

January 3, 2011

VIA E-MAIL AND ON-LINE SUBMISSION

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
secretary@cftc.gov

Re: Provisions Common to Registered Entities (RIN 3038-AD07)
(Federal Register Vol. 75, No 211, Page 67282)

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges" or "DCMs"), appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Notice of Proposed Rulemaking ("Release") that was published in the Federal Register on November 2, 2010. In the Release, the Commission seeks comment on proposed rules that would implement the statutory framework for certification and approval for new products, new rules and rule amendments submitted to the Commission by registered entities.

CME Group is the world's largest and most diverse derivatives marketplace. CME Group includes four separate 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 includes CME Clearing, 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 through CME ClearPort®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

I. Background

As the Commission notes in the Release, Section 745 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) amends Section 5c of the Commodity Exchange Act (“Act”) to provide for new rule, rule amendment and product certification and approval procedures applicable, among others, to DCMs and Derivatives Clearing Organizations (“DCOs”). Moreover, Section 806(e)(1) of Dodd-Frank requires that a SIDCO¹ provide the Commission with 60 days advance notice of any proposed changes to rules, procedures or operations that could materially affect the nature or level of risk presented by a SIDCO.

The Commission stated that the proposal is intended to “enhance its ability to administer the Act, as amended, ensure consistency with various new requirements of the Dodd-Frank Act and clarify the regulatory obligations imposed on market participants.” We believe that the proposed regulations go far beyond that legitimate purpose and should be modified substantially before final adoption. As written, the proposal would impose significant burdens on DCMs and DCOs; they had no role in causing the events giving rise to the passage of Dodd-Frank and instead thrived as market participants flocked to markets with security and integrity. DCOs and DCMs have an unparalleled track record for successful self-regulation that maintains market and financial integrity while competing in a global environment. The proposed regulations may well reverse this progress; certain provisions of the proposal represent a reversal from the basic tenets of principles-based regulation and harken back to the more prescriptive-based rules of the 1990s.

II. Comments

a. The New Product and Rule Submission Procedures Would Significantly Increase Costs to Registered Entities

Proposed Sections 40.2, 40.3, 40.5 and 40.6, as amended, would set forth certain requirements which, if implemented, would significantly increase the burdens associated with new product submissions, new rules and rule amendments.

1. Increased Documentation Requirements

First, a registered entity would be required to include in its submissions the documentation it relied upon to establish the basis for compliance with applicable provisions of the Act, including applicable Core Principles. Currently, before a product is self-certified or a new rule or rule amendment is proposed, DCMs and DCOs conduct a due diligence review to support their conclusion that the product complies with the Act and Core Principles and provide a requisite certification thereto. The proposed rules would greatly increase the documentation burden associated with the submission process. This requirement imposes a double burden: one on the submitting registered entity and one on the Commission and its staff to review the new

¹ A SIDCO is a DCO that has been designated as a systemically important financial utility by the Financial Stability Oversight Council pursuant to Section 804 of Dodd-Frank.

documentation. For instance, proposed Regulation 40.3 states that registered entities should include with requests for product approval “all documentation” relied upon to determine whether a new product complies with the applicable Core Principle. Such a requirement is vague and provides little guidance in terms of what is required; moreover, this and similar requirements are unrelated to the issues that Dodd-Frank intended to address. The existing principles-based regime, particularly in the area of product development, has enabled the futures industry to grow and to maintain its competitiveness in the global marketplace. A retrenchment of this approach in a portion of the business which has functioned successfully and has not been problematic goes well beyond the scope of that which is mandated by Dodd-Frank. The benefits, if any, to be gathered by this component of the proposal are significantly outweighed by the costs that will be imposed on the marketplace and the Commission.²

2. Requirement for Legal Review and Verification

Second, registered entities would also be required to examine potential legal issues associated with the listing of products and include certain representations related to these issues in their submissions. The entity would be required to provide a certification that it has undertaken a due diligence review of the legal conditions, including conditions that relate to contractual or intellectual property rights, which may “materially affect the trading of the product.” The Release states that the Commission has an interest in verifying that registered entities have an adequate understanding of the legal conditions and constraints that may have a material impact on the trading of these types of products.

The imposition of such a legal due diligence standard is clearly outside the scope of Dodd-Frank, is unnecessarily vague and is impractical, if not impossible, to comply with in any meaningful manner. An entity, such as ours, involved in product creation and design is always cognizant of material intellectual property issues that might arise. We are concerned, however, that an amorphous, and potentially vast, legal diligence requirement would require that a registered entity expand what could reasonably be considered to be a material or colorable intellectual property issues and undertake extensive intellectual property analysis, such as patent, copyright, trademark searches in order to satisfy the regulatory mandates. This would greatly increase the cost and timing of listing products without providing any true corresponding benefit to the marketplace and without any true showing that failure to provide such verification has damaged the marketplace in the past. The point of the self-certification product process which Congress retained in Dodd-Frank is that registered entities that list new products have a self-interest in making sure that new products meet applicable legal standards. Nothing in the last decade of

² Similarly, the proposed regulations add a new provision on emergency standards; it provides, in sum, that emergency rules should be submitted prior to implementation, if practicable, or at earliest time after implementation and in no event longer than 24 hours -- the same documentation standards apply as would be applied to other rule submissions. We believe that these enhanced requirements fail to acknowledge the practicalities in dealing with exigent circumstances and urge that the Commission considering retaining existing emergency action standards.

self-certification suggests that this concept is flawed or that registered entities have employed this power recklessly. This aspect of the Commission's proposal is simply unwarranted.

In practice today, DCMs and DCOs are already subject to and required to certify that their products are not inconsistent with the Act or its regulations. Consequently, any breach of this certification potentially subjects the DCM or DCO to regulatory liability. In addition, in some circumstances, a DCM or DCO may be subject to litigation or other commercial remedies for listing a new product; the avoidance of these costs and burdens is sufficient incentive for the DCM or DCO to avoid undue legal risks.

As a result of the two requirements described above, we have significant concern that the rule submission process would be slowed down considerably. In 2010 alone, we have launched 438 new products and have submitted to the CFTC a total of 342 submissions, including product and rule submissions and amendments. We continue to maintain an iterative dialogue with the Commission staff on both product and rule submissions and believe that this process has worked successfully. Put simply, there is an existing process and it has worked; there is no reason to alter a process that is not broken. In addition, as stated above, we are concerned that the Commission lacks the resources to review all of the materials required to be submitted and we submit that the Commission's resources should be better aligned with implementation of the goals of Dodd-Frank rather than remedying an illusory wrong.

The implementation of the Commodity Futures Modernization Act in 2000 streamlined the product certification and rule submission process and provided the necessary tools for DCMs and DCOs to expand with the rest of the derivative markets. Our ability to compete on a global scale is based upon our ability to be facile and innovative in a competitive environment. In fact, we believe that the proposed rules would reduce incentives for DCMs and DCOs to innovate. For instance, nothing in the proposal would preclude a competitor from utilizing or relying upon documentation previously submitted by a DCM, DCO or SEF to justify its listing of a new product.³ The first mover would be penalized by enabling a competitor to easily replicate its new product.

b. The Proposed "Stay" Provision Should Not Be Applied in All Circumstances

Sec. 40.6 of the proposed regulation provides for a new "stay" provision which would permit the Commission to stay the effectiveness of a rule for a 90-day period in the event that the rule submission presented a novel or complex issue, provided an inadequate explanation or was potentially inconsistent with the Act. The proposal also provides for a 30-day comment period (within the 90-day review period) whenever the CFTC determines to stay a rule and take it under

³ Pursuant to the proposed rules, new product and rule submissions must be posted on the web site at the time of filing. We propose that the Commission consider a grace period of at least one business day to post such submissions to account for the practical and logistical considerations in providing web access.

review. This provision implements comparable provisions contained in Sec. 745 of Dodd-Frank. We believe that the Commission should clarify that the comment period provision should not be mandatorily invoked in the event a rule submission were stayed due to the provision of inadequate information. The purpose of a comment period is to solicit external views with respect to a controversial new rule. This is not the case in the event a filing is stayed for lack of adequate explanation and the opportunity for public comment is not meaningful in such a circumstance.

c. The Scope of the Proposed Approval Procedures for SIDCOs is Overbroad.

Proposed Rule 40.10 would provide that a SIDCO must provide at least 60-day prior notice in the event that a proposed rule submitted by the SIDCO would “materially change the nature or level of risk.” The rule submission would also be required to contain the nature of change, expected effects on the risks to the SIDCO, its clearing members and the market and how the SIDCO plans on managing those risks.⁴ In defining the term materiality in the proposed regulation, the Commission states that the proposed rule involves matters in which there is a “reasonable possibility” that the changes could substantially affect the performance of essential clearing and settlement functions or overall nature or level of risk presented by the SIDCO. It specifically notes in the rule that this would involve changes relating to financial resources, participant and product eligibility, risk management (including margin and stress testing), daily or intra-day settlement procedures, default procedures, system safeguards (including business continuity and disaster recovery) and governance.

While Section 806 of Dodd-Frank establishes a 60-day review period for certain SIDCO rule submissions, we do not believe, nor does the statute prescribe, a mandatory 60-day period for the extensive laundry list of activities as set forth above. It is difficult to suggest, for example, what purpose would be served to impose a 60-day review period for submissions which would operate to improve the operations of the SIDCO. The proposed rule structure already prescribes a 10-day review period for new rules and rule submissions and authorizes the Commission to stay implementation of rules or rule amendments in the event that such a rule presents novel or unique questions or whether a proposed rule is inconsistent with the requirements of the Act. A broad implementation of Section 806 of Dodd-Frank would have little utility except to impede the ability of the SIDCO to operate in a timely (and competitive) manner and could easily be accomplished by other means. We suggest that the Commission should focus on rules which materially increase the level of risk presented by a proposed DCO rule or rule amendment; we believe that this would be consistent with the purpose and policy considerations underlying the relevant provisions of Dodd-Frank.

Moreover, the CFTC has requested comment on whether there are any changes to rules which should not be able to be adopted on an emergency basis. The proposal uses as an example whether there should be restrictions on a SIDCO’s ability to demand significantly higher assessments from clearing members on an emergency basis. In general, we are not in favor of

⁴ A rule proposal would also be required to be filed with the Federal Reserve.

any restrictions on the ability of a DCO such as ours to act in the event of an emergency; in these instances, exigent circumstances require the flexibility to operate within the context of our own rules. The Commission release implies that emergency situations promote unfettered discretion by a DCO when, in fact, our ability to act in an emergency situation stems from emergency rules and procedures which have been, and which will be in the future, vetted by the Commission. Consequently, any wholesale prohibition on a SIDCO's ability to act in an emergency situation in the future is unnecessary.

d. The Prohibition on Event Contacts Should Be Further Defined

The Commission also proposes to prohibit the listing of event contracts based on certain excluded commodities if such contracts involve an activity as enumerated in Sec. 745 of Dodd-Frank. While we understand the policy implications behind such a prohibition, we also believe that certain provisions, such as the prohibition against "agreements, contracts or transactions that involve...gaming" should be further defined and articulated so as to avoid confusion and legal uncertainty in the future. For over 100 years, courts have been interpreting the lines between speculation and gaming-type activities and we are concerned that a blanket prohibition on "gaming" could promote uncertainty and hamper important product innovation in the U.S.⁵

e. De-listing of Products Should Be Made Effective Upon Submission

Proposed Rule 40.6(a)(3) requires that entities such as DCMs and DCOs would be required to provide ten-days notice before implementing a proposed rule change. This provision stems from Sec. 745 of Dodd-Frank; however, we believe that this provision should not be applied to instances where a DCM or DCO has decided to de-list a product. As noted above, we have successfully endeavored to list a significant number of products and, as part of the product updating process, do, upon occasion, de-list inactive products in the event that there is no open interest and no activity for a certain period.⁶ In this instance, a ten-day advance notice requirement serves little purpose and, in fact, may disrupt the de-listing process. During this ten-day period, a market participant could establish a new position, thereby impeding the ability of the DCM or DCO to de-list. Consequently, we believe that registered entities should be able to make product de-listings effective upon submission to the Commission.

III. Conclusion

CME Group's ability to compete on a global scale is based upon our ability to be facile and innovative in a competitive environment. DCOs and DCMs have an unparalleled track record for successful self-regulation that maintains market and financial integrity. Many of the provisions of these proposed regulations, taken in the aggregate, would serve to significantly

⁵ See, e.g., Board of Trade of the City of Chicago v. Christie Grain and Stock Co., 198 U.S. 236, 25 S.Ct. 637 (1905).

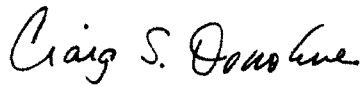
⁶ A total of 65 contracts were de-listed by the CME Group exchanges in 2010.

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increase the costs to registered entities and would significantly slow down their operations. Nothing in the history or purpose of Dodd-Frank supports this result.

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) 930-8275 or via email at **Craig.Donohue@cmegroup.com**, or Christopher Bowen, Managing Director, Chief Regulatory Counsel, at (212) 299-2200 or **Christopher.Bowen@cmegroup.com**.

Sincerely,

A handwritten signature in black ink that reads "Craig S. Donohue". The signature is written in a cursive, flowing style.

Craig S. Donohue

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia