CME Group

June 30, 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-AF21 – Amendments to Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants

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 Amendments to Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants (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").

---

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, it operates one of the world's leading central counterparty clearing providers, CME Clearing.

2 88 FR 22934 (April 14, 2023).

CME Group appreciates the Commission's attempt to codify previously issued guidance pursuant to CFTC Letter 19-17 ("NAL 19-17") and CFTC Letter 20-28 ("NAL 20-28") (collectively the "NALs") to assist futures commission merchants ("FCM(s)") in providing a commercial service to their customers that maintain multiple accounts with them. As the Commission is aware and at its request, this topic has been discussed over the course of a number of years by FCMs, asset managers, trade associations such as the Futures Industry Association ("FIA") and the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA-AMG"), and the Joint Audit Committee ("JAC") of which CME is a member as a DCM and self-regulatory organization ("SRO").

CME is mindful of the work the Commission and the industry have contributed to the NALs and supports the substance of this Proposal. At the same time, we believe that the provision of regulatory clarity is of utmost importance to this NPR. Upon reflection and with hindsight as to the operation of the NALs, CME has significant concerns about both the placement of this proposed rule in Part 39 and its effect on DCOs as well as concerns regarding some of the conditions in the Proposal that seem to contradict, or would require modification to, other rules applicable to FCMs.

I. <u>Proposed Regulation §39.13(j) Should Instead be in Part 1 of the CFTC Regulations</u>

a. The relief contemplated in the proposed regulation should be applicable to all FCMs regardless of membership at a DCO

As currently written, Regulation 39.13(g)(8)(iii) provides that a DCO shall require its clearing members to ensure that their customers do not withdraw funds from their accounts maintained with the clearing member unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer's initial margin requirement. This requirement has been embodied in rules of DCMs, including the CME Group Exchanges, DCOs and the CFTC for decades and makes risk management sense – customers should not withdraw funds from an account in deficit nor withdraw funds to an extent that it would put an account in deficit. However, the Commission has agreed, under conditions specified in the NALs, to permit such a withdrawal subject to those conditions. Following the Commission's issuance of NAL 19-17, CME permitted the same activity subject to the same conditions. CME's clearing members have invested a significant amount of time and effort in conforming their policies, systems and practices to comply with the conditions of the NALs and related JAC advisory notices.

CME recommends that the codification of the NALs should be accomplished in Part 1 of the Commission's regulations as an FCM risk management rule as explained below. If the rule is placed in Part 1, it would apply to all FCMs equally whether or not they are clearing members of one or all DCOs. This placement would benefit clearing member FCMs that have undertaken steps to comply with and implement the NALs because a Part 1 rule would eliminate the risk that any current or future DCO does not adopt a rule to permit this activity. The Commission could set forth the conditions for separate account treatment as a permissible risk management practice in a Part 1 regulation and provide that FCMs adopting the practice would not be in violation of Regulation 39.13(g)(8)(iii) so long as the FCM follows all the conditions and appropriately supervises such activity.

The proposed codification of the NALs as a DCO rule does a disservice to FCMs that have complied with the NALs conditions. First, the NPR's approach presumes that every DCO would adopt a rule to permit the treatment of separate accounts set forth in proposed Regulation 39.13(j). If one DCO's governing body – a risk committee, a board committee or the board – disagrees with such treatment and does not authorize it, then the FCM would be forced to exclude that DCO's cleared contracts from its customers' separate accounts. As the Commission appreciates in the NPR, an FCM does not typically margin its customer accounts that way[3] and excluding certain DCO contracts from separate account margining likely would not be operationally feasible. Second, as proposed, the NPR applies only to the DCOs permitting their FCM clearing members to afford this treatment to their customers. An FCM that is a non-clearing member of a particular DCO or that is not a member of any DCO would not be eligible to offer separate account margining. Finally, because the NPR imposes conditions that interact with other Part 1 capital and customer protection rules as explained below, placing the proposed rule in Part 1 would appropriately group those regulations together. Accordingly, CME recommends that this proposal be added in Part 1 as an FCM risk management rule.

b. The NPR creates contradictions in the application of certain capital and customer protection regulations

There are a number of capital and reporting requirements imposed on FCMs by the CFTC that are impacted by the proposed Regulation[4]. As a DCO rule, proposed Regulation § 39.13(j) would effectively create a second set of reporting requirements applicable only to those FCM clearing members who choose to implement separate account margining at one or more DCOs. For example, the NPR requires that a clearing member FCM offering separate accounts treat a receivable for a debit or deficit from a separate account as a current or allowable asset for purposes of Regulation § 1.17(c)(2) based only on the assets of that separate account, and not on the assets held in another separate account of the same beneficial owner. Proposed Regulation § 39.13(j)(8) provides that the clearing member, in calculating the amount of its own funds it must use to cover debit or deficit balances, must include any debit or deficit of any separate account and reflect that calculation on the applicable report. These proposed requirements conflict with the requirements set forth in CFTC Regulations § 1.17, 1.20 and 22.2 today which require calculating the deficit across all accounts of a single beneficial owner.

---

[3] "As a practical matter, an FCM's futures account for a customer includes all futures products that the FCM clears for that customer, and the initial margin requirement for that account would be the sum of the initial margin the FCM charges the customer for each of those contracts (including, e.g., effects of portfolio margining), regardless of the DCO at which such contracts are cleared." NPR at 22938.

[4] Notably CFTC Regulation 1.17 (classifying debit/deficits, under-margined capital charges and risk-based capital requirements), CFTC Regulation 1.20 (determining customer liability in segregation), CFTC Regulation 1.22 (residual interest compliance calculations), CFTC Regulation 22.2 (determining cleared swap customer liability and LSOC compliance calculation), and CFTC Regulation 30.7 (determining customer liability in secured funds,).

Therefore, CME suggests that the Commission codify the separate account proposal in Part 1 and amend the relevant capital and customer protection regulations to incorporate the different calculations for separate accounts into the reportable capital and customer protection filings that are submitted by FCMs today.

II. Proposed Regulation §39.13(j) is Outside the Traditional Remit of a Derivatives Clearing Organization

a. Standards of compliance for a DCO do not include examinations

In the NPR's cost and benefits analysis, the Commission indicated that it believes that there would be small, one-time costs to DCOs that choose to permit separate account treatment. The Commission notes that such DCOs "would also likely incur legal, compliance, and other costs related to monitoring, *examination,* and enforcement with respect to clearing members and customers that engage in separate account treatment" (emphasis added).[5] This statement assumes that each DCO has an examination process for its clearing members. To be sure, under Regulation § 39.13(h)(5)(ii), the DCO periodically conducts risk reviews of the policies, procedures and practices of its clearing members to ensure that they have robust and sensible risk management practices. However, full-scale financial and customer protection examinations of FCMs are conducted pursuant to Regulation § 1.52 by DCMs in their capacity as an SRO. In the case of CME, these exams are conducted by its Financial and Regulatory Surveillance Department ("FRS") which focus on FCM compliance, not DCO compliance. The DCO does not conduct a full-scale examination of clearing members to determine its own compliance with Part 39, nor does it review FCMs for compliance with the types of conditions set forth in proposed Regulation § 39.13(j). For instance, the scope of CME's DCO Risk Management reviews would not include a review or analysis of a clearing member's customer agreements to ensure that they meet the conditions of proposed Regulation § 39.13(j) as under its regulatory mandate to manage risk in the markets it clears and support the stability of the broader financial system, the DCO does not have the staff with significant experience in evaluating customer documentation. To hire a team of examiners with such expertise, or contract with a third party to do so, could be a significant cost burden to DCOs. As noted above, the proposed rule is better suited as an FCM risk management rule with the supervisory obligations made applicable to the FCM to ensure the conditions set forth in proposed Regulation § 39.13(j) are met.

In addition to customer agreement reviews, the conditions create requirements that resemble sales practice and FCM supervision requirements, which are similarly outside the remit of the DCO. As a result, each DCO would incur a cost by either engaging a third party with the required expertise or hiring and training internal expertise to conduct these types of reviews in addition to creating controls testing procedures for each clearing member FCM of the DCO. Overall expenses will depend on the number of clearing members implementing separate account margining and will also include costs attendant to developing systems and written policies and procedures for monitoring. Similarly, CME recognizes that

[5] NPR at 22946

there may be costs for the FCMs who choose to offer separate accounts based on the method of review each DCO chooses. FCMs will need to weigh the costs of responding to such reviews in offering separate accounts. Ultimately, the costs would be lower, and in many cases those costs have already been accrued in the interim since the no-action relief was granted, if the Commission adopts the regulation in Part 1 so the rule is not dependent on each DCO's implementation and review for compliance.

b. DCO CCO reports focus on risk and compliance with risk-related requirements

Should the Commission nevertheless determine to add the rule to Part 39, CME would like to confirm that the Commission would consider the following process to be sufficient for the compliance program implemented by the CME Clearing compliance staff ("Clearing Compliance Team") and to support a DCO Chief Compliance Officer's ("CCO") report addressing compliance with the rule.

On an annual basis, the CCO is required to prepare a written report that reviews and describes CME Clearing's compliance with each Core Principle and applicable CFTC regulation. The CCO's assessment of compliance with separate account treatment pursuant to Regulation § 39.13(j) would leverage the existing CCO process for performing compliance reviews. In accordance with its existing process, the CCO and Clearing Compliance Team would initiate the review by assigning an internal process owner to complete a compliance self-attestation with Regulation § 39.13(j). The process owner would be required to verify applicable processes performed to ensure compliance with the requirements for a DCO to permit separate account treatment and indicate the key policies and procedures where the processes are documented.

The highly technical nature of the proposed requirements for separate account treatment is beyond the scope and core competencies of CME Clearing personnel, including the Clearing Compliance Team. CME Clearing would need to engage CME's FRS Department to act as the process owner for proposed Regulation § 39.13(j) for the purposes of the CCO report and related functions within the CME Clearing Compliance Program. By effectively requiring the FRS Department to become an assigned process owner required to complete compliance attestations and verify applicable processes, proposed Regulation § 39.13(j), as explained above, would create significant new demands on the FRS Department and potentially require additional resources. As discussed above, other DCOs similarly might need to engage affiliates or third parties to conduct the examination at a significant cost.

As a matter of course, the standard Clearing Compliance Program includes a review of the attestations of each process owner and any outstanding internal or external findings impacting CME Clearing's compliance with Part 39. CME Clearing would likely leverage a similar process review with the FRS Department regarding proposed Regulation § 39.13(j) if adopted. Additionally, the Clearing Compliance Team would incorporate into its Control Framework the relevant processes performed in a manner designed to ensure compliance with proposed Regulation § 39.13(j). These would include relevant controls and control procedures, which would be developed in consultation with the process owners and independently tested. The testing of such controls would allow the Clearing Compliance Team independently to verify that a clearing member using separate account treatment complies with the conditions established in the DCO's rules as set forth in proposed Regulation § 39.13(j). Given the accounting concepts and technical nature of the proposed requirements for separate account treatment, the

Clearing Compliance Team may engage with additional, external subject matter experts to supplement the testing of the controls. The Clearing Compliance Team would similarly incorporate into its annual compliance review any internal policies and procedures relevant to the processes performed in a manner designed to ensure compliance with the requirements for a DCO to permit separate account treatment.

The results of the compliance review would be used by the CCO and Clearing Compliance Team to inform the CCO's assessment of CME Clearing's compliance with proposed Regulation § 39.13(j). To the extent that the CCO identified any issues of noncompliance, material compliance matters, or areas for improvement and recommendations for potential changes, these would be noted in the CCO Report and monitored by the Clearing Compliance Team until remediated.

c. **Disparate implementation by DCOs may impact utility of the regulation**

As explained above, CME recommends codifying the NALs' approach to separate account treatment in Part 1 as a rule governing FCMs. If the Commission nevertheless determines to add this regulation into Part 39, CME offers the following change to make the provisions applicable to all clearing members across any DCO (additions underlined, deletions struck through):

"39.13 (j) *Separate account treatment with respect to withdrawal of customer initial margin*. A DCO shall not be in violation of ~~For purposes of~~ paragraph (g)(8)(iii) of this section, ~~a derivatives clearing organization may permit a~~ if its clearing member that is a futures commission merchant ~~to~~ treats the separate accounts of a customer as accounts of separate entities if such clearing member's written internal controls and procedures permit it to do so, and ~~the derivatives clearing organization requires such clearing member to~~ the clearing member complies ~~y~~ with the following conditions with respect to such separate accounts:…"

Making these proposed revisions would allow FCM clearing members of DCOs that have complied with and implemented the NAL conditions to continue to maintain separate account treatment for their customers without waiting for each individual DCO to adopt (or not adopt) rules. Further, our proposed revisions would place the supervisory obligations where they belong: on the FCM for its sales and operational practices. CME acknowledges however that the changes would not resolve the issue with respect to FCMs that are not clearing members of the DCOs.

III. Specific Comments and Implications for Other Commission and Exchange Rules

Recognizing that CME along with the Commission, FIA and SIFMA-AMG were part of various discussions prior to the issuance of NAL 19-17, with the benefit of time and hindsight, CME has a number of suggestions for clarifying the existing conditions in the NALs and some recommendations for additional conditions for the proposed rule. We have set those forth in the appendix attached hereto in response to the Commission's specific questions.

* * * *

CME Group appreciates the opportunity to comment on the CFTC's NPR and would be pleased to discuss any of our comments with the Commission. If you have any comments or questions, please feel free to contact me at (312) 930-8167 or at Sean.Downey@cmegroup.com.

Sincerely,

Sean Downey
Managing Director
Clearing Chief Compliance Officer,
Enterprise Risk Officer and Policy

cc: Honorable Chairman Rostin Benham
Honorable Commissioner Christy Goldsmith Romero
Honorable Commissioner Kristen N. Johnson
Honorable Commissioner Summer Mersinger
Honorable Commissioner Caroline D. Pham
Clark Hutchison, Director, Division of Clearing and Risk
Amanda Olear, Director, Market Participants Division

Appendix

Responses to the CFTC Questions in the NPR

Question 1: The Commission requests comment regarding whether it should consider any conditions additional to those contained in proposed regulation § 39.13(j) below, or modify or remove any of the conditions proposed herein.

CME's Recommendations and Comments:

- If the regulation is added to Part 39, any required notification provided to a DCO should also be provided to the CFTC's Division of Clearing and Risk.
- If the regulation is added to Part 39, add a condition that notifications required under Regulation §1.12 are required to be made to all DCOs permitting separate account treatment in order for each DCO to verify that their clearing members are not operating outside the ordinary course of business.
- The condition that a clearing member maintain and keep current a list of all accounts receiving separate account treatment should be revised to state that at any time, upon request of a DCO or the Commission, the clearing member must be able to produce a current list of accounts receiving separate account treatment. This change would give the clearing member the flexibility to either maintain a current list on an ongoing basis or simply code the account in a manner where a run of current separate accounts could be produced without additional recordkeeping. This would assist DCOs and/or a bankruptcy trustee in porting should the need arise.

Question 2: The Commission requests comment regarding whether any further action is necessary and appropriate to apply the requirements DCOs are required to apply to their clearing members regarding customer withdrawal of initial margin under regulation § 39.13(g)(8)(iii) and proposed regulation § 39.13(j), directly to non-clearing FCMs or to FCMs that carry regulation § 30.7 customer accounts that are not cleared at a DCO that is registered with the Commission (or are so registered, but only subject to subpart D of part 39) . If so, who (e.g., SROs or the Commission) should take such action, and what should that action be? Would such actions risk causing actual or potential conflicts with the rules or practices of foreign clearing organizations or foreign contract markets? If so, please provide references.

Please see CME's discussion in Section I above for a manner to apply separate account margining to all FCMs equally. CME believes this would allow the FCM to treat all cleared contracts equally. Of course, an FCM that is a member of a clearing house that is not registered with the CFTC must also follow that clearing house's rules.

Question 3: The Commission requests comment regarding whether it should (i) consider any events beyond those enumerated in proposed regulation § 39.13(j)(1)(ii)(A) through (I) as inconsistent with the ordinary course of business for purposes of the application of proposed regulation § 39.13(j); (ii) change *the specification of any of the events in proposed regulation § 39.13(j)(1)(ii)(A) through (I); or (iii) delete any of those events (because the proposed event is not inconsistent with the ordinary course of business).*

CME recommends the following additional events be enumerated as inconsistent with the ordinary course of business:

- when an FCM is under-capitalized
- when an FCM is not in compliance with segregated, secured or cleared swaps requirements
- when an FCM has filed notice of non-current books and records
- when an FCM has filed notice of a material inadequacy in internal controls that impacts the FCM's ability to remain in compliance with CFTC Regulations

Further, the proposed regulation should be amended to make clear that any FCM experiencing any event that in the FCM's opinion is inconsistent with the ordinary course of business should be considered operating outside the ordinary course of business until the particular event has been resolved. CME also suggests clarifying that the list of events described is not exhaustive and remains, at all times, subject to the discretion of the FCM in accordance with its risk management practices.

Question 4: The Commission requests comment on whether proposed regulation § 39.13(j)(2) should require a clearing member to obtain from a customer or, as applicable, the manager of a separate account, any specific information or documentation relevant to determining the value of assets dedicated to a separate account, or, more broadly, any information relevant to determining the value of assets available to meet the obligations of the customer's accounts on a combined basis. The Commission further requests comment on whether it should prescribe a minimum requirement of how often such information should be obtained and/or updated.

CME agrees with the Commission's inclination to require such documentation. To properly manage the risk of a separate account and to perform stress testing and credit limits on both a separate account and a combined basis (a requirement under the condition set forth in proposed Regulation § 39.13(j)(3)), the FCM clearing members should obtain financial information including assets dedicated to both.

However, if the parent organization of the FCM maintains multiple relationships with the customer (e.g., prime brokerage, lending, etc.), it should be sufficient that the FCM's organization has this current financial information and can provide it to the Commission or the DCO upon request.

Question 5: The Commission requests comment on whether the regulatory framework set forth in proposed regulation § 39.13(j)(4) appropriately balances practicability and burden with risk management. If not, what alternative approach should be taken? How would such an alternative approach better balance those considerations? In particular, the Commission requests comment on whether the proposed standard of timeliness for a one business day margin call set forth in proposed *regulation § 39.13(j)(4)(i)–(iii) presents practicability challenges and, if so, what those challenges are, and how the proposed standard of timeliness could be improved.*

There are a number of CME Group Exchange rules that deal with the collection of margin; the timeliness of which is a critical component of an FCM's risk management program. Under CME Rule 930, if an FCM and customer enter into a contractual agreement for margin calls to be met in a timeframe that is longer than one business day (aside from reasonable, one-day administrative or operational exceptions), the FCM is not making a bona fide attempt to collect margin within one business day after the occurrence of the event giving rise to the margin deficiency. Further, under CME Rule 930, FCM clearing members must retain full discretion to determine when and under what circumstances positions in a customer's account should be liquidated, including, for example, circumstances where the FCM believes the customer has not or will not meet a margin call. These rules apply to all customers of an FCM irrespective of whether the FCM implements separate account treatment as set forth under the Proposal. CME is concerned that the discussion in the Preamble of proposed Regulation § 39.13(j)(4) may create confusion in the industry by incorrectly implying that customers <u>not</u> utilizing separate account treatment may be given contractual terms providing for a period of time longer than one business day to satisfy a margin call, or may otherwise restrict the FCM's discretion as to liquidation, in contravention of CME Group Exchange rules.

CME also notes that in the Preamble, the Commission states that "Proposed regulation 39.13(j)(4)(iv) is designed to provide clearing FCMs with a level of discretion in how they manage risk by allowing for limited delays in margin payments due to non-US banking conventions."[6] The Preamble supports why this regulation should be in Part 1 applicable to FCMs. The Commission may intend to provide this relief, but there is no guarantee that each DCO will necessarily agree to the relief. For example, CME disagrees with the Commission's characterization that it is a burden for clearing members to ask customers facing lengthy holiday periods to pre-fund for potential margin calls in advance of the holiday. CME believes that such action is prudent risk management; indeed many of its clearing members routinely require such funding.

Question 6: With respect to the proposed standard of timeliness for a one business day margin call:

(a) Are there other currencies, besides JPY, where relevant banking conventions render payment before the second U.S. business day after a margin call is issued impracticable? If so, the Commission requests commenters to specifically identify any such currencies, and provide specifics about the operational issues involved for each.

Currently, many margin calls issued in currencies other than U.S. Dollars and Canadian Dollars are met same day. CME believes that proposed Regulation 39.13(j)(4)(ii) should treat all currencies equally where relevant banking conventions render payment impracticable before the second U.S. business day after a margin call is made with regards to and not limit it to only Japanese Yen.

---

[6] NPR at 22942

Notwithstanding such conventions, CME believes the Commission should encourage FCMs to collect all currencies as quickly as feasible.

(b) Should the Commission establish a mechanism (e.g., through action by Commission order, potentially with authority delegated to the Director of the Division of Clearing and Risk, or through action by DCOs) to address cases where the taxonomy of which currencies can practicably be paid on the same day/first U.S. business day/ second U.S. business day after a margin call is issued should be changed, due to changes in banking conventions or newly discovered information?

(c) The Commission requests comment on whether, and if so, how, proposed regulation § 39.13(j)(4) should explicitly address timing of payment of margin in the event of an unscheduled United States banking holiday (e.g., due to a national day of mourning).

(d) The Commission requests comment on whether, and if so, how, proposed regulation § 39.13(j) should explicitly address timing of payment of margin in the event of scheduled or unscheduled closures of United States securities markets.

CME believes the unscheduled closings of banks or securities markets (e.g., for a day of mourning) should be handled across the industry on a facts and circumstances basis and not prescriptively. CME, FIA, SIFMA and many other exchanges and clearing organizations have worked to establish protocols on such days, and this relief should not interfere with the flexibility necessary to exercise prudent risk management in fluid and varied circumstances.

Question 7: With respect to the criteria for extending payment of margin in EUR due to a banking holiday in the Eurozone pursuant to proposed regulation § 39.13(j)(4)(iv), the Commission requests comment on whether, and if so, how, the banking laws of national authorities within the Eurozone, operational issues, or other factors present practicability challenges to compliance. If commenters believe such challenges exist, the Commission seeks comment on whether a different standard would be more practicable, while achieving the goal of preventing customers or investment managers from claiming an extension of time to pay margin due to banking holidays in a multiplicity of jurisdictions, or in (a) jurisdiction(s) with which such customer or investment manager has no significant commercial nexus

CME has no comment.

Question 8: In anticipation of potential developments with respect to the use of central bank digital currencies or other digital assets, the Commission requests comment on whether and, if so, how, proposed regulation § 39.13(j)(4) should explicitly address the timing of payment of margin in digital assets.

CME believes this is an important topic that should be addressed in a separate request for comment in the broader context of customer protection, capital and margin in connection with digital assets.

Question 9: The Commission requests comment regarding whether there are any other international considerations, beyond the time required to process payment of margin in different currencies, that the Commission should take into account in establishing requirements for compliance with the ''one business day'' margin call standard for purposes of proposed regulation § 39.13(j)(4). If so, the Commission requests comment regarding how proposed regulation § 39.13(j) should be modified, if at all, to account for such considerations.

Please see CME's response to Question 5.

Question 10: The Commission requests comment on whether it should prescribe specific steps that a DCO must require a clearing member to take to verify the identity of an authorized representative of a customer, and if so, what such steps should entail. The Commission further requests comment on the potential time and cost burden of such steps. Commenters are requested to provide quantitative data where available.

The Commission should not prescribe specific steps a DCO must require a clearing member to take regarding customer authorization as documentation of customer relationships is outside the scope of a DCO's risk management responsibilities and crosses into FCM supervision and sales practices. Of course, an FCM should know that the persons they are dealing with are duly authorized under applicable NFA and exchange rules. These tasks are not part of the role of the DCO. Therefore, to the extent the Commission prescribes any steps, they should be made directly applicable to FCMs under Part 1.

Question 11: The Commission requests comment on the appropriateness of its proposed approach of providing DCOs with discretion in determining whether a clearing FCM has applied separate account treatment consistently over time.

CME believes the DCO already has this authority pursuant to Part 39.

Question 12: The Commission requests comment on the extent to which DCOs, clearing members, and customers currently rely on the noaction position in CFTC Letter No. 19– 17 (including the extensions of time in CFTC Letters No. 20–28, 21–29, and 22– 11) to permit and/or engage in separate account treatment. Commenters are requested to provide data where available (e.g., number of DCOs and/or clearing members that allow for separate account treatment, or size of clearing members providing for separate account treatment by customer funds in segregation or number of customers, as well as the nature and the extent of the costs that they would incur if the relevant no-action position were to be permitted to expire).

Currently 14 of the 42 clearing FCMs at CME have notified CME that they intend to apply the separate account margining relief under NAL 19-17, though CME notes that a number of firms that provided notice have not actually implemented separate account margining.

Question 13: The Commission requests comment, including any available quantifiable data and analysis, concerning the costs and benefits of the proposed regulation for DCOs, FCMs, and any other market participant(s), including regarding the extent to which market participants already enjoy any such benefits or incur any such costs

Please see Section II of the letter.

Question 14: The Commission requests comment, including any available quantifiable data and analysis, concerning whether the tradeoff of costs and benefits of the proposed regulation for DCOs, FCMs, and any other market participant(s), could be improved by modifying the set of conditions set forth therein (i.e., by deleting or modifying in a specified fashion any of the proposed conditions, or by adding specified additional conditions).

Please see Sections I and II of the letter.

Question 15: The Commission requests comment regarding whether there are FCMs which chose not to rely on the no-action position provided by CFTC Letter No. 19–17 due to the conditions required to rely on that position. The Commission further requests comment on how those conditions could be modified to mitigate the burden of compliance while achieving the goals of mitigating systemic risk and protecting customer funds.

CME has no comment.