CME Group

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Via Electronic Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Clearing Agency Standards for Operation and Governance, SEC Release No. 34-64017 (File No. S7-08-11)(RIN 3235-AL13)

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Securities and Exchange Commission's Notice of Proposed Rulemaking ("Release"), published in the Federal Register on March 16, 2011, seeking comment on proposed rules regarding registration of clearing agencies and standards for the operation and governance of clearing agencies (the "Proposed Rules").

CME Group operates four separate derivatives exchanges, including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. CME Group also operates CME Clearing, a derivatives clearing organization ("DCO") registered with the Commodity Futures Trading Commission ("CFTC") and one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts as well as for over-the-counter derivatives transactions.

CME Group's CDS Business

CME Clearing has cleared index-based credit default swaps ("CDS") since December 2009. These activities have been conducted to date pursuant to temporary conditional exemptive relief granted by the Commission.[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") recognized the value of central counterparty ("CCP") participation in the CDS space and amended the Securities Exchange Act of 1934 to ensure that DCOs such as CME Group that were clearing such swaps before the date of enactment would be "deemed to be registered" as a clearing agency under the securities laws solely for the purpose of clearing security-based swaps.[2] This "deemed registered" provision, which takes

[1] See SEC Release No. 34-63388 (November 29, 2010).
[2] Section 763 of the Dodd-Frank Act.

effect on July 16, 2011, was designed to ensure that there would be no break in already existing clearing services for these products, facilitating increased central clearing of CDS products pursuant to the Dodd-Frank Act's objectives of increasing transparency and reducing systemic risk in the use of swaps and security-based swaps.

The Dodd-Frank Act also clarified regulatory jurisdiction for CDS products. Responsibility for oversight is divided between the CFTC and the Commission. The Commission will ultimately regulate entities that clear "security-based swaps," a term that will include CDS based on single names. The CFTC will regulate entities that clear products that are "swaps," a term that will include CDS based on broad-based indices.[3]

To this point in time, CME Group has cleared only broad-based CDS. However, CME Group plans to offer clearing for CDS based on single names in the future. As a result, CME Group ultimately will be subject to regulation by both the Commission and the CFTC as result of its CDS clearing business, as it is today pursuant to the terms of the Commission's exemptive relief.

The Proposed Rules and Related CFTC Rulemakings

The Proposed Rules include standards for how securities clearing agencies should operate and be governed.[4] Certain requirements in the Release would apply to *all* clearing agencies under the Commission's jurisdiction. Other requirements would apply based on the functional activities performed by a clearing agency, for example, whether the clearing agency performs CCP services or non-CCP services. The Proposed Rules are designed to enhance the existing regulatory framework for the Commission's supervision of clearing agencies.

The CFTC also recently proposed a series of regulations intended to establish and enhance standards for the operation of DCOs. The CFTC's proposed regulations address topics that are similar to those covered by the Proposed Rules including, for example, risk management procedures, participant and product eligibility, DCO governance, settlement procedures, treatment of funds, default rules and procedures and system safeguards. CME Group submitted comprehensive comments on these CFTC clearinghouse proposals.[5] Our comments are generally applicable to the subject matter addressed in the Proposed Rules and we refer to them here and summarize key aspects below.

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[3] See Sections 712, 721 and 722 of the Dodd-Frank Act. The Commission and the CFTC will have concurrent jurisdiction over "mixed swaps".

[4] The Commission has authority under the Securities Exchange Act of 1934 to prescribe rules that are designed to ensure that clearing entities regulated by the Commission are organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors. In addition, Title VII of the Dodd-Frank Act (Section 712) provided the Commission with new authority to prescribe regulations containing risk management standards for clearing agencies clearing security-based swaps.

[5] See Letter from CME Group (Craig Donohue) to the CFTC dated February 7, 2011 regarding general DCO requirements ("DCO Requirements Letter"); Letter from CME Group (Craig Donohue) to the CFTC dated March 7, 2011 regarding DCO risk management requirements ("DCO Risk Management Letter"); and Letter from CME Group (Craig Donohue) to the CFTC dated March 21, 2011 regarding DCO governance requirements ("DCO Governance Letter"). The Letters are available at the following links:
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27556&SearchText=
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31993&SearchText=
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31105&SearchText=

For example, the Proposed Rules set forth certain requirements relating to CCP risk management practices including margin requirements and management of credit exposures. As a general matter, we believe that risk management is not a routine operational process that readily can be subjected to standardized requirements. Risk management needs will vary widely based on product and market characteristics, and CCP risk managers must have the flexibility to assess and adjust their approaches (with appropriate consultation with regulators) as greater data becomes available and when market conditions change. Regulators should therefore avoid proscriptive, rules-based requirements in this area. We do not believe that any regulatory framework, no matter how carefully crafted at the time that it is promulgated, can describe each potential condition that can arise and the necessary actions that can and should be taken to mitigate risk. Furthermore, regulators should not require each clearinghouse to employ the same rigid, standardized set of procedures. Clearinghouses must have appropriate discretion to manage risk effectively.[6]

In addition, the Proposed Rules address clearing member participation requirements and eligibility. CME Group generally supports the regulatory objective of participation requirements that are risk appropriate without being unnecessarily restrictive, in order to promote fair and open access to clearing services. CME Group believes that a diversified, qualified and well-capitalized group of clearing members must play a central role in risk management and systemic-risk containment. Certain components of the Proposed Rules, however, would arguably impose arbitrary constraints on a clearinghouse's ability to establish appropriate admission and continuing eligibility standards for clearing members.[7]

The Proposed Rules require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Securities Exchange Act of 1934, to support the objectives of owners and participants and to promote the effectiveness of the clearing agency's risk management procedures. Further, the Proposed Rules also require clearinghouses to implement policies designed to identify existing or potential conflicts of interest. CME Group favors a principles-based approach in these areas, and we urge the Commission not to adopt hard and fast standards that will be costly to implement and maintain and that yield little or no apparent corresponding regulatory benefits.[8]

The Commission's rulemaking also implements the Dodd-Frank mandate that each clearing agency appoint a Chief Compliance Officer ("CCO"). While CME Group believes that certain aspects relating to the clearing agency CCO requirements are appropriate, other provisions stray too far from Dodd-Frank's mandate and from established compliance practices in the financial services industry.[9] For example, a CCO should not be held to the impossible standard of "ensuring" a firm's compliance with law. Rather, the appropriate standard, one that is actually achievable, would be to require CCOs to put in place measures reasonably designed to ensure compliance with applicable law.

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[6] See DCO Risk Management Letter at page 5.
[7] See DCO Risk Management Letter at page 3.
[8] See DCO Governance Letter at pages 2-3.
[9] See DCO Requirements Letter at pages 2-10.

The Regulation of CDS Clearinghouses should be Uniform

CME Group believes that final Commission rules that are applicable to clearinghouses processing single name CDS should be comparable to the final requirements applicable to clearinghouses clearing index-based CDS to the maximum extent possible. Clearinghouses that clear single name CDS undoubtedly will also clear CDS based on indexes subject to the CFTC's oversight. We do not believe that there are differences between single name CDS and CDS based on indices that justify significant differences in regulatory treatment at the clearing level.

To the extent final rules differ in significant ways, clearing agencies that clear both single name CDS and index-based CDS would obviously be required to address such differences. Compliance costs would be increased. There are certain to be unnecessary operational inefficiencies associated with two sets of compliance standards. Differing rules could also have the unintended consequence of tilting the playing field in favor of one class of instruments. We strongly urge the agencies to make every effort to ensure final rules are conformed to the maximum extent possible in this area.

Issues Regarding Duplicative Oversight

As one of the largest derivatives clearinghouses in the world, CME Clearing is subject to comprehensive oversight by the CFTC, its primary regulator. CME Clearing and other similarly situated DCOs that recently began clearing CDS became subject to the SEC's jurisdiction with respect to those activities. The Commission found that compliance with the enumerated terms outlined in each applicable exemptive order was sufficient to permit these activities. However, the continuing need to extend the temporary orders to facilitate continued CDS clearing has proved cumbersome both for the Commission and for exempted clearinghouses and market participants.

CME Group believes the "deemed registered" provision in Dodd-Frank was intended to facilitate increased CCP clearing of CDS by removing the need for DCOs clearing CDS from having to receive periodic extensions or from having to register initially. It was not intended to reshape the basic division of agency oversight with respect to organizations like CME Group that are primarily futures markets and that also offer clearing for over-the-counter security-based swaps products (that is, single name CDS). The Commission's jurisdiction is clearly limited to regulating the narrow band of CME Group's business falling under its purview, that is, security-based swaps – it does not have authority to regulate CME Group activities that are not related to clearing security-based swaps.

However, a footnote in the Release expresses the Commission's view that eligible clearing agencies like CME Group "will be required to comply with all requirements of the Exchange Act, and the rules thereunder, applicable to registered clearing agencies" to the extent any such entity clears security-based swaps after the effective date of the "deemed registered" provisions. These obligations would include, for example, "the obligation to file proposed rule changes under Section 19(b) of the Exchange Act." This scope is significantly broader than the terms outlined in CME Group's current exemptive order, and would have the effect of subjecting CME Group markets to duplicative and potentially conflicting oversight from two different market regulators. This was not Congress' intent in Dodd-Frank.

As a specific and important example, CME Group is not required to file rule changes with the Commission for advance approval under Section 19(b) under the terms and conditions of its current exemptive order. Compliance with Section 19(b) of the Exchange Act, and the Commission's Rule 19b-4, is a very different standard than the self-certification regime available to CME Group under the Commodity Exchange Act and accompanying CFTC regulations. CME Clearing operates out of Chicago Mercantile Exchange Inc. ("CME"), the same corporate entity that will receive the benefit of the "deemed registered" provision and will therefore be subject to the Commission's jurisdiction.

Obviously, CME should not be expected to make Rule 19b-4 filings with respect to changes in its rulebook that relate to activities that are subject to the exclusive jurisdiction of the CFTC, for example, its futures clearing business. To assert that CME should be required to file *all* proposed rule changes under SEC Rule 19b-4 would render meaningless the separate rule filing requirements applicable under the Commodity Exchange Act and the existing oversight regime of the CFTC. CME Group believes that a more sensible approach is to expect "deemed registered" clearinghouses to continue compliance with the current terms of their respective exemptive orders, or to adhere to some similarly clear and appropriately limited set of requirements that relate directly to the Commission's jurisdiction over security-based swaps. We urge the Commission to clarify the continuing regulatory requirements with respect to oversight of "deemed registered" clearinghouses for security-based swaps clearing, and to coordinate with the CFTC and any other primary regulator of such organizations.

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CME Group generally supports the objectives of the Commission's proposed rulemaking to strengthen the operation of clearing agencies. Clearing agencies play a central role in the financial markets and should be subject to regulatory requirements that are commensurate with their responsibilities. CME Group thanks the Commission for the opportunity to comment on this matter. If the Commissioners or Commission staff has any comments or questions, please feel free to contact me at (312) 930-8275 or Tim Elliott, Director and Associate General Counsel, at (312) 466-7478.

Sincerely,

Craig S. Donohue

cc: Chairman Mary L. Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes