, generally support the stability of the broader financial system and consider the legitimate interests of clearing members and customers of clearing members and take into account prudent risk management standards (including systemic risk mitigation) and best practices in the industry."[6] Market participants form an important part of CME Clearing's governance arrangements, including being represented on the Board of Directors (the "Board")[7] and committees established by the Board, such as the Clearing House Risk Committee ("CHRC") and IRS Risk Committee ("IRSRC" and collectively with CHRC, the "CME Clearing Risk Committees"). Unlike DCOs, market participants do not have a regulatory obligation to support the stability of the broader financial system; their decision-making can be influenced by other considerations, including their own commercial interests. Therefore, any requirements that prescribe participation of market participants in a DCO's governance arrangements must be tailored to ensure they only provide ***risk-based*** input. A market participant's commercial interests should not and cannot inform a DCO's risk management practices and decisions.

Broadly, the DCO Core Principles and current CFTC Regulations 39.24 and 39.26 set conservative requirements for DCO's governance arrangements which have resulted in diverse market participant representation, as well as provide for consultation with market participants and consideration of their risk-based input on matters that materially affect a DCO's risk profile. These arrangements have been further supported by CFTC Regulations 40.5, 40.6, and 40.10 that require DCOs to provide the Commission an explanation of any substantive opposing views they receive during the rule filing process. Notwithstanding the robust governance arrangements that already exist for DCOs, CME Group appreciates the desire of the Commission to codify certain best practices in risk governance as recommended by the MRAC Subcommittee and generally supports the proposed rule text. In addition, CME Group recommends some more technical and procedural amendments with respect to the rule text for the risk management committees ("RMCs") and risk advisory working groups ("RWGs").

CME Group does, however, have specific feedback regarding certain of the areas where additional requests for comments were made. Most notably, the question imbedded in the NPR asking whether all new products should be treated categorically as materially affecting the DCO's risk profile and thus

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[3] MRAC Risk and Governance Subcommittee, *Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives* (Feb. 2021), *available at* https://www.cftc.gov/media/5701/MRAC_CRGSubcommittee-RecommendationsOnCCPGovernance022321/download.

[4] 7 U.S.C. 7a-1.

[5] 17 CFR § 39.24(a)(1)(iii)-(iv).

[6] CME Group, Corporate Governance Principles, at pg. 11, *available at* http://investor.cmegroup.com/static-files/60827cf0-529e-4656-a57a-d2007fa68e30.

[7] Note, the Board of Directors of CME is comprised of the same individuals as the Board of Directors of CME Group.

requiring consultation with the RMC should not be reflected in any final rule. As discussed below, such a requirement would contradict the plain reading of and legislative intent behind the self-certification process authorized by Section 5c(c) of the Commodity Exchange Act ("CEA"), as set forth in CFTC Part 40 Regulations, without any attendant risk management benefits.

II. RISK MANAGEMENT COMMITTEE

CME Group supports proposed CFTC Regulation 39.24(b)(11), which requires that a DCO establish one or more RMCs that are consulted on matters that materially affect the risk profile of the DCO. This is evidenced by CME Clearing's long history of consulting with risk committees comprised primarily of market participants (i.e., currently CHRC and IRSRC).[8] Further, we support the Commission's proposal that the RMCs focus on matters that could materially affect the risk profile of the DCO. This strikes the appropriate balance of allowing a DCO to efficiently and effectively operate its clearing and settlement arrangements, consistent with CFTC Regulation 39.38(a)(1), while allowing broader feedback on matters that materially affect the risk profile of the DCO.

A. New Products: All new products should not be included in the RMC consultation requirements of proposed Regulation 39.24(b)(11).

Among the proposed amendments to CFTC Regulation 39.24(b) would be the inclusion in sub-section (11) of a non-exhaustive list of matters that could materially affect the risk profile of the DCO. As proposed, that list includes "any material change to the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, ***as well as the clearing of new products***" (emphasis ***added***).[9] Additionally, within the NPR, the Commission requested comment on whether a DCO's proposal to clear a new product should be categorically treated as a matter that could materially affect the DCO's risk profile for purposes of the proposed RMC consultation requirement and related question as to how such new products should be defined.[10]

CME Group believes that the categorical application of this requirement to new products is unnecessary. The appropriate standard as it relates to the clearing of new products and the proposed RMC consultation requirement has already been proposed in CFTC Regulation 39.24(b)(11), namely whether the matter at issue could materially affect the risk profile of the DCO. This is consistent with the consensus reached by both DCOs and market participants involved in the MRAC Subcommittee. Namely, the MRAC Subcommittee's recommendation was not that the clearing of ***any and all*** new products required consultation with the RMC, but rather where the clearing of a new product "could significantly impact the derivatives clearing organization's risk profile."[11] Categorically treating a DCO's proposal to clear any

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[8] *See* CME, Clearing House Risk Committee Charter, *available at* http://investor.cmegroup.com/static-files/7445789a-8aaa-46ec-8539-069e8cbf0fab; CME, Interest Rates Swaps Risk Committee Charter, *available at* http://investor.cmegroup.com/static-files/50a72d75-6269-41ec-8bec-1799c4ac19e1.

[9] NPR at 49560.

[10] *Id.*

[11] MRAC Risk and Governance Subcommittee, *Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives* (Feb. 2021), pg. 3 (noting, "[t]herefore, the Subcommittee agreed to support a codification of best practices for RCs with amendments to CFTC Rule 39.24 as follows: Adding a new Rule 39.24(b)(4) (and re-numbering accordingly) that states: (b) A derivatives clearing organization shall have

new product as a matter that requires RMC consultation would be inconsistent with the CEA, Congressional intent, and past Commission action on new product launches. Importantly, requiring all new products to be categorically subject to RMC consultation risks upending long-standing norms around competition, innovation, and intellectual property. Further, relying on the standard already proposed within CFTC Regulation 39.24(b)(11)—i.e., could materially affect the risk profile of the DCO—has the benefit of being simple, practical, and right-sized.

1. The proposal would contradict the congressional intent surrounding the new product approval process.

The proposed RMC consultation requirement, if applied categorically to all new products, would frustrate the product certification process for exchange-traded derivatives in the CEA as enacted by Congress in 2000 in the Commodity Futures Modernization Act ("CFMA") and reaffirmed by Congress in the Dodd-Frank Act. In 2000, Congress enacted important reforms to streamline and expedite the CEA product approval process by authorizing self-certification by DCMs as a means for launching new products which allowed for next business day listing of new exchange-traded derivatives products. The purpose of these reforms was to promote the ability of DCMs to innovate and respond quickly to competitive conditions in a fast-changing market subject to Commission oversight. These reforms have worked well and are now a staple of the statutory structure the Commission administers. Indeed, in the Dodd-Frank Act of 2010, Congress maintained these reforms without material change and as discussed below, the CFTC and its Commissioners have extolled the virtues of self-certification in the years leading up to and following the Dodd-Frank Act.

In enacting the CFMA, Congress made it clear that the statute's purposes, among others, were to: (1) "streamline and eliminate unnecessary regulation for the commodity futures exchanges;" (2) "transform the role of the Commodity Futures Trading Commission to oversight of the futures markets" from that of the frontline regulator; (3) "promote innovation for futures and derivatives;" and (4) "enhance the competitive position of United States financial institutions and financial markets."[12]

In 2010, Congress carefully reviewed and amended CEA Section 5c(c) in the Dodd-Frank Act and left intact the product self-certification process which had been in place since 2000. Legislative history confirms that Congress specifically preserved the flexibility of the existing product self-certification process—a strong indication that the CFTC should not implicitly vitiate the approach set by Congress under CEA Section 5c(c).[13] When enacting the Dodd-Frank Act, Congress carefully reviewed the self-

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governance arrangements that: (4) Establish one or more risk management committees and require the board of directors to consult with and consider feedback from the risk management committee(s) on all matters and proposed changes to the derivatives clearing organization's rules, procedures, or operations that could materially affect the risk profile of the derivative es clearing organization, including any material change to the derivatives clearing organization's risk model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of ***new products that could significantly impact the derivatives clearing organization's risk profile***;" (emphasis ***added***)), *available at* https://www.cftc.gov/media/5701/MRAC_CRGSubcommittee-RecommendationsOnCCPGovernance022321/download.

[12] Commodity Futures Modernization Act, Pub. L. No. 106-554, App. E, § 2, 114 Stat. 2763, 2763A–366 (2000).

[13] *Compare* S. 3217, 111th Cong. 2d Sess., § 725(d) (as introduced, Apr. 15, 2010) (imposing a 10-day review period for product and rule certifications) *with* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1735, codified at 7 U.S.C. 7a-2(c)(2) (imposing a 10-day

certification process and amended the process in three ways; however, none of these amendments affected registered entities' ability generally to list a new exchange-traded derivatives product on the second business day after submitting self-certification to the CFTC. The legislative evolution of these amendments in the Dodd-Frank Act confirms that Congress made a deliberate choice to leave untouched the exchange-traded derivatives product listing and clearing process. When the Senate bill that eventually became Title VII of the Dodd-Frank Act was first introduced in April 2010, the legislation initially contemplated requiring a 10 business day review period for ***all product and rule certifications*** submitted to the CFTC by registered entities.[14] The version of the bill that passed the Senate, however, removed such review period ***for product certifications***, while keeping the 10 business day review period for rule certifications only.[15] The Dodd-Frank Act, as enacted, retained the Senate's change to the self-certification provision.[16] Congress's decision to reject the 10 business day waiting period for listing new products clearly demonstrates that Congress did not intend to, and in fact did not, authorize the CFTC to impose additional procedural burdens on registered entities in their listing a new exchange-traded derivatives product through self-certification.

DCMs have the primary responsibility for listing new products and, as noted above, it is contemplated that this should occur quickly and in accordance with Congressional intent. While a DCO is part of that process and does need to consider new products in light of its product eligibility requirements and risk management framework, to make the DCO bring all new products through an RMC consultation process would, without any risk management benefits, dramatically change a DCO's role by ostensibly creating a two-track regulatory process with the DCO's process being more onerous. It is not necessary, appropriate, or logical to have a DCM and its DCO go through independent regulatory processes prior to listing all new exchange-traded derivatives products. Under DCM Core Principle 11, a DCM would not currently be able to list a product for trading until the DCO on which the product is to be cleared had determined that clearing the new product would not pose a material risk to the DCO, which would otherwise require existing governance arrangements to apply, including consulting with its RMC in certain instances. Yet, to the extent the listing of all new products was categorically treated as a matter that could materially affect a DCO's risk profile, a DCM would be required to consult with the DCO's RMC and provide the necessary time for the DCO's board of directors to consult with and respond to input from the RMC for each and every new product a DCM seeks to list regardless of its impact on the DCO's risk profile. This is the case even when the DCM certifies that the product would otherwise comply with the CEA and CFTC regulations. Categorically treating a DCO's proposal to clear a new product as a matter that could materially affect the DCO's risk profile for purposes of the proposed RMC consultation requirement

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review period for rule certifications *only*); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion[,]" and that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.") (citations omitted).

[14] *See* S. 3217, 111th Cong. 2d Sess., § 725(d) (as introduced, Apr. 15, 2010) (noting, the bill provided that "the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment shall become effective, pursuant to the registered entity's certification, 10 business days after the Commission's receipt of the certification (or such shorter period determined by the Commission by rule or regulation).").

[15] *See* H.R. 4173, 111th Cong. 2d Sess., Title VII, § 745(d) (as passed the Senate, May 27, 2010).

[16] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1735, codified at 7 U.S.C. 7a-2(c)(2).

would thus defeat the product self-certification process that Congress specifically designed in 2000 and has left intact for over two decades.

2. The existing self-certification process has operated successfully.

Since January 27, 2021, the date on which the Commission's most recent amendments to CFTC Part 39 Regulations took effect, the CME Group Exchanges listed for trading 207 new contracts through the self-certification process.[17] An RMC consultation requirement for the clearing of any new product would vitiate the benefits of self-certification and would be both unwarranted and incompatible with CME Group's ability to respond with appropriate speed to emerging competitive conditions.

The Commission and its Commissioners have endorsed the important public interests served by the self-certification process on many occasions. For example, in May 2004, the Commission stated, "[t]he certification procedure was established by the Commodity Futures Modernization Act of 2000 (CFMA), in order to permit exchanges to react quickly in a competitive and dynamic business environment."[18] In 2005, then-Acting CFTC Chairman Sharon Brown-Hruska touted the benefits of the self-certification process, stating, "[n]ew product and rule amendment certification procedures in the CFMA have also lowered regulatory barriers and fostered innovation by providing exchanges greater flexibility in listing contracts and reacting to developments in the cash markets…In short, the innovation, competition, and customer choice envisioned by Congress in passing the CFMA is bearing fruit."[19] In 2007, then-Acting CFTC Chairman Walter Lukken put the self-certification authority in a larger context, stating, "[t]he CFMA replaced the prior 'one-size-fits-all' regulatory model with a flexible, practical, principles-based model for exchanges. U.S. exchanges also were given the authority to approve new products and rules through a self-certification process without prior CFTC approval, which encouraged innovation and enabled exchanges to act quickly in response to fast-changing market conditions."[20] In 2018, CFTC Chairman J. Christopher Giancarlo acknowledged the market-driven innovations that the self-certification process for exchange-traded derivatives products has enabled, noting that while 793 products were approved from 1922 until the CFMA was signed into law in 2000, exchanges have self-certified 12,016 products since then.[21]

As explained above, applying an RMC consultation requirement categorically for the clearing of ***any*** new product—regardless of materiality impact—risks undermining the important benefits of the self-certification process that the Commission has consistently acknowledged and Congress has repeatedly supported. The self-certification regime has worked appropriately since its inception. The Commission

[17] *See* 85 FR 4800 (noting, the effective date of January 27, 2021 in the most recent amendments to CFTC Part 39 Regulations and noting further the Commission's determination to not move forward with the initially proposed requirement that DCOs provide the Commission with 30 calendar days prior notice before accepting a new product for clearing).

[18] *Review Commodity Futures Trading Commission Regulatory Issues: Hearing Before the S. Comm. on Agriculture, Nutrition, and Forestry*, 108th Cong., 2d Sess. 35 (May 13, 2004).

[19] *To Consider the Reauthorization of the Commodity Futures Trading Commission: Hearing Before the S. Comm. on Agriculture, Nutrition, and Forestry*, 109th Cong., 1st Sess. 47 (Mar. 8 & 10, 2005).

[20] *Hearing to Review Trading of Energy-Based Derivatives: Hearing Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture*, 110th Cong., 1st Sess. 13 (July 12, 2007).

[21] Remarks of Chairman J. Christopher Giancarlo before the Market Risk Advisory Committee Meeting (Jan. 31, 2018), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement013118#P19_4317.

should continue to rely on a DCO's expertise to identify when a new product could materially affect the DCO's risk profile and to bring it to the RMC for consultation. This is particularly warranted given a DCO's obligations under the DCO Core Principles and existing CFTC Part 39 Regulations, for example, with respect to risk management and the special submission and review process that applies to a DCO's clearing of a new asset class or type of swap under CFTC Regulation 39.5. An RMC consultation requirement, if applied categorically to all new products, would result in an unwarranted, burdensome regulatory requirement that contradicts past practices and introduces possible conflicts of interest or competitive interests into a time-tested process.

3. The Commission should not deviate from the proposed approach that RMC consultation is only required for the clearing of new products that could materially affect the risk profile of the DCO.

CME Group recognizes that there are instances in which it would be appropriate to require the DCO to consult with the RMC on the clearing of a new product. However, CME Group and it would seem even the Commission based on the language used in the NPR recognize that not all instances in which a DCO intends to clear a new product would constitute a matter that could materially affect the risk profile of the DCO.[22] Consistent with this view, the MRAC Subcommittee's recommendation, which represented an area of consensus among DCOs and market participants, makes clear that only new products that could significantly impact the DCO's risk profile should require RMC consultation.[23] Rather than unnecessarily introducing competing definitions or defined terms—whether that be the Commission codifying another definition for "new product" or DCOs adopting additional policies defining what constitutes a "new product"—we would point to the fact that the Commission has already established a workable standard.

B. Other Comments on Risk Management Committees

We appreciate the Commission's overall emphasis in the NPR, including with respect to RMCs, that risk-based input (as opposed to commercially driven input) should be sought from market participants as a part of a DCO's risk governance.[24] It is imperative to ensure that market participants acting as RMC members, consistent with current CFTC regulations, prioritize the safety and efficiency of the DCO and support the stability of the broader financial system. When acting in the capacity of members of the RMC, members

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[22] *See* NPR at 49560 (noting, "***[w]hen determining whether a new product could materially affect its risk profile***, a DCO should consider the product's potential impact as the product matures, and not only at the onset of trading, when risks may be less pronounced" (emphasis ***added***)).

[23] MRAC Risk and Governance Subcommittee, *Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives* (Feb. 2021), pg. 3 (noting, "[t]herefore, the Subcommittee agreed to support a codification of best practices for RCs with amendments to CFTC Rule 39.24 as follows: Adding a new Rule 39.24(b)(4) (and re-numbering accordingly) that states: (b) A derivatives clearing organization shall have governance arrangements that: (4) Establish one or more risk management committees and require the board of directors to consult with and consider feedback from the risk management committee(s) on all matters and proposed changes to the derivatives clearing organization's rules, procedures, or operations that could materially affect the risk profile of the derivatives clearing organization, including any material change to the derivatives clearing organization's risk model, default procedures, participation requirements, and risk monitoring practices, ***as well as the clearing of new products that could significantly impact the derivatives clearing organization's risk profile***;" (***emphasis*** added)), *available at* https://www.cftc.gov/media/5701/MRAC_CRGSubcommittee-RecommendationsOnCCPGovernance022321/download.

[24] *See* NPR at 49560-61.

must also provide risk-based input. As such, CME Group supports the clarity provided by proposed CFTC Regulation 39.24(c)(3) which requires that a DCO maintain policies designed to enable RMC members to provide independent, expert opinions in the form of ***risk-based input*** on all matters presented and perform their duties in a manner that supports the safety and efficiency of the DCO and the stability of the broader financial system.[25] However, CME Group recommends that a technical revision be made, namely the substitution of "expert" with "informed," as doing so would enable RMC members to provide independent and ***informed opinions*** in the form of risk-based input, without implicating the legal connotations that accompany the concept of "expert opinions." The Commission's goal of limiting the focus of input to risk-based input could also be enhanced further by amending CFTC Regulation 39.24(b)(11) to require the board "to consult with, and consider and respond to ***risk-based*** input from, the…" (emphasis ***added*** to suggested new text) RMCs on all matters that could materially affect the risk profile of the DCO.

CME Group agrees with the importance of market participant representation on RMCs and is comfortable with proposed CFTC Regulation 39.24(b)(11)(ii) that requires an RMC to include representatives from clearing members and customers of clearing members. In particular, CME Group is pleased to see that the Commission believes its proposal "ensures a minimum level of market participant participation on RMCs while providing DCOs with appropriate flexibility to account for differences among DCOs in terms of size, business models, resources, and governance structure."[26] Flexibility is paramount considering the wide variety of registered DCOs and their disparate types of participants and products. Consequently, the CFTC should not adopt specific composition requirements for RMCs beyond what is currently proposed in CFTC Regulation 39.24(b)(11)(ii), as DCOs are well equipped to determine the appropriate balance and composition of expertise necessary for their specific risk management needs.[27]

CME Group is comfortable with proposed CFTC Regulation 39.24(b)(11)(iii) that RMC membership be rotated on a regular basis. As the Commission notes, this proposal will allow market participants "from a broad array of market segments to provide their expertise, and will ensure that the RMC provides the DCO with fresh perspectives on risk management matters."[28] It also importantly allows a DCO to maintain the appropriate balance of expertise, since an RMC requires members to have specific understanding of various risk management practices and products cleared by the DCO, which inherently requires knowledge from a diverse set of participants. We do, however, have concerns that requiring a minimum specific frequency with which members must be rotated could reduce the effectiveness and efficiency of RMCs when the specific expertise and knowledge of those members is lost with each rotation, which is inconsistent with the requirements for a DCO to design its offering in an efficient manner under CFTC regulations.[29] Some RMC members may also have specialized expertise that cannot

[25] Members of the CME Clearing Risk Committees are already required to act with a duty of care that prioritizes the safety and efficiency of the Clearing House and the stability of the broader financial markets.

[26] NPR at 49561.

[27] Please refer to this paragraph relating to the Commission's request for comment "on whether it should adopt additional specific composition requirements, and if so, what those requirements should be." NPR at 49561.

[28] NPR at 49561.

[29] 17 CFR § 39.24(a)(1)(iii) (noting, "[a] derivatives clearing organization shall have ***governance arrangements that***: Place a high priority on the safety and ***efficiency of the derivatives clearing organization***" (emphasis ***added***)); 17 CFR § 39.38(a)(1) (noting, "[i]n order to meet the needs of clearing members and markets, each systemically important derivatives clearing organization and subpart C derivatives clearing organization should ***efficiently and effectively design its: (1) Clearing and settlement arrangements***;").

easily be replaced. It is important for flexibility to remain with DCOs with regard to membership rotation, as they are bested suited to achieving the appropriate balance of rotation of new and fresh perspectives with the need to maintain prevailing risk management expertise. Consequently, the CFTC should not adopt a minimum rotation frequency for RMC membership.[30]

III. RISK ADVISORY WORKING GROUPS

CME Group believes DCOs could benefit from the portion of proposed CFTC Regulation 39.24(b)(12) that requires a DCO to establish one or more RWGs as a forum to seek risk-based input from a broad array of market participants regarding matters that could materially affect the risk profile of the DCO. This approach is already widely adopted by many DCOs, including CME Clearing, for seeking risk-based input from market participants. In line with CME Group's comments above, we want to reiterate the criticality of the Commission's focus on risk-based input to ensuring that market participants cannot utilize any of these forums as a vehicle to provide their commercially driven input. Similarly, CME Group appreciates the Commission's proposed focus for RWGs is on matters that could materially affect the risk profile of the DCO.

While CME Group believes that an RWG may—as a matter of practice—meet on a quarterly basis, it is not necessary to mandate such a frequency as proposed in CFTC Regulation 39.24(b)(12). A DCO may not have matters to discuss with an RWG that could materially affect its risk profile each quarter. In order to support efficiency and active participation in the RWGs, the frequency at which RWGs are convened should be determined based on when topics arise that materially affect the risk profile of the DCO. This approach would be consistent with the requirements for a DCO to design its offering in an efficient manner under CFTC regulations by limiting unnecessary meetings that could detract from a DCO's attention to its risk management and operational priorities.[31] Consequently, the proposed requirements under CFTC Regulation 39.24(b)(12) that an RWG shall be convened at least quarterly should be removed.[32]

CME Group believes that RWGs should be less formalized than the proposed RMCs and provide a forum for "free and open dialogue," as the Commission references, from a wide array of market participants.[33] While there should not be a requirement to formally document the proceedings of RWG meetings through meeting minutes or otherwise, the risk-based input received through the RWGs should be appropriately shared in accordance with the DCO's specific governance arrangements. In existing working groups, CME Group has found that an informal and flexible approach has been conducive to participants voicing their opinions; moreover, feedback is often both received and implemented within the confines of a given working group. As such, CME Group would be concerned that instituting additional formalities, such as requiring and publishing meeting minutes, may chill an open dialogue and impede progress. The determination of who receives feedback internally at a DCO, how it is communicated to members of the

[30] Please refer to this paragraph relating to the Commission's request for comment "on whether it should set a minimum frequency for RMC membership rotation, what are the advantages and disadvantages of doing so, and, if it does, what that frequency should be." NPR at 49561.
[31] 17 CFR §§ 39.24(a)(1)(iii) and 39.38(a)(1).
[32] Please refer to this paragraph relating to the Commission's request for comment "on whether the proposed requirement that each RWG convene quarterly is the appropriate frequency." NPR at 49561.
[33] NPR at 49561.

RWG, and how—and if—it is documented or displayed beyond the RWG should be left to the DCO. Consequently, DCOs should have the flexibility to adopt their own practices that are appropriate for documenting and sharing risk-based input received from the RWGs; however, documentation of such meetings should not be required by CFTC regulation.[34]

IV. REQUESTS FOR COMMENT

A. Market Participant Consultation Prior to a Rule Change

The Commission requests comment on whether it should also require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change pursuant to §§ 40.5, 40.6, or 40.10. If so, what constitutes a sufficiently broad spectrum of market participants, and how should the DCO engage that group? Should a DCO be required to consult only on those rule changes that could materially affect the DCO's risk profile?[35]

The CFTC should not amend its regulations to require a DCO to consult with market participants prior to submitting any rule changes pursuant to CFTC Regulations 40.5, 40.6, or 40.10. Broadly, current CFTC regulations already provide for governance arrangements for DCOs that include appropriate consultation with market participants, which would be supplemented by the adoption of the proposals for DCOs to have RMCs and RWGs.

As noted above, market participants form an important part of a DCO's governance arrangements which are, in part, based on current CFTC regulations. CFTC Regulation 39.26 already requires that a DCO's board (or board-level committee) include market participants. Further, CFTC Regulation 39.24(b)(2) requires that a DCO's board make certain that the DCO's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders. These requirements are complemented by the requirements under CFTC Part 40 Regulations, which ensure that rule filings pursuant to 40.5., 40.6, and 40.10 include a brief explanation of any substantive opposing views. Collectively, these requirements allow a DCO to design its governance arrangements in a manner that is appropriate for the unique products it clears and market participants it serves, while ensuring that market participants are represented on a DCO's governing body and that the DCO's rules and major decisions reflect the legitimate interests of its market participants.

There are many ways in which a DCO may comply with the abovementioned existing requirements, which for CME Clearing includes, among other things, having market participants represented on its Board, as well as committees established by the Board (e.g., CME Clearing Risk Committees). While the Board approves all matters that have a significant impact on the risk profile of the Clearing House, the relevant CME Clearing Risk Committees, in accordance with their respective charters, approve those matters that have a significant impact on the risk profile, as well as substantive changes to the Clearing

[34] Please refer to this paragraph relating to the Commission's request for comment "on whether it should require DCOs to document the proceedings of RWG meetings, considering both the transparency and accountability benefits of such a requirement and the potential impact of a documentation requirement on free and open dialogue." NPR at 49561.

[35] NPR at 49562.

House's rules and risk management programs.[36] CME Clearing further consults with market participants through a variety of *ad hoc* and permanent working groups. Ultimately, CME Clearing's governance arrangements provide for significant consultation with market participants in advance of rule filings—with further consultation undertaken for matters that materially affect the risk profile of the clearing house. This is in addition to the CFTC's industry leading transparency requirements once a rule filing has been submitted. While CME Group is confident in the design of CME Clearing's governance arrangements, DCOs must have the ability to design their governance arrangements in a manner that is appropriate for their unique offerings.

Notwithstanding the consultation that DCOs undertake in advance of filing rules, CFTC Part 40 Regulations also subject rule filings to appropriate review and challenge once they are filed. These rule filings provide market participants an additional venue that is suitable for them to provide their risk-based feedback to DCOs and the CFTC as appropriate. CFTC Part 40 Regulations also appropriately recognize the importance and the efficiency of distinguishing between material and non-material changes by providing for longer review periods for material changes thus providing for greater opportunity to challenge. This approach achieves an appropriate balance to ensure DCOs can effectively manage their risks and more broadly, is consistent with the requirements for DCOs to design their clearing arrangements in an efficient manner under CFTC regulations.[37]

In accomplishing effective consultation, is there value to requiring a DCO to respond to market participant feedback? Specifically, where specific risk-based feedback from market participants has not been incorporated in the DCO's decision, should the DCO be required to respond to market participants informing them of the decision and outlining the rationale behind their action? How could such a requirement be tailored to avoid forcing a DCO to respond to excessively detailed or irrelevant comments? [38]

CME Group does not believe it is necessary or beneficial for the CFTC to require a DCO to respond to market participants' feedback. The current requirements under CFTC Regulations 40.5, 40.6, and 40.10 provide an appropriate mechanism for DCOs to publicly provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable DCO Core Principles, as well as an explanation of any substantive opposing views. A DCO's rule filings, pursuant to these requirements, provide the public, including market participants, with the relevant information for understanding a DCO's rationale for proposing a given rule or rule amendment. Requiring a DCO to respond to market participants where their risk-based feedback has not been incorporated is unnecessary given the expansive rule filing requirements that are already in place under CFTC Part 40 Regulations. Requiring a DCO to respond to each individual market participant's feedback that has not

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[36] *See* CME, Clearing House Oversight Committee, available at http://investor.cmegroup.com/static-files/16d6afbf-c684-41eb-ad3f-2abf91234717; CME, Clearing House Risk Committee Charter, *available at* http://investor.cmegroup.com/static-files/7445789a-8aaa-46ec-8539-069e8cbf0fab; CME, Interest Rates Swaps Risk Committee Charter, *available at* http://investor.cmegroup.com/static-files/50a72d75-6269-41ec-8bec-1799c4ac19e1.

[37] 17 CFR § 39.24(a)(1)(iii) (noting, "[a] derivatives clearing organization shall have ***governance arrangements that***:..Place a high priority on the safety and ***efficiency of the derivatives clearing organization***" (emphasis ***added***)); 17 CFR § 39.38(a)(1) (noting, "[i]n order to meet the needs of clearing members and markets, each systemically important derivatives clearing organization and subpart C derivatives clearing organization should ***efficiently and effectively design its: (1) Clearing and settlement arrangements***;").

[38] NPR at 49562.

been incorporated would also be overly burdensome on the DCO without any clear risk management benefit and would undermine the efficiency of the current rule filings process. Additionally, overly broad consultation requirements, if applied to DCOs, would be unique in financial markets as compared to other entities, like banks, broker-dealers, and futures commission merchants, which similarly take risk management actions on a regular basis to address the risks associated with the provision of their financial market services. This would apply a massive burden on DCOs that could negatively impact the ability of DCOs to efficiently and effectively introduce new or enhanced risk management offerings, which would be in contradiction with the requirements for DCOs to design their offerings in an efficient manner under CFTC regulations.[39]

As noted above, Commission regulations currently require a DCO to provide to the Commission a "brief explanation of any substantive opposing views." Should the Commission further clarify the meaning of "substantive" in the context of this requirement? Should a DCO be required to provide the Commission with a report of all opposing views expressed to the DCO? Rather than expecting the DCO to accurately describe opposing views, should the Commission only require a DCO to pass on to the Commission any opposing views expressed to the DCO in writing? Should a DCO be required in its submission to the Commission to respond to opposing views expressed to the DCO? Finally, should the Commission consider additional rules to address a DCO's failure to comply with the full submission requirements of Part 40, such as the imposition of an automatic stay? [40]

CME Group does not believe it is necessary or beneficial for the CFTC to provide a meaning of "substantive" in its regulations, nor should a DCO be required to provide the Commission with a report of all opposing views expressed to the DCO. Consistent with CME Group's comments on if a DCO should have to respond to market participants' feedback, a DCO should not be required in its rule filing submissions to respond to opposing views.

CFTC Part 40 Regulations have successfully operated for many years during which DCOs have filed a variety of rules meeting the requirement to provide a brief explanation of any substantive opposing views. Determining if an opposing view is "substantive" or not is highly dependent on the specific facts and circumstances relating to the rule filing, thus, each DCO is best-suited to determine if views are substantive. Defining this term by regulation could inadvertently result in an outcome where a view that is in fact substantive is classified as non-substantive based on the regulatory definition. Consequently, the CFTC should continue to embrace its principles-based regulatory approach and should not further clarify the meaning of "substantive" in the context of CFTC Part 40 Regulations, as implementing a definition, particularly a prescriptive one, could result in undesirable outcomes for all market stakeholders, particularly registered entities.

As noted above, current CFTC Part 40 Regulations provide an appropriate regulatory framework for DCOs to submit proposed rules and rule amendments, including outlining substantive opposing views. This framework provides the CFTC with the necessary time to review and challenge a given rule filing—providing more time for the review of material changes—and during this review, the CFTC is empowered to seek any additional information it may need, including on any substantive opposing views. In addition to the CFTC's rigorous review processes, material changes filed pursuant to CFTC Regulation 40.10 are

[39] 17 CFR §§ 39.24(a)(1)(iii) and 39.38(a)(1).
[40] NPR at 49562.

also subject to review by the Board of Governors of the Federal Reserve System. The process whereby a DCO provides a brief explanation of substantive opposing views in its filing and the CFTC reviews such filing is not only efficient but provides the CFTC with the most pertinent information needed to understand the views. Requiring a DCO to provide the CFTC a report with all opposing views does not provide any clear risk management benefits and would be overly burdensome on the DCO and undermine the efficiency of the current rule filings process thus negatively impacting the ability of a DCO to introduce new or enhanced risk management offerings. Certainly, the DCO's business records related to such feedback also are currently and would remain available consistent with retention periods for the examination staff of the CFTC to review.

Finally, CME Group does not believe it is necessary for the Commission to adopt additional rules to address a DCO's failure to comply with the full submission requirements of CFTC Part 40 Regulations. CME Clearing works to maintain an open dialogue with the Commission in the normal course, including with respect to rule filings. To the extent there could be an issue, currently the Commission has ample right to impose a stay under CFTC Part 40 Regulations and additional recourse for a DCO's failure to comply with the Commission's regulations.

B. RMC Member Information Sharing with Firm to Obtain Expert Opinions

The Commission requests comment on whether DCOs should be required to maintain policies and procedures designed to enable an RMC member to share certain types of information it learns in its capacity as an RMC member with fellow employees in order to obtain additional expert opinion. If so, what types of information should be eligible to be shared? What measures should be taken to ensure that confidential information is appropriately protected? [41]

While DCOs may have policies and procedures in place for allowing an RMC (or similar body) member to share certain types of information it learns in its capacity as an RMC member with fellow employees in order to obtain additional informed opinions, the CFTC should not require a DCO to maintain such policies and procedures. Although RMC members should never share information for commercial purposes, CME Group understands there are facts and circumstances in which an RMC member sharing information with another employee at its institution who has unique expertise regarding the matter at hand could be beneficial to the member and DCO from a risk management perspective. As such, in practice, CME Clearing has a mechanism to allow RMC members to share certain information with other individuals at their institutions, where permission is specifically granted.

DCOs should, as appropriate based on their structures, provide RMC members with the ability to share information with other subject matter experts within their institutions. However, the right to grant permission for this type of information sharing must be reserved for each individual DCO in order to allow for the DCO to consider the specific facts and circumstances at hand. Expressly providing how, what, and why such information can be shared with individuals outside of a DCO's RMC will create risks, in terms of confidentiality and otherwise. To minimize these risks and to ensure the soundness of a DCO's information privacy, the CFTC should continue to embrace the principles-based regulatory framework enumerated by Congress by allowing DCOs to determine the appropriateness of information

[41] NPR at 49562.

sharing by RMC members. Implementing prescriptive requirements in this area would increase the risk of information leakage and could result in negative consequences for DCOs' risk management.

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CME Group appreciates the opportunity to comment on the CFTC's NPR. We would be happy to discuss any of our comments with the Commission. If you have any comments or questions, please feel free to contact me at (312) 930-3260 or via email at Suzanne.Sprague@cmegroup.com.

Very truly yours,

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