CME Group

May 13, 2024

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: Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions
(Federal Register Vol. 89, No. 54, 19646)
RIN 3038–AF29

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 related to Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions ("Proposal"), which was published in the Federal Register on March 19, 2024.[1] In the Proposal, the Commission would establish governance and fitness requirements for designated contract markets ("DCMs") and swap execution facilities ("SEFs") with respect to market regulation functions and impose new conflict of interest standards.

CME Group is the parent of four U.S.-based 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, agricultural, and environmental commodities. 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. Additionally, CME Group is the parent of NEX SEF Limited, a London-based swap execution facility ("NEX SEF").

[1] Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions, 89 Fed. Reg. 19,646 (March 19, 2024).

I. Background

In the Proposal, the Commission aims to codify governance and fitness requirements for market regulation functions, as well as related conflict of interest standards, for both DCMs and SEFs. Specifically, the proposed new rules and amendments address requirements relating to the following: minimum fitness standards; conflicts of interest in decision-making; limitations on the use of material non-public information; board of director composition; public directors; nominating committees; Regulatory Oversight Committees ("ROC"); disciplinary panels; DCM Chief Regulatory Officers ("CRO"); and SEF Chief Compliance Officers ("CCO"). The Proposal also establishes notification requirements related to certain changes in the ownership or corporate or organizational structure of a DCM or SEF.

CME Group appreciates the importance of (i) maintaining robust governance and fitness requirements with respect to market regulation functions and (ii) ensuring that adequate substantive and structural requirements are in place to address conflicts of interest. Further, we recognize that the Proposal, in many respects, would codify existing guidance and best practices and seek to harmonize the regulatory treatment of DCMs and SEFs. In doing so, however, it would be converting principles-based guidance into prescriptive, and in part, arbitrary rules. Moreover, the Proposal mirrors certain of the requirements included in prior proposed rulemakings without fully resolving significant concerns raised about them. For context, over a decade ago and in conjunction with rulemakings to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), the Commission proposed conflicts and governance rules for DCOs, DCMs, and SEFs (the "2010 Conflicts of Interest NOPR" and the "2011 Governance NOPR", respectively).[2] We expressed concerns in the prior rulemakings that the Commission's effort to regulate the composition of boards of directors impermissibly trenches on an area firmly reserved to the States, otherwise failed to establish the Commission's statutory authority to impose board-level governance requirements, and proposed board and committee composition requirements that were arbitrary.[3]

From our perspective, the Commission's principles-based guidance in Appendix B to Part 38 has worked well. To the extent a DCM or SEF fails to comport with the guidance, we would expect the Commission to require a showing that it otherwise complies with the applicable principles-based core principle. Therefore, we support harmonizing this *guidance* across DCMs and SEFs and would also support supplementing the guidance with new concepts raised in the Proposal, such as delineating the responsibilities of a CRO. This approach would ensure that the Commission's interest in DCMs and SEFs having robust governance and conflicts of interest controls could be met while retaining a

[2] *See* Requirements for DCO, DCM, and SEFs Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. 63732 (Oct. 18, 2010) ("2010 Conflicts of Interest NOPR") and Governance Requirements for DCOs, DCMs, and SEFs; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 Fed. Reg. 722 (Jan. 6, 2011). ("2011 Governance NOPR").

[3] *See* CME Group Comment Letter *Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest (RIN 3038-AD01)(Federal Register Vol. 75, No 200, Page 63,732, October 18, 2010) (November 17, 2010)*, available here: https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=21286; and CME Group Comment Letter *Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest (RIN 3038-AD01) (Federal Register Vol. 76, No. 4, Page 722) (March 7, 2011)*, available here: https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=21868.

principles-based framework with flexibility necessary to account for the substantial differences in entities subject to the Proposal. Our comments below are framed to advance these objectives.

II. Comments[4]

1. Structural Governance Requirements for Identifying, Managing, and Resolving Actual and Potential Conflicts of Interest - Proposed §§ 38.854, 38.855, and 38.857

In an effort to mitigate conflicts of interest within DCMs and SEFs, the Commission seeks to prescribe board-level (i.e., the board of directors and its committees) governance requirements. Converting guidance from Appendix B to Part 38 under Core Principle 16 into rules, the Proposal would require the board of directors of a DCM to be composed of at least 35% public directors, any executive committee of the Board to be composed of at least 35% public directors, any nominating committee of the Board to be composed of at least 51% public directors, and any regulatory oversight committee of the Board to be 100% public directors. Consistent with the guidance, our board is composed of more than 35% public directors; our Nominating and Governance Committee consists of more than 51% public directors; and our Market Regulation Oversight Committee is comprised of 100% public directors. While it is undoubtedly in the best interest of shareholders of CME Group, as a public company, for the company to embrace governance best practices and undertake measures to minimize conflicts of interest at all levels, including with respect to our DCMs and SEF, we nevertheless question the Commission's authority and ability to implement the Proposal, including whether it can *or should* supersede well-established State corporation laws, and whether it has the requisite corporate governance expertise to determine mandatory composition thresholds for boards of publicly traded companies.

Reserving all of the arguments we advanced in prior letters, we specifically note that, in our comments to the 2010 Conflicts of Interest NOPR, we questioned whether the proposal impermissibly reached into an area of State sovereignty. We believe that the Proposal contains the same flaw. Matters of corporate governance are traditionally the province of the States–specifically the State of incorporation.[5] Companies such as CME, incorporated in the state of Delaware, are subject to those State's laws, including laws governing corporate directors' duties of care, good faith, and loyalty to the corporation and its shareholders. Applicable State law expressly addresses the Commission's concerns that directors of a DCM would act in their own interests rather than those of the corporation / DCM as a whole. The proposed structural governance requirements in the Proposal related to board of directors and committee composition are therefore unnecessary.

Further, we previously questioned the Commission's statutory authority to prescribe board-level governance requirements. The same question persists in the Proposal. It is well recognized that federal administrative agencies do not have the power to make law; rather they have the power to "adopt regulations to carry into effect the will of Congress as expressed by the statute."[6] Here, the will of Congress as expressed by the Commodity Exchange Act is that DCMs (not the Commission) shall have

[4] While the comments cite proposed DCM regulations in Part 38, they should be read to apply equally to corollary proposed SEF regulations in Part 37.

[5] See, e.g., ABA v. FTC, 430 F.3d 457, 471-72 (D.C.Cir. 2005) (regulators may not enact rules or regulations that reach into an area of State sovereignty unless the plain language of the federal law compels the intrusion).

[6] Ernst & Ernst v. Hochfelder, 425 U.S. 185, 213-14 (1976) ("The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.'").

the authority and responsibility to establish and enforce appropriate fitness standards (Core Principle 15), establish and enforce rules to minimize conflicts of interest (Core Principle 16), have governance arrangements designed to permit the consideration and views of market participants (Core Principle 17), and for publicly traded DCMs to endeavor to recruit a broad and culturally diverse pool of qualified candidates for the board of directors (Core Principle 23). The Proposal does not cite any statutory authority that would permit the will of Congress to be overridden with prescriptive and arbitrary structural governance requirements.

Notwithstanding these concerns, we believe the Commission can achieve its objectives by keeping these provisions as guidance to Parts 37 and 38–a safe harbor through which DCMs and SEFs could demonstrate compliance with Core Principle 16. To the extent a DCM or SEF has a different governance structure or composition threshold, we would expect that the Commission would inquire as to how that DCM or SEF complies with the applicable core principle.

2. Minimum Fitness Standards & Verification – Proposed § 38.801

Core Principle 15 requires DCMs to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCM, and any other person with direct access to the DCM (including "any party affiliated" with any of the foregoing persons).[7] Further, DCM Core Principle 15 Guidance states that a DCM should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle that should include (i) standards for fitness and (ii) standards for the collection and verification of information supporting compliance with such standards. We urge the Commission to maintain this as guidance, allowing DCMs to continue availing themselves of the discretion and flexibility granted by Congress. Should the Commission determine nonetheless that it is necessary to codify this guidance into rules, we would recommend modifying the requirements as set out below.

i. Standards for Fitness

With respect to the fitness standards, DCM Core Principle 15 Guidance explains that the bases for refusal to register a person under section 8a(2) of the Commodity Exchange Act ("CEA" or the "Act") shall be the minimum fitness standards for "persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority." Further, "natural persons who directly or indirectly have greater than a ten percent ownership interest in a [DCM]" should meet the fitness standards applicable to members with voting rights.[8] In addition, "persons who have governing obligations or responsibilities, or who exercise disciplinary authority," should not have a "significant history of serious disciplinary offenses, such as those that would be disqualifying under [CFTC Regulation] 1.63."[9]

[7] DCM Core Principle 15, CEA section 5(d)(15), 7 U.S.C. 7(d)(15).

[8] Part 38, Appendix B, Core Principle 15 Guidance.

[9] Part 38, Appendix B, Core Principle 15 Guidance. Additionally, pursuant to CFTC Regulation 1.63(c), persons that are subject to any of the disciplinary offenses set forth in CFTC Regulation 1.63(b) are prohibited from serving on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization.

In the Proposal, the Commission largely codifies DCM Core Principle 15 and DCM Core Principle 15 Guidance into § 38.801. The Proposal nevertheless diverges from DCM Core Principle 15 and its related guidance in terms of what standards DCMs must implement and to whom they apply. Under proposed § 38.801(a), persons subject to the minimum fitness standards include the following: officers; members of the board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing); members of the DCM; any other person with direct access to the DCM; and any person who owns 10 percent or more of a DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM, and any party affiliated with any of those persons.[10] While this is a long list, the only addition for DCMs appears to be their "officers."

We recognize that it is incumbent upon DCMs to apply fitness standards to various persons associated with the organization in light of the current guidance and consistent with good business practices. However, we do not believe there is a need to transform existing guidance into a rule. If the Commission nevertheless does so, we urge the Commission to limit the rule's scope to those persons actually governing the DCM. Specifically, we would suggest limiting the scope to (i) officers and (ii) members of the DCM's board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing). Under the Exchanges' rulebooks, the DCMs have set out extensive requirements for membership, which provide the Exchanges with the authority to expel members and to require the sale of their membership for various offenses. With respect to non-members, the Exchanges' rules currently allow them to deny access to any non-member who has violated rules or refused to cooperate in an investigation, and clearing members must suspend or terminate a non-member's access if the Exchange determines that the actions of a non-member threaten the integrity or liquidity of any contract, violate any Exchange rule or the Act, or if the non-member customer fails to cooperate in an investigation.[11] By virtue of these rules, the Exchanges can effectively regulate which persons and entities have access to its markets. Consequently, we do not believe it is necessary to require members of the DCM or any non-members with direct access to the DCM to fall under the scope of § 38.801(a).[12]

Proposed § 38.801(b), in turn, establishes that the minimum standards of fitness for certain enumerated persons must include the bases for refusal to register a person under Section 8a(2) and 8a(3) of the CEA.[13] Those persons are the DCM's officers and members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing); members

[10] Proposed § 38.801(a).

[11] CME Rulebook, Chapter 1 "Membership" available at: https://www.cmegroup.com/content/dam/cmegroup/rulebook/CME/I/1/1.pdf; See CME Group Exchanges' Rule 574, Globex Access Restrictions, and Rule 402.D, Actions Against Non-Members.

[12] As for persons who "own 10 percent or more of the DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM," we note that CME Group wholly-owns its Exchanges and that we do not interpret this requirement to apply to *CME Group*. Given that CME Group is a public company, the Exchanges would not be in a position to impose minimum fitness standards to such persons (i.e., shareholders), much less remedy a scenario where those persons failed to meet minimum fitness standards.

[13] 89 Fed. Reg. 19,657-19,658.

with voting privileges[14]; and any person who owns 10 percent or more of the DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM. In converting the guidance to a rule, the CFTC has added officers to the list and expanded the standard to include section 8a(3) of the CEA. For the same reasons set out above, we do not object to these proposed modifications as applied to (i) officers and (ii) members of the DCM's board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), but we do not believe that § 38.801(b) should be extended to the other categories.

Proposed § 38.801(c) states that minimum standards of fitness for certain individuals must include ineligibility based on six types of disciplinary offenses that generally track the disciplinary offenses listed in §§ 1.63(b)(1)–(6), with certain modifications. Those individuals are the DCM's officers and members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing). The net result of these proposed changes is twofold. First, the DCM's officers would now be in scope. Second, the discretionary standard set forth in Core Principle 15 Guidance—that these persons "should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of this chapter"—would be replaced by the requirement that minimum fitness standards for these persons "must include ineligibility based on the disciplinary offenses listed in [38.801(c)(1)-(6)]." Not only is this standard more prescriptive, but as the Commission notes, the list of offenses from § 1.63(b) has been modified. Again, we recommend the Commission retain this as guidance. However, if the Commission determines that codification in § 38.801(c) is necessary, we recommend that the rule more closely track the Core Principle 15 Guidance, which we believe has served DCMs and market participants well and provides necessary flexibility.

Finally, we note that the Commission has raised the question of whether DCMs should be required to establish a "sufficiently good repute" standard as an additional fitness standard for officers or members of the board of directors.[15] We do not believe that this is a necessary or appropriate addition. Officers and

[14] If the Commission is inclined to impose fitness standards on "persons with member voting privileges," it should consider modernizing this classification. In the pre-demutualization era, member voting privileges conveyed some degree of control over exchange governance. "Membership" in a DCM is no longer a universal characteristic of an exchange. Today, for example, exchanges may offer entities equity ownership with voting rights. If an exchange offers an entity equity ownership with voting rights and that entity trades on the exchange like a member would have under previous structures, the conflict concerns that arise with respect to the entity may be no less acute than would attend a member with voting privileges.

[15] The Commission proposed the following two questions:

(1) Should SEFs and DCMs be required to establish additional fitness standards for officers or members of the board of directors whose background, although not automatically disqualifying under proposed §§ 37.207 or 38.801, raises concerns about the individual's ability to effectively govern, manage, or influence the operations or decision-making of a SEF or DCM? If so, is "sufficiently good repute" an appropriate fitness standard for officers and members of the board of directors (or anyone performing similar functions) of a SEF or DCM?

(2) The Commission quoted above a "sufficiently good repute" standard, for purposes of a potential requirement that SEFs and DCMs require members of their boards of directors and officers be of good repute. Please explain whether you agree with that standard. Does such standard provide sufficient flexibility to SEFs and DCMs? Should such standard be more detailed and list specific criteria or factors evidencing good repute? Would "sufficiently good repute," already be encompassed in CEA Section 8a(3)(M), "other good cause?"

members of the board of directors are already subject to robust, and more specific, fitness requirements under existing DCM Core Principle 15 Guidance. Further, the language is very subjective and as such would be difficult to apply and enforce.

ii. Standards for collection and verification

The Core Principle 15 Guidance states that a DCM's eligibility criteria should include standards "for the collection and verification of information supporting compliance with [the DCM's standards for fitness]."[16] The Core Principle 15 Guidance goes on to state that "such standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the contract market's counsel or other information substantiating the fitness of such persons."[17] Further, the Core Principle 15 Guidance advises that, if a DCM provides certification of the fitness of such a person, it should be based on verified information that the person is fit to be in his or her position. This guidance, in our view, continues to be sufficient and appropriate.

The Proposal would codify, and modify, this guidance in § 38.801(d). Under § 38.801(d), a DCM would be required to have appropriate procedures for the collection and verification of information supporting compliance with appropriate fitness standards, including, at a minimum, the following:

> "(i) A designated contract market must, on at least an annual basis, collect and verify fitness information for each person acting in the capacity subject to the fitness standards;
> (ii) A designated contract market must require each person acting in any capacity subject to the fitness standards to provide immediate notice if that person no longer meets the minimum fitness standards to act in that capacity;
> (iii) An initial verification of fitness information must be completed prior to the person commencing to act in the capacity for which the person is subject to fitness standards; and
> (iv) A designated contract market must document its findings with respect to the verification of fitness information for each person acting in the capacity subject to the fitness standards."[18]

The new requirements under proposed § 38.801(d) are, in certain respects, more prescriptive than the Core Principle 15 Guidance, which we believe is sufficient, appropriately calibrated, and not unduly burdensome. In particular, we believe an appropriate standard could be the collection and verification of fitness information at the commencement of service, followed by annual questionnaires or attestations. We do not believe that annual verification, beyond the foregoing, is necessary. We would request that the Commission remove this proposed requirement.

3. Regulatory Oversight Committee – Proposed § 38.857

Core Principle 16 requires DCMs to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCM and to establish a process for resolving them. Among the acceptable practices set out in Appendix B to Part 38 ("Core Principle 16 Acceptable Practices") is a requirement that the board of directors of a DCM establish a ROC as a standing committee—consisting of

[16] Part 38, Appendix B, Core Principle 15 Guidance.

[17] Part 38, Appendix B, Core Principle 15 Guidance.

[18] Proposed § 38.801(d).

only public directors—to assist it in minimizing actual and potential conflicts of interest.[19] The ROC is meant to oversee the DCM's regulatory program on behalf of the board, and several specific responsibilities in furtherance of this prerogative are enumerated in the Core Principle 16 Acceptable Practices.

Proposed § 38.857 would largely codify these existing responsibilities with limited modifications. However, certain modifications raise substantive concerns by effectively transforming a board level committee from offering oversight and accountability to managing day-to-day operations. Namely, § 38.857(d)(3) would require the ROC to "*approve* the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of staff required pursuant to § 38.155(a)" (emphasis added).[20] This requirement materially differs from the existing Core Principle 16 Acceptable Practices in that, currently, the ROC is only tasked with *reviewing* those matters. As a practical matter, we believe that reviewing, as opposed to approving, is the appropriate role for the ROC here, given the breadth of this remit and the frequency with which certain of these events may occur.

Additionally, § 38.857(d)(3) would require the ROC to "[r]eview *all* regulatory proposals prior to implementation and advis[e] the board of directors as to whether and how such proposals may impact the designated contract market's market regulation functions" (emphasis added).[21] This requirement differs from the existing Core Principle 16 Acceptable Practices, which only require that the ROC "[r]eview regulatory proposals and advise the board as to whether and how such changes may impact regulation." As drafted, the rule could be interpreted more broadly than perhaps the Commission intended. Would, for example, the ROC be expected to review and advise the board on every rule advisory (or amendment thereto) published by a DCM's market regulation staff? If so, that review and advice would not only cause substantial delays in publishing information to the marketplace, but it would also inappropriately convert the entire board into day-to-day managers of a DCM.

We recommend qualifying the regulatory proposals that must be reviewed by the ROC. We believe the following formulation would ensure that only material matters are brought before the ROC: "review regulatory proposals that may materially impact the designated contract market's regulation functions, prior to implementation and advise the board of directors as to whether and how such proposals may impact those functions." We view this limitation as particularly important, given that the proposed text requires that the matters be presented to the ROC prior to implementation.

Finally, the Commission proposes to codify and supplement the existing annual report component of the ROC duties under the Acceptable Practices for DCM Core Principle 16. Currently, the ROC must prepare an annual report for the board of directors assessing the contract market's self-regulatory program, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels.[22] Under proposed § 38.857(g), the Commission would supplement the list of information that must be included in the annual report and also require that the report be filed with the Commission. While we do not object to the inclusion of additional data in the report, we urge the Commission to reconsider the requirement to affirmatively file the report. Currently, the annual report is available to the

[19] Part 38, Appendix B, Core Principle 16 Guidance.

[20] Proposed § 38.857(d)(3).

[21] Proposed § 38.857(d)(3).

[22] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(ii)(E).

Commission upon request. We believe that this approach has facilitated the sharing of information with the Commission, when necessary, while not creating an unnecessary administrative burden.

4. DCM Chief Regulatory Officer

While the Commission has not previously required DCMs to appoint CROs, the role is contemplated under the CFTC's existing guidance and it has become industry practice, including at CME Group Exchanges. Proposed § 38.856(a)(1) would explicitly require each DCM to formally establish the position of CRO and designate an individual to serve in that capacity and to administer the DCM's market regulation functions. The proposed rule further requires that (1) the position of CRO must carry with it the authority and resources necessary to fulfill the duties set forth for CROs; and (2) the CRO must have supervisory authority over all staff performing the DCM's market regulation functions. Additionally, the proposed rule establishes minimum qualifications for the CRO, sets out a reporting line, and enumerates several duties of the CRO, among other components. We strongly support the notion that a DCM should have a senior-level employee with the authority and resources necessary to support, supervise, and oversee functions that traditionally have been considered "market regulation" (i.e., market surveillance, trade practice investigations, audit trail compliance, and enforcement). While we do not believe it is necessary to have prescriptive regulations establishing and governing that role, we nevertheless offer suggestions regarding the appropriate scope and reporting lines of the CRO role.

Subpart (a)(1)(ii) of proposed § 38.856 would require the CRO to have supervisory responsibility over "all staff performing the [DCMs] market regulation functions."[23] We believe we understand and appreciate what the Commission aims to achieve with this requirement, but there may be instances where "non-market regulation staff" perform tasks that support the DCM in its fulfillment of "market regulation functions," as defined in the Commission's Proposal. Most of these tasks or activities serve multiple purposes, which typically would not involve conflicting interests within the DCM. For example, a DCM's operational staff may be responsible for monitoring markets in real-time. This monitoring activity supports the DCM's interest in having a robust and reliable trading platform, which is critical from a commercial and operational resilience perspective. And this activity may simultaneously support the DCM's regulatory obligation to conduct real-time market monitoring to identify disorderly trading and any market or system anomalies under Core Principle 2 and § 38.157.

Operational staff may similarly establish and maintain risk control mechanisms designed to prevent and reduce the risk of price distortions, including mechanisms that pause or halt markets, in satisfaction of Core Principle 4 and § 38.255. Likewise, the DCM's legal, corporate compliance, corporate secretary, human resources, or technology team (or a combination thereof) may be responsible for satisfying a DCM's recordkeeping obligations under Core Principle 18. The matrix of responsibilities likely varies considerably across DCMs.

If the Commission is going to prescribe the supervisory responsibilities of a CRO—which seems unnecessary since the DCM is ultimately responsible for complying with all applicable laws and CFTC regulations—it should limit those responsibilities to market surveillance and investigation activities that fall within the traditional core market regulation functions and that also may give rise to a disciplinary action pursuant to Core Principle 13 and associated CFTC regulations. Because it is these activities that are most susceptible to conflicting interests, the Commission's objective of ensuring that conflicts are

[23] Proposed § 38.856.

appropriately mitigated would still be preserved.[24] Conversely, if the Commission does not adopt our proposed limitation, then proposed § 38.856 would require a CRO to oversee many staff whose primary role is not market regulation, thereby overextending the CRO into operations that it cannot properly or effectively oversee.

Proposed § 38.856(b) sets forth reporting line requirements for the CRO, providing that the CRO must report directly to "the board of directors or to *the* senior officer of the [DCM]" (emphasis added). This requirement differs from the existing supervisory structure contemplated under the DCM Core Principle 16 Acceptable Practices, which provide for the ROC to supervise the CRO.[25] If the Commission is intent on implementing this as a rule, which we do not believe is necessary, we propose that the Commission instead establish a requirement that the CRO report directly to the board of directors or *a* senior officer of the DCM. We believe that this modification would provide DCMs with the flexibility to have CROs report to other, non-revenue generating, senior officers such as the General Counsel or Chief Legal Officer where conflicts between the DCM's commercial and regulatory interests can be minimized. We believe that this modification not only would offer beneficial flexibility, but also would advance the Commission's goal of eliminating conflicts of interest.

5. Conforming Changes – Transfer of Equity Interest

The Commission also proposes to amend regulation § 38.5(c)(1) to expand the types of changes of ownership or corporate or organizational structure that would trigger a notification obligation to the Commission. The proposed amendments would require DCMs to report any anticipated change in the ownership or corporate or organizational structure of the DCM, or its respective parent(s) that would: (i) result in at least a 10 percent change of ownership of the DCM, or a change to the entity or person holding a controlling interest in the DCM, whether through an increase in direct ownership or voting interest in the DCM, or in a direct or indirect corporate parent entity of the DCM; (ii) create a new subsidiary or eliminate a current subsidiary of the DCM; or (iii) result in the transfer of all or substantially all of the assets of the DCM to another legal entity.

We request clarification that the Commission is seeking notification only for the addition or removal of subsidiaries that would have a material impact on the DCM itself. As the Commission is aware, DCMs may sit within a corporate entity that has many subsidiaries, some of which are not directly related to the operation of the DCM. The requirement as currently drafted would be unduly burdensome for DCMs and unnecessary for the purposes of the Commission's rulemaking—namely, to ensure sufficient governance and fitness requirements and appropriate conflict of interest standards *with respect to market regulation functions*.

III. Conclusion

CME Group thanks the Commission for the opportunity to comment on this Proposal. As discussed throughout our comments, we appreciate the importance of robust governance and the Commission's goal of ensuring adequate safeguards are in place to address conflicts of interest. Nevertheless, we urge the Commission to consider the above requests as it finalizes the Proposal. If you have any comments or

[24] Alternatively, the Commission could modify the definition of "market regulation function" in proposed § 38.851(b)(9), limiting the definition to "market surveillance and investigations activities that may give rise to a disciplinary action."
[25] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(ii)(D).

questions, please feel free to contact me at (312) 930-2324 or via email at **Jonathan.Marcus@cmegroup.com**.

Sincerely,

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