November 6, 2023

VIA ON-LINE SUBMISSION
Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Provisions Common to Registered Entities (RIN 3038–AF 28) (Federal Register Vol. 88, No 171, 61432)

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Notice of Proposed Rulemaking ("Proposal") that was published in the Federal Register on September 6, 2023.[1] In the Proposal, the Commission seeks comment on proposed amendments to the Part 40 regulations that govern, among other things, how registered entities submit self-certifications and requests for approval of their rules, rule amendments, and new products for trading and clearing, as well as the Commission's review and processing of such submissions.

CME Group is the parent of four U.S.-based designated contract markets ("DCMs"): Chicago Mercantile Exchange Inc. ("CME"), Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX") and Commodity Exchange, Inc. ("COMEX") (collectively, the "CME Group Exchanges" or "Exchanges"). These Exchanges offer a wide range of products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, and agricultural commodities. CME Group offers futures and options on futures trading through the CME Globex® platform, fixed income trading via BrokerTec and foreign exchange trading on the EBS platform, and a swap execution facility ("SEF"). CME is also registered as a derivatives clearing organization ("DCO") (also known as "CME Clearing") which provides clearing and settlement services for exchange-traded and over-the-counter derivatives transactions.

I. Background

Section 745 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") amended Section 5c of the Commodity Exchange Act ("Act") to revise the certification and approval procedures added by the Commodity Futures Modernization Act of 2000 ("CFMA") that apply, among others, to DCMs and DCOs for submitting rules, rule amendments, and new products to the Commission. Among other revisions, Dodd-Frank built in a 10-business day review window before a

[1] Provisions Common to Registered Entities, 88 Fed. Reg. 61,433 (Sept. 6, 2023)

new rule or rule amendment submitted via certification could be implemented but retained the CFMA provision that a DCM may list a new product upon filing the requisite certification on the business day preceding the product's listing. At that time, in the notice of proposed rulemaking implementing the statutory provisions enacted under Dodd-Frank, the Commission stated that the changes to Part 40 were intended to "enhance its ability to administer the Act, as amended, ensure consistency with various new requirements of Dodd-Frank and clarify the regulatory obligations imposed on market participants."[2]

Since the CFMA reforms, DCMs and DCOs such as the CME Group Exchanges have established an unparalleled track record for successful self-regulation that maintains market and financial integrity while competing in a global environment. The existing principles-based regime, particularly for product development, has enabled the futures industry to grow and maintain its leadership position in the global marketplace. 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."[3] 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."[4] 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."[5] The CFTC continued to tout the benefits of self-certification after the Dodd-Frank amendments. For example, in 2018, then-CFTC Chairman Giancarlo highlighted 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 self-certified 12,016 products in the subsequent 17 years.[6] The self-certification regime has worked well since its inception, and we do not believe significant change to it is necessary or appropriate.

We do not interpret the Proposal as seeking to effect significant change, given that we understand the filings currently made by the CME Group Exchanges, DCO and SEF meet the "completeness" standard set forth in the Proposal. To the extent the Commission aims to make some modest changes, however, we emphasize the important success of the self-certification process to convey the need for the Commission to be cautious in making any modifications to Part 40 in light of this history. Additionally, we provide limited comments below with respect to some of the proposed amendments to CFTC Regulations 40.1, 40.2, 40.3, and 40.6.

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[2] Provisions Common to Registered Entities, 75 Fed. Reg. 67,282 (Nov. 2, 2010).

[3] *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).

[4] *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).

[5] *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).

[6] 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.

II. Comments

1. *§40.1 - Definitions*

CME Group supports the removal of the term "dormant contract" and "dormant product" from the rule. As noted in the Proposal, a DCM listing a contract has a continuing obligation to ensure that the contract complies with the Act and the Commission's regulations thereunder.[7] Moreover, as the Commission also noted, it is unaware of any instance in which the dormancy of a product for an extended period has caused any market or market participant material harm; thus, we agree that deletion of the definition would result in little, if any, market integrity or safety concerns, while potentially reducing compliance costs for market participants and oversight costs for the Commission.[8]

CME Group also supports the addition of the term "margin methodology" to the list of activities that would be considered a "rule" under the Proposal. CME Clearing files margin methodologies as rules and it would be prudent to apply this practice uniformly across all DCOs.

Relatedly, we support removing "Payment or collection of option premiums or margins" from Regulation 40.1(j)(1)(xi) and adding that to the categories of rules that may be implemented without certification under Regulation 40.6(d)(2). CME Group believes, as the Commission too suggests, that this change will lower the burden on registered entities while still providing sufficient notice to the Commission.[9]

2. *§40.2 – Listing products for trading by certification*

CME Group also supports the amendment to Appendix D to require a DCM or SEF to indicate whether a product is a "referenced contract" when submitting a new product. CME Group Exchanges identify products as referenced contacts when submitting new products, and it would be prudent to apply this practice uniformly across all DCMs or SEFs.

In addition, the Commission is proposing to delegate the Commission's authority regarding the filing format and manner requirements to the Directors of the Division of Market Oversight and the Division of Clearing and Risk. CME Group supports the proposed delegation. Importantly, because our DCMs, DCO and SEF collectively submit hundreds of filings in a calendar year, we are confident that the division heads will endeavor to make the filing formats as uniform as possible.

3. *§40.3(c) & 40.6(b) – Review Periods*

There are, however, certain elements of the Proposal that CME Group does not support. Regulation 40.3 governs the treatment of new products submitted for Commission review and approval. In particular, paragraph (c) of Regulation 40.3 sets out the standard review period, establishing that all products submitted for approval under that paragraph shall be deemed approved by the Commission 45 days after receipt unless notified otherwise, so long as (i) the submission complies with Regulation 40.3(a) and (ii) the submitting entity does not amend the terms or conditions of the product or supplement the request for approval, "except as requested by the Commission or for correction of typographical errors, renumbering or other non-substantive revisions, during that period." The regulation goes on to explain that "any

[7] 88 Fed. Reg. at 61,433-34.
[8] 88 Fed. Reg. at 61,434.
[9] 88 Fed. Reg. at 61,434.

voluntary, substantive amendment" will be treated as a new submission (i.e., the 45-day clock will start over). The Proposal would amend this condition by removing the phrase "except as requested by the Commission" and the reference to "voluntary" in qualifying the amendment. Under the Proposal, if an entity subsequently submits an amendment or supplementation requested by the Commission, it would be treated as a new submission and would restart the 45-day review period. The Commission explains that it believes such amendments are necessary to better ensure that it has time to review any substantive changes to requests for product approval.[10]

Relatedly, Regulation 40.6(b) sets out the review period for the self-certification of rules and rule amendments, including substantive revisions to an existing product's terms and conditions. The regulation provides the Commission with a 10-business day review period, after which the rule is deemed certified (unless it is stayed by the Commission during that period). The Proposal would amend 40.6(b) by adding language to provide that any substantive amendment or supplementation of the rule submission will be deemed a new submission and restart the 10-business day clock. Similar to the proposal for Regulation 40.3 above, the provision would provide an exception for instances where the amendment or supplementation is made for correction of typographical errors, renumbering or other non-substantive revisions, but would not include instances where the amendment is made at the request of the Commission.

CME Group does not support (1) the removal of the language "except as requested by the Commission" from the carve-outs listed in Regulation 40.3(c) or (2) the absence of such language in the proposed amendments to Regulation 40.6(b).[11] CME Group appreciates that the Commission generally ought to be able to enjoy the full length of the review periods provided for in Regulations 40.3 and 40.6 when substantive changes are made to submissions under those regulations and therefore does not object to the conceptual inclusion of clarifying language in Regulation 40.6(b) to that effect. However, the Commission's stated rationale does not apply in the context of amendments that are requested by the Commission. The Commission presumably understands the basis for its requested change or changes so it should not need an additional 10-day or 45-day review period (as the case may be) to review the changes it has asked for. Accordingly, we recommend that the language "except as requested by the Commission" remain in Regulation 40.3(c) as an enumerated carve-out—alongside the correction of typographical errors, renumbering and other non-substantive revisions—and similarly be added to the proposed language in Regulation 40.6(b).

III. Conclusion

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-2324 or via email at **Jonathan.Marcus@cmegroup.com**.

[10] 88 Fed. Reg. at 61,437.

[11] Similarly, CME Group does not support the inclusion of the bolded language in new Regulation 40.3(c)(4) "Any substantive amendment or supplementation by the submitting entity, **including an amendment or supplementation requested by the Commission**, will be treated as a new submission under this section."

Sincerely,

Jonathan Marcus
Senior Managing Director and General Counsel
CME Group Inc.
20 South Wacker Drive
Chicago, IL 60606

cc: Chairman Rostin Behnam
Commissioner Kristin Johnson
Commissioner Summer Mersinger
Commissioner Caroline Pham
Commissioner Christy Goldsmith Romero
Vincent McGonagle, Director, Division of Market Oversight
Clark Hutchison, Director, Division of Clearing and Risk