



February 13, 2023

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-AF12 - Reporting and Information 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 Reporting and Information Requirements for Derivatives Clearing Organizations (the “NPR” or the “Proposal”).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 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”).

CME Group supports the Commission’s efforts to provide additional clarity to the complex set of reporting and informational regulations contained in Part 39. In many of these instances, CME Group

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, and foreign exchange trading on the EBS platform. In addition, through CME, it operates one of the world’s leading central counterparty clearing providers, CME Clearing.

² 87 FR 76698 (Dec. 15, 2022).

finds the proposed requirements both useful and instructive. There are, however, certain specific requirements as discussed more fully below which require further clarification. Other proposed requirements would impose significant burdens on DCOs while providing limited benefit to the overall goal of transparency and to financial sector resiliency. In addition, the costs of the Proposal are greatly underestimated in certain instances. Our specific comments to various provisions of the Proposal are as follows.

I. Proposed Amendments to §39.18

As currently implemented, Regulation 39.18(g)(1) requires that a DCO promptly notify staff of the Division of Clearing and Risk (“Division” or “DCR”) of any “hardware or software malfunction, security incident, or targeted threat that *materially impairs*, or creates a significant likelihood of *material impairment* of, automated system operation, reliability, security, or capacity” (emphasis added).³ The NPR seeks to expand this reporting obligation through multiple avenues, including by removing the materiality requirement and widening the pool of events that would amount to reportable systems interruptions. This marked increase in scope is out of step with other regulatory incident reporting regimes and would impose significant burdens on DCOs, while providing limited benefit, both to the overall goal of transparency and to financial sector resiliency. Instead, CME Group believes the current reporting regime, in conjunction with the Commission’s existing tools to gather information from DCOs, strikes the most effective balance for supporting and achieving a secure and resilient clearing ecosystem.

a. The proposed amendments would significantly increase DCOs’ reporting obligations.

The proposed amendments would greatly expand the scope of events that require “prompt” notification in several ways. First, the current draft of the NPR would amend §39.18(g)(1) by removing any reference to “materiality” from the regulations.⁴ The Commission believes removing a DCO’s discretion to determine whether incidents are “material” would create a bright-line rule.⁵ The proposed revision, however, would achieve this bright-line standard at the cost of requiring DCOs to notify the Commission of even trivial incidents in real time.

Removing the materiality requirement from the obligation to report cybersecurity incidents and threats would unnecessarily capture numerous de minimis threats, typically resolved on a daily basis. CME Group’s CFTC registered entities, like all major corporations and critical infrastructure, face a broad range of potential cyber threats, which could include everything from a routine spam phishing email to a large-scale breach or ransomware attack. As worded, the NPR would treat these threats similarly and would require the same timing of reporting to the Commission. It would be overly burdensome to comply with the NPR as proposed because threats are a constant reality that DCOs already manage effectively using information security controls, internal threat detection, and mitigation processes.

³ 17 CFR § 39.18(g).

⁴ NPR at 76700.

⁵ NPR at 76701.

The NPR also adds prompt reporting obligations for any “operator error that impairs, or creates a significant likelihood of impairment of” a DCO’s automated systems.⁶ The term “operator error” is not defined in the NPR but would presumably include manual or human errors. Without a materiality threshold, the NPR would require DCOs to promptly notify the Commission about one-off, manual errors that have marginal or potentially no impact on a DCO’s core clearing and settlement functions. This requirement would also include reporting human errors that would be subject to established checks and balances designed to mitigate any impact.

Not only does the NPR remove the materiality threshold and vastly expand the class of events that require reporting, but it also proposes a broad definition of what would constitute a DCO’s “[a]utomated systems.” As defined in the NPR, automated systems include “computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources that a derivatives clearing organization uses in its operations.”⁷ This definition includes not only systems that support core clearance and settlement functions, but also those that support a DCO’s operations in general, like back-end Human Resources systems and marketing or other commercial systems. The NPR would require DCOs to make prompt notification to the Commission of even non-material impairments to such back-end systems and would mark a significant increase in scope to existing reporting obligations.

b. The proposed amendments would significantly increase a DCO’s reporting burden with little corresponding benefit to transparency or sector resiliency.

The Commission underestimates the significant increase in reporting obligations under the NPR. As currently proposed, DCOs could be required to submit multiple daily reports of immaterial, de minimis incidents and operator errors—not four annually as the Commission predicts.⁸ By understating the burdens, the Commission skews the overall cost/benefit analysis, which needs to account for the substantial resource expenditures required to ensure all such events are reported. In our view, the broadly worded NPR would directly result in significant new reporting obligations, with little corresponding benefit.

The NPR references occasions where DCOs did not report incidents that the Commission later considered to be material⁹ as an impetus or justification for the expanded reporting obligations. However, the Commission has existing tools to address the failure to report isolated system impairments incidents, including the examination process, as well as informal dialogue with DCOs; these tools have proven effective and are more tailored to address the stated concern. The NPR does not explain why these existing tools are inadequate and fails to address how the purported lack of prompt notification to the Commission about these incidents harmed the financial markets. Moreover, the NPR does not demonstrate why the perceived deficiencies of reporting on a discrete and anomalous basis should necessitate a broad expansion of reporting obligations across all DCOs.

⁶ NPR at 76700.

⁷ NPR at 76701.

⁸ NPR at 76711.

⁹ NPR at 76701.

Nor does the NPR adequately demonstrate the benefits that would result from the expansion of DCO reporting obligations. In fact, the added burden may hinder a DCO's ability to triage and manage serious incidents by diverting core operational and technical resources away from incident management and maintenance of orderly financial markets for the sake of reporting numerous immaterial events. CME Group recognizes and appreciates the importance of operational resiliency and information security controls, as necessitated by the system safeguards regulations.¹⁰ CME has invested and continues to invest considerable time and resources in maintaining and maturing these systems and processes, often in close collaboration with Commission staff through informal engagement and during system safeguards examinations. We are confident in our ability to detect and recover from operator errors and cyber incidents and threats without the addition of prompt reporting obligations of non-material events. DCOs actively leverage controls designed to limit the risk to automated systems and mitigate errors; these systems are regularly tested, and the results of those tests are shared with the board as well as the Commission during regulatory examinations. Most errors, incidents, and threats have no impact on the overall function of automated systems or the ability to maintain orderly markets given our defense-in-depth approach. To the extent the Commission has concerns about the operational controls and processes in place at a particular DCO, it has tailored measures designed to address these concerns, like the ongoing examination process. Thus, the prompt reporting of events that have no impact on the overall function of automated systems would add administrative burdens with negligible benefit to the regulated community or the overall financial sector.

In addition, this increase in notifications would not only increase the burden on DCOs but would also increase the burden on the Commission; the proposed reporting requirements would require Commission staff to parse through a high volume of additional notifications, thus reducing and diverting resources that should focus on material events.¹¹

c. The existing reporting requirements strike the right balance by requiring prompt notification of material events.

CME Group believes that the current reporting regime is effectively designed to provide real-time transparency to the Commission and support financial resiliency. Removing the materiality standard would prevent DCOs from assessing incidents based on internal factors whose overall impact is best understood by the DCO. With robust and mature oversight programs in place, DCOs can best measure customer and market impact, both in terms of the general scale of the potential system impairment as well as the scope of its impact internally and on the industry. Additionally, a DCO's internal mitigation and controls provide ample tools to equip the DCO to manage any such impacts. This process involves a nuanced and collaborative approach to determine the overall impact of system impairments on a case-by-case basis. Leveraging existing partnerships among technical, operational, legal, and business teams allows the DCO to share information quickly and assess impact based on actual "run-the-business" knowledge. The result is the ability to make materiality decisions quickly and consistently without the

¹⁰ 17 CFR § 39.18.

¹¹ The CFTC Office of the Inspector General (OIG) recently highlighted resource constraints on the Commission's cybersecurity oversight. For example, a March 2022 Report from the OIG lists the addition of Commission staff to manage the cybersecurity threats facing registered entities as an "unimplemented recommendation." See https://www.cftc.gov/media/7326/oig_reporttocongress042922/download.

added burden of prompt and indiscriminate reporting obligations. Adding prompt reporting obligations for immaterial incidents would impede the DCO's triage efforts and divert resources for no benefit. Allowing DCOs to determine if a system impairment has a material impact and to report only those that do best serves the interests of the Commission as well as the financial markets.

Regulatory reporting of system security incidents and threats based on a materiality standard serves the industry well in analogous settings. For example, designated contract markets ("DCMs") are required to promptly notify the Commission of "*significant* systems malfunctions" and cybersecurity incidents that "actually or potentially *jeopardize* automated system."¹² DCMs, in other words, rely on their own reasonable discretion when determining which incidents or threats rise to the level of seriousness, requiring regulatory notification. In past rulemakings, the Commission recognized the value in allowing DCOs to determine what is material relative to their operations in the context of reportable events.¹³ When the Commission previously proposed changes to reporting requirements for margin model issues that did not include a materiality threshold, the Commission (in response to industry feedback) amended its initial proposal to include materiality, stating that it "believes that reporting only margin model issues that materially affect the DCO's ability to calculate or collect initial margin or variation margin, as opposed to all margin model issues, strikes an appropriate balance between supplying the Commission with information needed for effective oversight of DCOs, without placing an undue burden on the DCOs."¹⁴ The current NPR stands in contradiction to DCR's previous rulemaking calling for materiality determinations.

d. Guidance from the Commission could provide added clarity and support consistency in incident reporting.

As an alternative to the complete removal of a materiality standard and the expansion of the scope of reportable incidents, the Commission may wish to consider issuing guidance on which factors DCOs should weigh and consider in deciding when incidents meet the materiality threshold. Illustrative examples of reportable incidents could also help provide clarity and alignment on the Commission's expectations. In our view, this guidance would provide an overall greater benefit to the regulated community by clarifying the Commission's reporting expectations while still empowering DCOs to monitor automated processes efficiently and effectively. Creating greater transparency and uniformity in determining which incidents rise to the level of "material" would allow the Commission to build stronger reporting relationships without the substantial and unjustifiable costs that would attend changing the regulations to remove the materiality standard.

e. The NPR is inconsistent with the approach taken by other regulatory regimes.

The expansive incident reporting obligations proposed in the NPR are inconsistent with other regulatory regimes. Other jurisdictions (including other U.S. agencies, as well as abroad) have addressed

¹² 17 CFR § 38.1051(e).

¹³ 85 FR 4800 (Jan. 27, 2020) available at <https://www.cftc.gov/sites/default/files/2020/01/2020-01065a.pdf>.

¹⁴ *Id.*, at p. 4822.

the need for incident reporting and concluded a threshold-based approach is proper.¹⁵ For example, the proposed reporting regime in the NPR is considerably broader than the requirements under Regulation Systems Compliance and Integrity (“Reg SCI”), which apply to Covered Clearing Agencies regulated by the Securities and Exchange Commission (“SEC”). Reg SCI requires prompt reporting only for events with more than a de minimis impact on the SCI Entity’s operations or market participants.¹⁶ Moreover, immediately reportable systems disruptions not only require more than a de minimis impact, they also must disrupt, or significantly degrade the normal operation of one of the systems that directly support clearance and settlement (for Covered Clearing Agencies).¹⁷

Just as the notification proposals in the NPR diverge from the requirements of Reg SCI, they are similarly inconsistent with other current proposals and final rules on cyber incident reporting. The SEC recently proposed a rule titled “Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure” which seeks to revise Form 8-K to include sections for reporting *material* cybersecurity incidents within four business days¹⁸ (emphasis added). The Cyber Incident Reporting for Critical Infrastructure Act of 2022¹⁹ (“CIRCIA”) requires critical infrastructure entities to report *material* cybersecurity incidents and ransomware payments to the Cybersecurity and Infrastructure Security Agency (“CISA”) within 72 and 24 hours, respectively (emphasis added). Additionally, CIRCIA requires the Department of Homeland Security to create an intergovernmental Cyber Incident Reporting Council to coordinate, deconflict, and harmonize federal incident reporting requirements.²⁰ In summary, we believe the Commission would best serve the regulated community by requiring materiality determinations as other regulatory agencies do.

II. Proposed Amendments to Regulation 39.19(c)

a. **Reporting Fields for the Daily Reporting Requirements—§39.19(c)(1) - Variation Margin Reporting**

In the NPR, the Commission indicated that to gain further oversight of DCOs and the markets, including potentially identifying liquidity issues as they develop, DCOs should report the time and amount of each variation margin call to each clearing member, the time and amount that variation margin is received from each clearing member and the time and amount that variation margin is paid to each clearing member.²¹ CME Group is concerned that daily reporting of variation margin timestamps by

¹⁵ International reporting obligations adopt materiality-based thresholds with their incident analysis requirements. For example, Annex III of MiFID II outlines the requirements for trading venues to immediately inform regulators of system disruptions for “[a]ny *major* malfunction or breakdown of the system for market access that results in participants losing their ability to enter, adjust or cancel their orders;” or “[a]ny *major* malfunction or breakdown of the systems of the trading venue to monitor and control the trading activities of the market participants; and any *major* malfunction or breakdown in the sphere of other interrelated services providers” (emphasis added).

¹⁶ 17 CFR § 242.1002(b)(5).

¹⁷ *Id.* at 242.1000.

¹⁸ 87 FR 16590 (March 23, 2022).

¹⁹ See Cyber Incident Reporting for Critical Infrastructure Act of 2022, H.R. 2471, 116th Cong. (2022) available at <https://www.congress.gov/bill/117th-congress/house-bill/2471/text>.

²⁰ https://www.cisa.gov/sites/default/files/publications/CIRCIA_07.21.2022_Factsheet_FINAL_508%20c.pdf.

²¹ NPR at 76701.

clearing member firms to the Commission will not meaningfully aid the Commission in managing DCO liquidity risks as they develop, especially when balanced against the additional costs this would impose not only on DCOs but also on the DCOs' settlement banks, which will be required to build out systems and reporting to be able to satisfy the daily automated reporting of payment flow timestamps.

Not all settlement banks utilized for variation margin payments provide DCOs with automated and digestible file formats necessary to provide same-day timestamp information for variation margin calls and payments as would be required for Part 39's automated reporting structure. Accordingly, the Commission's proposal would require DCOs to request further technological features from settlement banks to satisfy the Commission's request. The proposal could then impact the market for settlement bank services as only the largest settlement banks with the most resources may be able to develop the necessary technological features, further constraining the market of available settlement bank service providers in the industry.

Given the amount of effort required of DCOs and settlement banks to implement this reporting, the benefit of the information requested would have to be significant to justify the cost. But the benefit of this information is minimal at best. In practice, the timestamp information would not allow the Commission to measure the liquidity health of DCOs in real time. Instead, the timestamp information which the Commission feels would provide additional granularity as to the timing of these payment flows would be reported on a one-day lag. And even if the information could be reported in real time, we fail to see the benefit to the Commission from a liquidity risk management perspective to receiving exact time stamps for payments since they vary from day to day for reasons unrelated to the liquidity resources and risk of the clearing members or their customers. CME and other DCOs have a variety of reporting and notification obligations along with active bilateral communications during times of market stress which provide an effective and efficient means of addressing market events as they unfold.

As an alternative reporting item, CME recommends that DCOs report instances when clearing members are sufficiently late in making their variation payments that it results in an impactful delay to the completion of the settlement cycle. This information will give the Commission a better sense of the possibility of liquidity distress without excessive and unnecessary reporting burdens placed on DCOs and their clearing members.

b. Reporting Fields for the Daily Reporting Requirements—§39.19(c)(1) - Trade Date in OTC Reporting

The Commission has proposed that the trade date of interest rate swaps, forward rate agreements and inflation index swaps be reported in addition to the cleared date as products are not always cleared on their trade date²². CME can accommodate the Commission's request to provide the trade date for interest rate swaps, forward rate agreements, and inflation index swaps; however, because numerous dates related to these products exist in OTC trade registers, we request clarity on which date is necessary for reporting. CME notes nevertheless that much of this information is now included as part of the CFTC's Part 45 re-write and is already provided to another division of the Commission. For these reasons, we believe the

²² NPR at 76702.

Commission can obtain internally the requested information regarding swaps and forwards and thereby avoid duplicative reporting to the Commission across different divisions.

c. Reporting Fields for the Daily Reporting Requirements—§39.19(c)(1) - Settlement Prices for Contracts with No Open Interest

CME Group opposes the proposal to provide settlement prices data for futures and options contracts with no open interest. Reporting data that is unused and is not based on observed open interest would not help the risk surveillance process as these prices would not represent a true buy and sell transaction. Reading this proposed reporting requirement in the context of CFTC Core Principles for DCOs (J) Reporting and (L) Public Information (iii) Public Disclosure, we question whether this information is “necessary to conduct oversight” under (J) or necessary for public disclosure since the trades are not “settled or cleared” as referred to in (L) (iii). That the Commission may well be exceeding its regulatory authority is especially concerning in light of the sweeping nature of this requirement and the potential impact on a DCO’s operations. On a daily basis exchanges and DCOs list a multitude of new contracts with future maturities, often beyond where typical daily liquidity resides, to enable market participants’ systems to calibrate to the new exchange codes and listings. Requiring DCOs to report settlement prices in these cases where no contracts have yet traded adds complexity to the typical listing process, with no tangible benefit to risk surveillance by Commission staff.

An alternative, more measured approach would be to report contracts which have no open interest without any price reporting requirement. This requirement could be a middle ground, providing the CFTC with a full set of the available contracts without open interest which they could combine with contracts containing open interest. This alternative solution would be technologically possible, and we believe most, if not all, DCOs could adopt this approach within a reasonable time period.

d. Individual Customer Account Identification Requirements—§39.19(c)(1)(i)(D)

The Commission has proposed to amend §39.19(c)(1)(i)(A) to specify that when a DCO reports initial margin requirements and initial margin on deposit by each individual customer account as required, the DCO also must identify each individual customer account by LEI and an internally generated identifier, where available.²³ We support the NPR’s proposal to identify each individual customer account by LEI and internally generated identifier *if* the DCOs have the information available to be reported for the accounts. As a result of the recent Part 39 enhancements, LEI reporting to DCOs has become more routine, rendering DCOs better able to accommodate the Commission’s request.

e. Daily Reporting of Margin Model Back Testing—§39.19(c)(1)(i)

The Commission has requested to add daily reporting of margin model back testing to the §39.19(c)(1)(i)(A) reporting requirements in addition to the daily performance of margin model back testing that is already required.²⁴ For this proposed reporting obligation, CME stresses that the Commission should provide DCOs with ample time to test and implement it, ideally an 18-month time

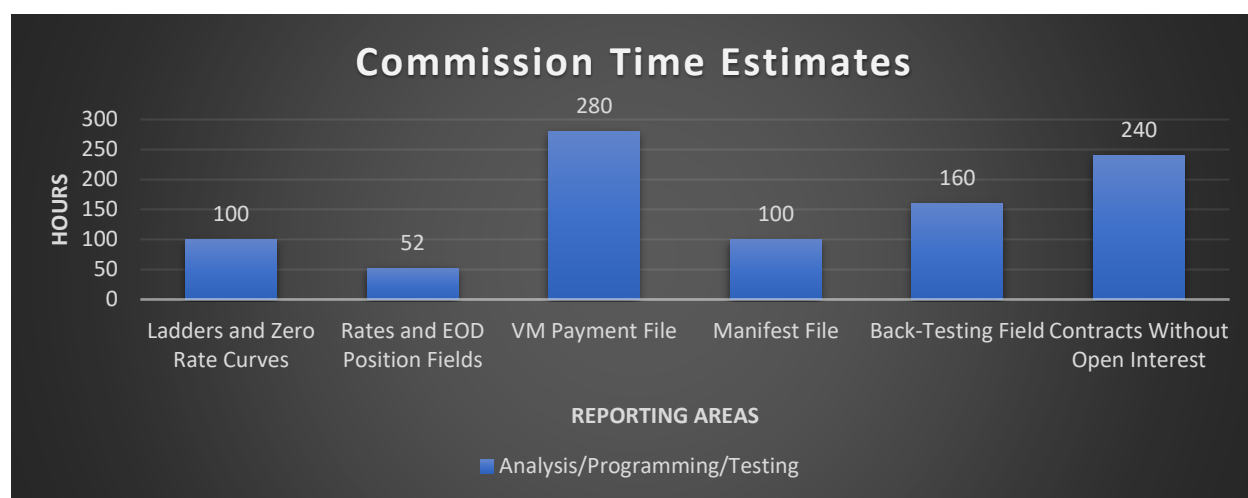
²³ NPR at 76703.

²⁴ NPR at 76704.

frame following the finalization of this proposal. Many DCOs have just finished technology builds to adhere to the June 2022 Part 39 reporting implementation and the December 2022 CFTC Part 45 Swaps Reporting Re-Write. Adequate time to ensure testing and reporting accuracy will ultimately lead to a reliable steady state of DCO reporting for the CFTC Risk Surveillance teams.

III. Cost-Benefit Considerations

CME Group believes that the Commission underestimated the time and costs associated with certain changes set forth in the NPR. First, with respect to the proposed reporting requirements set forth in §39.19(c)(1), the Commission stated that it estimates that the total costs for updating these reporting requirements to be approximately \$109,574.43 per DCO.²⁵ Moreover, the Proposal suggests that the total time required to implement these proposed changes would take approximately 900 hours of system analysis, programming and quality assurance testing split across the various new requirements:



Based on our experience in implementing the June 2022 Part 39 reporting enhancements, we believe that this time estimate is severely underestimated and the time that would be required to implement the Proposal would be an order of magnitude greater than predicted. Based on the review of the Proposal, the requirements span several different systems and databases, requiring careful planning and staging for an aligned implementation at the various DCOs, ultimately adding to the costs. Further, we believe that the costs of the implementation of reporting enhancements would substantially supersede the benefits the additional reporting will bring to the Commission.

Second, CME Group believes that the Commission underestimated the significant increase in the other reporting and notification obligations under the NPR that would be required if the Proposal were adopted. The Commission stated in the NPR that the proposed amendments to § 39.18(g) may impose additional costs on DCOs because DCOs may be required to provide additional and more frequent notifications to the Division regarding reportable events. The Commission estimates, based on recent levels of reporting, that these changes would require a DCO to file an additional four reports per year on

²⁵ NPR at 76707, 76712.

average and that this additional reporting would cost each DCO approximately \$152 per year. As noted in Section I. above, CME Group believes that DCOs could be required to submit multiple daily reports of immaterial incidents and operator errors; as a result, the estimated time and monetary costs are grossly underestimated. CME Group believes that the Commission should re-evaluate how it has formulated the cost-benefit analysis with respect to these aspects of the Proposal.

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CME Group appreciates the opportunity to comment on the CFTC's NPR and 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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