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April 22, 2024

**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 –Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants**

Dear Mr. Kirkpatrick:

CME Group Inc. (“CME Group”)[[1]](#footnote-2) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) Notice of Proposed Rulemaking on Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants (the “NPR” or the “Proposal”).[[2]](#footnote-3)

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 Clearing recognizes the Commission’s efforts 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”) in providing a commercial service to their customers where the customers maintain multiple accounts at the FCM. The Commission’s prior proposal[[3]](#footnote-4) suggested codifying the NALS under Part 39 of the CFTC’s regulations as obligations of the DCOs. CME Clearing appreciates the Commission’s consideration of CME’s comments on the prior proposal, and the comments of others, that these types of commercial activities are better suited as authorizations for, and the obligation of, all FCMs as reflected in the current NPR. CME commends the Commission for its thoughtful review of comments and consideration of the effects on the FCM community. CME believes the current NPR is a better approach to codifying the guidance in the NALs.

CME is aware that there are some technical matters to consider with respect to the definition of undermargined accounts and the calculation for capital and residual interest in the NPR. CME Clearing will defer to its colleagues at the DCM self-regulatory organizations which include CME Group Exchanges, to address these technical matters, as they more directly affect the DCMs in their capacity as designated self-regulatory organizations. CME Clearing will limit its comments to the remaining issues that more directly affect a DCO.

1. **Certain aspects of Proposed** **Amendments to Regulation § 39.13(g)(8) should be adopted with clarification**

Regulation § 39.13(g)(8)(i) currently requires DCOs to collect customer margin from their clearing members on a gross basis, that is, collect margin equal to the sum of initial margin amounts that would be required by the DCO for each individual customer within that clearing member account as if each individual customer were a clearing member. The CFTC proposes to add new Regulation §39.13(g)(8)(i)(E) to clarify that, for purposes of this part of the regulation on gross margining, each separate account of a separate account customer shall be treated as an account of a separate individual customer. CME Clearing supports this amendment and notes that clearing members are currently reporting separate accounts in that manner. For the purpose of ensuring accurate customer gross margin, we ask that the Commission clarify that the FCM must identify not only accounts eligible for separate account margining, but also which accounts are currently deploying the practice on the FCM’s books.

The CFTC also proposes to amend Regulation § 39.13(g)(8)(iii), to provide that it shall apply except as provided for in Regulation §1.44 while simultaneously incorporating the substance of Regulation §39.13(g)(8)(iii) into proposed Regulation §1.44. The CFTC proposes this amendment to ensure that the carve-out (represented by proposed Regulation §1.44(c) through (h)) to the Margin Adequacy Requirement (represented by proposed Regulation §1.44(b)) would apply to *all* FCMs not just to those who are clearing members of DCOs pursuant to Regulation §39.13(g)(8)(iii). The Commission asks in Question 8: “*If the CFTC includes the Margin Adequacy Requirement and requirements*

*regarding separate account treatment in Part 1 of its regulations as proposed, should the CFTC remove Regulation 39.13(g)(8)(iii)?*” CME Clearing agrees that if proposed Regulation §1.44 is adopted, it is logical to delete sub-section (iii) of Regulation §39.13(g)(8) as the withdrawal from customer accounts at the clearing member will be covered by proposed Regulation §1.44.

1. **Proposed Amendments to Regulation § 1.58 should include Regulation 30.7 amounts**

In the NPR the Commission discusses the requirement for gross margining of non-clearing FCM omnibus accounts[[4]](#footnote-5). As the Commission is well aware, CME believes that gross margining of customer positions is an important element of risk management in the event of a default by an FCM and is essential to the Commission’s stated goal in Part 190 for porting customers regardless of whether the non-DCO foreign clearing organization collects margin on a gross or net basis. CME Clearing agrees with the Commission’s proposed amendments to Regulation §1.58. but suggests that they also require that FCMs collect margin on a gross basis for the foreign futures and options contracts in an omnibus account held by the clearing FCM.

1. **Proposed Regulation § 1.44 does not affect risk management or rule enforcement**

Once again, CME would like to express its appreciation for the Commission considering its comments and the comments of others on the appropriate placement of the regulations regarding separate accounts. CME understands the amount of work CFTC staff has invested not only in the NALs, but also this NPR and the prior NPR, in addition to the years-long discussion with the industry. CME’s FCM clearing members have also invested significant time and energy into compliance with the terms of the NALs and CME’s rules. As the Commission has agreed that the exclusions for separate accounts provided in Proposed Regulation §1.44 are more apposite to FCM regulations, it is not expected that these proposals will fundamentally change any risk management expectations of our DCO or enforcement by our DCO or DCMs of their own rules unrelated to margin disbursements.

**\* \* \* \***

**CME Clearing 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 312.930.8167 or** [sean.downey@cmegroup.com](mailto:sean.downey@cmegroup.com)**.**

**Sincerely,**

A close-up of a signature

Description automatically generated

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

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. [↑](#footnote-ref-2)
2. 89 FR 15312 (March 1, 2024). [↑](#footnote-ref-3)
3. 88 FR 22934 (April 14, 2023). [↑](#footnote-ref-4)
4. NPR at 15340 [↑](#footnote-ref-5)