CME Group

July 8, 2013

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: Proposed SEC Rule – Regulation Systems Compliance and Integrity (File No.: S7-01-13; SEC Release No. 34-69077; 78 FR 18083)

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") proposed rulemaking regarding Regulation Systems & Integrity ("Regulation SCI").

CME Group is the parent of five separate derivatives exchanges registered with the Commodity Futures Trading Commission ("CFTC") as designated contract markets ("DCM"), including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX"), the Commodity Exchange, Inc. ("COMEX"), and the Kansas City Board of Trade ("KCBT"). 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 investments. CME also operates a clearing house ("CME Clearing"), registered with the CFTC as a derivatives clearing organization ("DCO"), that offers clearing and settlement services for exchange-traded futures contracts and over-the-counter ("OTC") derivatives transactions including interest rate swaps, credit default swaps ("CDS"), agricultural swaps, and other OTC contracts.

In addition to its registration as a DCO with the CFTC, Section 763(b) of the Dodd-Frank Wall Street Reform and Consumer Protect Act ("Dodd-Frank") deemed CME to be registered with the Commission. This point deserves further attention. In 2009, CME sought and obtained from the Commission temporary exemption, subject to certain conditions, from the requirement that CME register as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") solely to perform functions of a clearing agency for non-excluded CDS transactions.[1] This temporary relief expired when Section 763(b) became effective on July 16, 2011. Specifically, this section provided that "a derivatives clearing organization ('DCO') registered with the CFTC that cleared swaps pursuant to an exemption from registration as a clearing agency prior to the date of the enactment of the Dodd-Frank Act will be deemed

[1] Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps [].”[2]

An important distinction must be drawn between “security-based swaps” referenced above and “swaps.” Dodd-Frank made “security-based swaps,” including single-name and narrow-based index CDS, subject to the exclusive jurisdiction of the SEC. It also made “swaps,” including broad-based index CDS, subject to the exclusive jurisdiction of the CFTC. To date, CME has not cleared any transactions subject to the jurisdiction of the SEC. However, the “deemed registered” provision, according to the Commission, requires CME to comply with all requirements of the Exchange Act and the rules and regulations thereunder applicable to registered clearing agencies. It is under this rubric that CME would potentially be subject to Regulation SCI.

While CME Group largely agrees with many of the proposals within Regulation SCI, there are certain aspects deserving of comments. We strongly believe the benefits of subjecting an entity like CME, which is dually registered with the Commission and CFTC, to the requirements of Regulation SCI is far outweighed by the costs required to comply. We further believe that several of the proposed definitions, namely “SCI systems,” can be more finely tailored and defined without sacrificing any of the contemplated benefits of Regulation SCI. Similarly, the notification and reporting requirements to the Commission and marketplace should be pared back to avoid excessively notifying the Commission and market participants while also preserving SCI entities’ resources. Finally, the Commission’s proposals on business continuity and disaster recovery should be refocused. Each of these items is discussed below.

I. Comments to Questions 1, 2, 88, 122, 130, and 143: The proposed definitions of SCI entity and SCI SRO are overly broad and should be narrowed by excluding entities dually registered with the CFTC where the CFTC is the entity’s primary regulator and excluding all entities that do not play a “significant role” in the markets subject to the Commission’s jurisdiction.

Prefatorily, CME Group commends the Commission’s efforts in drafting the very comprehensive Regulation SCI. Requiring entities to have robust policies, procedures, testing, and accountability relating to capacity, integrity, resiliency, security, and business continuity is critical to maintaining the reliability of U.S. markets that serve the risk management needs of counterparties across the globe. As commented below, however, for *certain entities* the benefits to be achieved under Regulation SCI will be far outweighed by the cost of complying with SCI’s proposals.

In its proposed definition of “SCI self-regulatory organization,” and therefore its definition of an “SCI entity,” the Commission has included all registered clearing agencies without exception. CME proposes two exceptions to this definition. First, CME proposes an exception be made for those entities dually registered with the SEC and CFTC where the CFTC is the entity’s primary regulator. Second, an exception should be made for any entity that does not play a “significant role” in the markets subject to the Commission’s jurisdiction and could not have a “significant impact” on the markets subject to the Commission’s jurisdiction.

[2] *See* Section 763(b) of the Dodd-Frank Act (adding new Section 17A(l) to the Exchange Act, 15 U.S.C. 78q-1(1)).

Before considering the benefits of subjecting an entity to Regulation SCI, due consideration should be given to the significant costs of compliance. From the Commission's paperwork reduction estimates, each entity that historically participated in the SEC's Automation Review Policy inspections ("ARP") will initially be subjected to an additional 2,800+ hours of work to comply with Regulation SCI with an ongoing annual burden of 2,600+ hours.[3] In addition to the work-hour burdens, additional compliance costs will initially total between $400,000 and $3 million per entity with annual ongoing costs between $267,000 and $2 million per entity, according to the Commission.[4] CME believes these burdens are far underestimated and shares the comments submitted by the Municipal Securities Rulemaking Board in this regard.[5]

These significant burdens should be weighed against the purported benefit of subjecting certain entities that are otherwise regulated to the requirements of Regulation SCI. In the case of CME, CME is registered with the CFTC as a DCO, and each of the CME Group exchanges are registered as DCMs. We are thus required to comply with eighteen (18) DCO Core Principles and twenty-three (23) DCM Core Principles. Both sets of core principles include regulatory requirements similar to those proposed in Regulation SCI. For example, DCM Core Principle 20 ("Systems Safeguards") and DCO Core Principle I ("Systems Safeguards") require the CME Group exchanges and CME Clearing to have programs of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems that are reliable, secure and have adequate scalable capacity. We are required, under these Core Principles, to establish and maintain programs to address the following categories of risk analysis and oversight:

- Information security;
- Business continuity-disaster recovery planning;
- Capacity and performance planning;
- Systems operations;
- Systems development and quality assurance; and
- Physical security and environmental controls.

Both of these Core Principles also impose upon CME notification requirements; business continuity testing requirements; as well as obligations to conduct regular, periodic, objective testing and reviews of systems to ensure they are reliable, secure, and have adequate scalable capacity.

Beyond being subject to the strict oversight of the CFTC, CME is subject to the supervision of the Board of Governors of the Federal Reserve System. On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility ("SIFMU") under Title VIII of Dodd-

[3] Requirements to Establish Written Policies & Procedures and Mandate Participation in Certain Testing (initially 580 hours / ongoing annually 378 hours); Notice, Dissemination, and Reporting Requirements (initially 2,255 hours / ongoing annually 2,255 hours); and Requirements to Take Corrective Action, Identify Immediate Notification SCI Events, and Identify Dissemination SCI Events (initially 63 hours / ongoing annually 18 hours).

[4] Regulation Systems Compliance and Integrity, 78 Fed. Reg. 18084-01, 18171-72 (March 25, 2013).

[5] The Commission's Paperwork Reduction Act estimates on work-hour burdens fail to take into consideration management review of any of the Regulation SCI requirements – policies and procedures; Commission notifications; member and participant notifications; periodic review summaries; etc. Factoring in management review could easily double the work-hour burdens estimated by the Commission.

Frank. As a SIFMU, CME is subject to the supervision of the Board of Governors of the Federal Reserve System, which is authorized, among other things, to prescribe risk management standards governing operations of clearing and settlement activities of CME.[6] The objectives of these risk management standards is to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[7]

With this level of oversight already in place, it is unnecessary to subject entities like CME to yet another layer of oversight. Regulation SCI, in fact, acknowledges the inefficiency of its application to certain entities. In its definition of "SCI self-regulatory organization," the Commission has excluded exchanges that list or trade security futures products, notice-registered with the Commission as national securities exchanges pursuant to Section 6(g) of the Exchange Act, as well as any limited purpose national securities association registered with the Commission pursuant to Section 15A(k). Footnote 97 provides that "these entities are security futures exchanges and the National Futures Association ("NFA"), for which the CFTC serves as their primary regulator. The Commission preliminarily believes that it would be appropriate to defer to the CFTC regarding the systems integrity of these entities." It should be no different for other self-regulatory organizations, including registered clearing agencies. Where the CFTC serves as an entity's primary regulator, the Commission should defer to the CFTC.

Deference to the CFTC is even more appropriate when considering whether a dually registered entity plays a "significant role"[8] in the markets subject to the SEC's jurisdiction and could have a "significant impact"[9] on an SEC market. These are the proposed thresholds for determining whether to subject an alternative trading system ("ATS") to Regulation SCI, offered in part because the Commission has recognized that at least some entities, like low volume ATSs, should not be required to comply with and "thereby not incur[] the costs associated with" Regulation SCI. There appears to be no just reason to have a different determining characteristic for any other type of entity.

Since being "deemed registered" with the Commission, CME has not cleared any transactions subject to the SEC's jurisdiction. And while we may opt to clear single name CDS transactions in the future, presently, CME does not. CME, therefore, does not play any role, let alone a "significant role," in markets subject to the SEC's jurisdiction and could not, therefore, have a "significant impact" on an SEC market. There would be no benefit in subjecting CME, a dually-registered clearing agency, to Regulation SCI, incurring the extraordinary costs associated with SCI, if CME could not have a significant impact on an SEC regulated market.

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[6] *See* 12 U.S.C. § 5464 ("Standards for Systemically Important Financial Market Utilities and Payment, Clearing, or Settlement Activities").

[7] As a result of being designated a SIFMU by the Financial Stability Oversight Council, CME is also subject to special certification requirements by the CFTC for submission of rules by systemically important derivatives clearing organizations. *See* 17 C.F.R. § 40.10. This regulation requires CME to provide the CFTC with not less than 60 days advance notice of any proposed changes to its rules, procedures, or operations that could "materially affect the nature or level of risks presented" by CME. The term "materially affect the nature or level of risks presented" includes matters as to which there is a reasonable probability that the change could materially affect system safeguards, among others.

[8] 78 FR 18084-01, 18095.

[9] 78 FR 18084-01, 18094.

Questions 88, 122, 130, and 143 further recognize principles of efficiency and economy. Each asks whether there are SCI entities for which the proposed requirements "would be inappropriate (e.g., not cost effective)." The answer to these questions, as well as Question 2 (whether it is appropriate to defer to the CFTC regarding the systems compliance and integrity of security futures exchange and the NFA), is "yes." There are entities for which the proposed requirements would be inappropriate. And yes, it is appropriate to defer to the CFTC where the CFTC is the primary regulator for an entity also registered with the SEC. The thousands of man-hours and hundreds of thousands, if not millions, of dollars that would be required for each entity to comply with Regulation SCI outweighs the benefit when there is another regulatory body acting in the role of primary oversight, where that oversight includes review of requirements similar to those of SCI, and where the entity's role in the markets subject to the SEC's jurisdiction is limited, if existent at all.

CME Group, accordingly, proposes the Commission exclude from the definition of "SCI entity" and except from the requirements of Regulation SCI dually registered entities where the entity's primary regulator is the CFTC. Alternatively, CME Group proposes that thresholds be created for entities other than ATSs, such that Regulation SCI would only apply to entities that play a "significant role" in markets subject to the SEC's jurisdiction and could have a "significant impact" on an SEC market.

II. Comments to Questions 19, 20, 21, 24, 29, 32, 33, 37, and 42: The proposed definitions of "SCI systems," "SCI security systems," "systems disruptions," "systems compliance issue," "systems intrusion," and "material systems change" are overly broad and should be narrowed by limiting the scope of those definitions to cover only those systems, disruptions, compliance issues, or intrusions that would directly impact a market subject to the SEC's exclusive jurisdiction.

As drafted, Regulation SCI would have SCI entities reporting to the Commission disruptions, compliance issues, intrusions, and systems changes for events and systems that have no relation to markets subject to the Commission's jurisdiction. These definitions should be narrowed to cover only those systems where a disruption, compliance issue, intrusion, or material systems change would be reasonably likely to impact the protection of *securities* investors and the maintenance of fair and orderly markets *that are subject to the SEC's jurisdiction*.

An example best illustrates the overbreadth of the current definitions. CME operates the CME Globex® electronic trading platform. Through CME Globex's advanced functionality, high-reliability, and global connectivity, it is the world's premier marketplace for derivatives trading. Products traded on CME Globex (futures contracts and options on futures contracts) are subject to the CFTC's exclusive jurisdiction. We do not offer trading of any product subject to the SEC's jurisdiction on CME Globex. However, CME Globex would nevertheless fall into the definition of an SCI system – "all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, whether in production, development, or testing, that directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance." And if CME Globex were to be defined as an SCI system, it would also fall within the other definitions and rules that rely on the definition of an SCI system, including systems disruptions, systems compliance issues, systems intrusions, and material systems changes. It

seems unlikely the Commission intended its draft rules to cover systems that have no direct relation to markets under its jurisdiction.

Question 20 is the best source for properly scoping these definitions. Question 20 asks whether the proposed definitions of "SCI systems" and "SCI security systems" are sufficiently clear and whether the definitions "appropriately capture the scope of systems of SCI entities that would be reasonably likely to impact the protection of investors and the maintenance of fair and orderly markets." As noted above, CME does not believe the definition of "SCI systems" is sufficiently clear because of its unlimited scope – it captures systems operated by an SCI entity that have practically no relevance or relation to SEC markets. If the intent of the definitions was to capture the systems reasonably likely to impact securities investors and the maintenance of fair and orderly markets subject to the SEC's jurisdiction, as suggested in Question 20, then the definition of "SCI systems" should reflect this.

By modifying the definition of "SCI systems" to include only those "systems that would be reasonably likely to impact the protection of securities investors and the maintenance of fair and orderly markets subject to the SEC's jurisdiction," the remaining definitions that reference SCI systems will also have proper scope. SCI entities would report to the Commission "material systems changes" to "SCI systems" that could impact an SEC regulated market. Likewise, entities would report "systems intrusions" ("an unauthorized entry into the SCI systems") and "systems disruptions" ("an event in an SCI entity's SCI systems") when there is an intrusion into or disruption on a system that would be reasonably likely to impact an SEC regulated market.

Furthermore, the definition's inclusion of systems in development or testing is unnecessary. A system in development or testing does not remotely present the same risk as a system in production. A "system disruption" to an SCI system in development would not result in a failure to maintain service level agreements; it would not result in a "disruption of normal operations;" it would not result in a loss of transaction or clearance and settlement data; it would not result in a diminution of the ability to disseminate market data; it would not result in a queuing of data between systems. If it did any of the above, the system would no longer be operating in a development or testing environment – it would have had to have escaped into one of the production environments, in which case it would be covered by the definition of "SCI systems." Systems in development or testing should be deleted from the definition of SCI systems.

These modifications not only would make the Commission more efficient by isolating events to those under its jurisdiction where there might be an impact to securities investors or the securities market, but it would further the goal of avoiding redundant, inconsistent, or overlapping regulations shared with the CFTC. CME, therefore, proposes that the Commission modify its definition of "SCI systems" to read as follows:

> The term SCI systems means all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, in a production environment that *would be reasonably likely to impact the protection of securities investors and the maintenance of fair and orderly markets subject to the SEC's jurisdiction and* directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance.

III. Comments to Questions 107, 110, 113, and 114: Rule 1000(b)(4) and the Commission notification requirements are vague and overly burdensome, and should be modified by modifying the definition of "responsible SCI personnel" and honing the notification requirements by requiring only significant events to be reported on a near-term basis, reserving reporting of non-significant events to semi-annual or annual reports.

CME fully appreciates that the Commission needs to be notified of certain events in order to carry out its oversight function and to protect its markets and investors. However, the rules need refining. Imposing upon SCI entities notification obligations based on "any personnel" having responsibility for a system, including "a junior systems analyst responsible for monitoring the operations or testing of an SCI system or SCI security system," becoming aware of an event is too far-reaching. The triggering event for Commission notification should be when senior management, who have more experience and greater perspective, become aware of an SCI event. Further, the notification requirements can be drastically pared back without impacting the robustness or effectiveness of a notification regime.

Responsible SCI Personnel

The notification requirements of Regulation SCI hinge on the timing of "responsible SCI personnel" becoming aware of an SCI event. The definition provides that this term means "for a particular SCI system or SCI security system impacted by an SCI event, any personnel, whether an employee or agent, of the SCI entity having responsibility for such system." At CME, all 2,700+ employees are responsible personnel – each has an obligation, a responsibility, to perform the functions associated with his or her role. In terms of systems, there could be dozens of employees with varying levels of experience who have some level of responsibility for a system. However, not all personnel having responsibility for a system necessarily have accountability for or ownership of the system as a whole. That is held by certain senior managers, who have experience and perspective to guide their decision-making.

Experience and perspective are critical in properly assessing an SCI event. A junior analyst, by way of example, may identify an event, but may not have the experience and perspective necessary to ascertain whether it resulted in a failure to maintain service level agreements; a disruption of operations; a loss of use of any system; a loss of transaction or clearance and settlement data; a backup or delay; a diminution of the ability to disseminate market data; or a queuing of data between systems. Since the notification timing requirements hinge on when someone at the SCI entity became aware of a reportable event, it is critical to have that "awareness" component tied to personnel who can properly assess the event to determine whether there appears to be an SCI event.

In response to Question 107, CME therefore proposes that the definition of "responsible SCI personnel" be modified and limited to senior management accountable for the particular SCI system or SCI security system impacted by an SCI event.

Commission Notification

Once "responsible SCI personnel" become aware of an SCI event, notification requirements are triggered. From the commentary to proposed Rule 1000(b)(4), there appear to be two timeframes at play – immediate notification; and notification within 24 hours.[10] Both notification timeframes should be modified.

First, as drafted, Regulation SCI would require an SCI entity to immediately (in writing or orally) notify the Commission upon any responsible SCI personnel becoming aware of a system disruption that the SCI entity reasonably estimates would have a "material impact" on its operations or on market participants. An entity would be required to immediately notify the Commission upon any reasonable SCI personnel becoming aware of a systems compliance issue. And an entity would be required to immediately notify the Commission upon any system intrusion. Proposed Regulation SCI also refers to these "immediate notification SCI events," including system disruptions that would have a "material impact," as "significant SCI events."[11]

For immediate notification events, the Commission should preface each of the SCI events with the word "significant." For example: significant systems disruptions that the SCI entity reasonably estimates would have a material impact on its operations or on market participants; significant systems compliance issues; or significant systems intrusions. This emphasis is necessary to ensure the Commission is receiving notification of meaningful events that may necessitate Commission involvement as opposed to practically any event.

For example, the term "systems compliance issue" is very broad (and vague). It is defined as "an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the federal securities laws and rules and regulations thereunder or the entity's rules or governing documents, as practicable." The commentary offers that this would include instances where a lack of communication between an entity's IT staff and its legal staff has resulted in a system operating in a manner not incompliance with the entity's rules, "and, thus, in a manner other than how the users . . . have been informed that such systems would operate." The definition does not include any measure of harm or impact to the users or marketplace. It could conceivably relate to a miscommunication about a deferred month contract with zero open interest, zero market depth, and zero interest from the marketplace. Yet because of how broadly the term is defined, the issue would become immediately reportable to the Commission. By limiting the notification requirements to "significant" events, the Commission could focus on those events that have relevance.

Second, SCI entities must notify the Commission in writing on Form SCI of any SCI event within 24 hours pursuant to Rule 1000(b)(4)(ii). This includes "immediate notification SCI events" and any other SCI event (which necessarily only adds non-material systems disruptions as all other types of SCI events are

[10] Proposed Rule 1000(b)(4)(i) merely says "upon any responsible SCI personnel becoming aware." The commentary, however, expresses that this is an "immediate" notification requirement. "Immediate notification SCI event" is quoted parenthetically in the commentary, but it is not defined in the definition section of the rules.

[11] *See* 78 FR 18084-01, 18118 ("The Commission preliminarily believes an SCI entity's obligation to notify the Commission of significant SCI events should begin upon any responsible SCI personnel becoming aware of an SCI event. Thus, for all immediate notification SCI events, an SCI entity would be required to notify the Commission of the SCI event.").

immediately reportable as discussed above). This timeframe is too aggressive. It does not afford an SCI entity sufficient time to gather information to enable it to present informed or useful information to the Commission – at least not the type of information required by Form SCI and its Exhibit 1.

These documents, Form SCI and Exhibit 1, would require an SCI entity to provide a detailed description of the event; the entity's current assessment of the types and numbers of market participants potentially affected; the potential impact on the market; and the entity's current assessment of the event, including whether the entity would have to disseminate information to the public about the event. Even if all this information were ascertainable within 24 hours of an event, the Commission has estimated it will take an SCI entity **20 hours** to prepare this documentation "with a compliance manager and in-house attorney each spending approximately 10 hours in collaboration to draft, review, and submit the report."[12] The mere fact that the Commission estimates it will take 20 hours for two people to draft a report emphasizes that this is an enormous burden to accomplish in the first 24 hours after an event occurs.

A more reasoned approach would be to extend the notification requirements in Rule 1000(b)(4)(ii) to 48 hours. This will allow entities sufficient time to gather information and provide the Commission with a report that is meaningful. Moreover, the Commission still will have received notifications of significant events "immediately," so it is not without information.

In addition to extending the written notification requirements of Rule 1000(b)(4)(ii) to 48 hours, CME proposes that this written notification requirement only apply to "immediate notification SCI events." If "immediate notification SCI events" is modified as we recommend –significant systems disruptions, significant systems compliance issues, and significant systems intrusions – the Commission will have all the information necessary to perform its oversight role. This would also drastically reduce the burden on each SCI entity that would otherwise be required to devote 20 hours to preparing a report for each non-significant event.

We would propose that all other notifications of events (non-significant SCI events) be subject only to a recordkeeping requirement, particularly where the reporting entity has another primary regulator, such as the CFTC. This is a just compromise when weighing the benefit of the Commission receiving notifications of non-significant SCI events against the cost of each SCI entity devoting 20 hours to writing a report.

IV. Comments to Questions 116, 117, 118, 119: Rule 1000(b)(5) and the Dissemination of Information to Members or Participants requirements should be limited to only those events that are likely to have a significant impact on the members or participants.

CME agrees with the spirit of Rule 1000(b)(5) that would require SCI entities to disseminate information to members or market participants when there are certain types of events. However, like other parts of Regulation SCI, this needs to be pared back. Excessively notifying the marketplace will only lead to a dilution effect, creating an under-emphasis for those events that could actually have an impact on the marketplace. At a minimum, SCI entities should only be required to disseminate information about events that would result in significant harm or loss to market participants. While this is already a factor for

[12] The Commission has estimated this reporting requirement will require 1,300 hours annually per SCI entity.

disseminating information about system disruption events, there are not similar limitations on disseminating information about systems compliance issues or systems intrusions. Further, the Commission should avoid setting prescriptive requirements surrounding the type of information required to be disseminated. If required to notify the marketplace of an event, the SCI entities should be accorded sufficient flexibility in tailoring the message.

As drafted, Regulation SCI would have SCI entities "promptly" disseminate information to the marketplace whenever there is a "systems disruption" that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants, and whenever there is a "systems compliance issue" or "systems intrusion." These latter two requirements are too broad. As discussed previously, an SCI entity could have a "systems compliance issue" that would have absolutely no impact on the marketplace. It could be entirely inadvertent, an oversight. Requiring the entity to notify the marketplace of this type of event serves no purpose. Similarly, notifying the marketplace about any systems intrusion, no matter how remote from a trading or clearing environment, will only serve to create panic in unwarranted scenarios or alternatively will dilute the effect of all notifications. Both "systems compliance issue" and "systems intrusion" should be modified like "systems disruption" – it is a disseminable event only when it results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

In addition to modifying the types of events that must be disseminated, the Commission should pare back the information that must be disseminated and to whom. As drafted, an SCI entity would be required to promptly disseminate "to its members or participants" information about the systems affected by the event with a summary description of the event. The entity would then have to further disseminate, when known, a detailed description of the event; the entity's assessment of the types and number of market participants potentially affected; and a description of the progress of the entity's corrective action and when the event is expected to be resolved. The Commission should not place such prescriptive requirements on SCI entities.

SCI entities should only be required to disseminate information to impacted, or potentially impacted, members or participants. Requiring entities to disseminate information to all members or participants, which is how Rule 1000(b)(5)(i)(A) can be interpreted, would result in excessive notifications, again leading to a dilution effect. Further, SCI entities should be afforded sufficient flexibility in notifying the marketplace about events. The entities have a vested interest in maintaining the integrity of their markets and are in the best position to determine what type of information the marketplace needs to make informed decisions. The different bits of information noted in Rule 1000(b)(5)(i) would be better issued as guidance than prescriptive requirements.

V. Comments to Questions 124, 127, 128, and 141: The 30-day Notification of Material Systems Changes requirement imposed by Rule 1000(b)(6) and the obligation to update the Commission on a semi-annual basis the status of such material systems changes, pursuant to Rule 1000(b)(8)(ii), are too burdensome. The same can be accomplished with less frequent and onerous reporting.

Proposed Rule 1000(b)(6) would require SCI entities to provide the Commission with 30 days advance notice of all material systems changes. Entities would be further required to update the Commission twice

per year in a periodic report, submitted pursuant to Rule 1000(b)(8)(ii), summarizing the progress of any material systems change during the preceding six months. Certainly, the Commission's intent with Regulation SCI is not to micromanage SCI entities. However, this level of reporting is excessive.[13] Rather than requiring SCI entities to engage in excessive semi-annual reporting under Rule 1000(b)(8)(ii), the Commission should instead require entities to have proper change control processes and procedures. Alternatively, these updates can be provided in an entity's annual SCI review report submitted pursuant to Rule 1000(b)(8)(i). And instead of setting firm time limits under which an entity is required to submit notifications of material systems changes under Rule 1000(b)(6), the Commission should instead simply require "timely advance notice of all material planned changes to SCI systems that may impact the reliability, security, or adequate scalable capacity of such systems."[14]

VI. Comments to Question 160: Rule 1000(f), which would require SCI entities to provide the Commission with access to their systems, unnecessarily creates risk and is unwarranted.

One of the most overreaching components of Regulation SCI is Rule 1000(f). It is plainly dangerous from a security perspective. As drafted, it would require SCI entities to provide the Commission with access to the entities' SCI systems and SCI security systems. The Commission believes this is consistent with its current authority with respect to accessing records. However, footnote 284 cannot be overlooked. It provides that with this access "Commission representatives could test an SCI entity's firewalls and vulnerability to intrusions." Having access to an entity's records does not create risk. Opening an entity's systems to external influences does. If the Commission simply wants to "evaluate an SCI entity's practices with regard to the requirements of proposed SCI," as stated in its justification for Rule 1000(f), it can do this through the other interactions with and reports of an SCI entity.

In addition to equating Rule 1000(f) to the Commission's authority to obtain records pursuant to Section 17(b) of the Exchange Act, footnote 286 of Regulation SCI provides that the Commission believes Rule 1000(f) is also authorized by Sections 11A (the establishment of a National Market System for securities); 6(b)(1) (registration of national securities exchanges); 15A(b)(2) (registration of national securities associations); and 17A(b)(3)(A) (registration of clearing agencies). CME, respectfully, disagrees. None of these provisions grant the Commission authority to access systems of a regulated entity.

Rule 1000(f) should be stricken in its entirety.

[13] The Commission has estimated that each SCI entity will submit approximately 60 notifications of material system changes on an annual basis, pursuant to Rule 1000(b)(6), and that each of these notifications would require an average of 2 hours to prepare and submit. Further, the Commission has estimated that each semi-annual report updating the Commission on the status of material system changes, pursuant to Rule 1000(b)(8)(ii) will take approximately 60 hours to prepare.

[14] Note, this will create regulatory comity with the CFTC, which requires its DCMs and DCOs to provide "timely advance notice" of "automated systems that are likely to have a significant impact on the reliability, security, or adequate scalable capacity of such systems." *See* 17 C.F.R. § 39.18 and 17 C.F.R. § 38.1051.

VII. Comments to Question 75, 77, 144, 145, 146, 149, 152, and 153: Regulation SCI's proposals related to business continuity and disaster recovery plans are justified in light of the securities market recovery after Superstorm Sandy, however, mandating participation in testing and imposing burdensome reporting requirements will likely have a negligible effect on future recovery efforts.

One vital lesson learned from Superstorm Sandy is that no matter their preparedness and technological ability to operate, firms will not jeopardize the safety and security of their employees in any circumstance. Therefore, mandating that firms participate in business continuity and disaster recovery testing will have little impact unless firms are also required to maintain backup resources that are geographically diverse and have the ability to timely recover. That, however, should not be prescribed by regulation with the burden of enforcement on SCI entities. It should be an effort by the Commission in corroboration with the industry, and other regulators, and with coordination with transportation, telecom, and utility sectors. The first step in this effort can be accomplished through Regulation SCI and it should focus on the SCI entities' ability to recover – mandating annual testing, requiring aggressive recovery time objectives, and obligating geographic diversification for backup systems. For now, though, participation by member firms should not be made mandatory.

Mandated Testing

CME, like many other registered entities, devotes significant resources to having robust and effective business continuity and disaster recovery plans. Our rules explicitly require clearing members to have written disaster recovery and business continuity policies and procedures[15]. We further require that clearing members perform periodic testing of their disaster recovery and business continuity plans, duplicate critical systems at backup sites, and periodically back-up critical information. However, we do not require the firms to participate in our testing. Participation is voluntary, and our business continuity and disaster recovery plans have never been "undermined by a lack of participation" by our members.

The last annual Futures Industry Association ("FIA") industry-wide clearing disaster recovery exercise took place on October 27, 2012 – just two days before Superstorm Sandy struck New Jersey. And despite several market participants preparing for the storm, 65% of CME's clearing member firms participated in the exercise, representing nearly 90% of our average daily cleared trade volume. We have had similar participation in other exercises as well. A mandatory regime is unnecessary when we are able to have such successful turnout on a voluntary basis.

If the Commission insists on forcing participation in functional and performance testing, Regulation SCI should not prescribe standards by which entities must designate members or participants. Each market is different, and each product traded or cleared within those markets is different. Volume thresholds, market share percentages, geographic location, settlement bank location, hours of trading, types of market participants (market makers, proprietary firms, brokers, etc.) may all be factors taken into consideration, but no single factor or combination of factors fits all markets. Because of this, SCI entities should be accorded significant discretion in determining which of its members or participants it deems necessary for the successful activation of our business continuity and disaster recovery plans.

[15] *See* CME Rule 983 (Disaster Recovery and Business Continuity), available here: http://www.cmegroup.com/rulebook/CME/I/9/9.pdf.

Further, if the Commission insists on forcing participation, SCI entities should not be required to provide the Commission with written notification of its "designated members or participants" or promptly update the Commission after any changes to its designations or standards, as would be required under proposed Rule 1000(b)(9)(iii). A simple recordkeeping requirement would serve the same purpose with far less burden on an SCI entity.

Finally, the Commission should not mandate industry- or sector-wide testing in the manner it has. As drafted, Rule 1000(b)(9)(ii) would require each SCI entity to "coordinate the testing of [its business continuity and disaster recovery plans] on an industry- or sector-wide basis with other SCI entities." While this is certainly a good goal to aspire toward, there is far too much outside of the control of a single entity to place such an affirmative burden on it. Further, the FIA and SIFMA already coordinate industry-wide testing. At most, the rule should provide that SCI entities are required to attempt to coordinate industry- or sector-wide testing.

Other Business Continuity & Disaster Recovery Obligations

Related to business continuity and disaster recovery, Rule 1000(b)(1)(i)(E) would require SCI entities to have policies and procedures related to the maintenance of backup and recovery capabilities that are sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption. This is where the Commission should focus its efforts. The first step in successfully recovering from a wide-scale disruption comes from the exchanges and clearinghouses themselves.

There are several questions related to Rule 1000(b)(1)(i)(E) that are deserving of comments. Question 77 asks whether the Commission should require user testing and certification prior to resuming operation of the affected systems after a system disruption or activation of an entity's business continuity plan. First, CME is aware of no evidence or case study that suggests the absence of a testing and certification environment has had any detrimental impact to a market's opening after a disaster recovery event. Second, in a disaster recovery setting, requiring user testing and certification prior to resuming operations would only add time to the recovery objective. At CME, we employ a pre-open phase prior to the resumption of any market after a halt or failover to backup systems. The pre-open is a predetermined time before the trading session opens when customers can begin entering, modifying and canceling orders but no trades are executed. This has proved more than sufficient for firms to ensure they have the ability to enter, modify, and cancel orders. This further allows us to identify potential issues with our systems prior to resuming operations. CME does not believe that requiring user testing and certification has any additional benefit.

Also, Question 75 asks whether business continuity and disaster recovery plans involving backup data centers should be required to be tested in a live "production" environment on a periodic basis. CME believes this would create unnecessary risk. Any change between environments requires immense coordination of resources, which inherently adds risk. Furthermore, requiring entities to switch between a production environment and its backup (which would presumably be in a geographically diverse area) would cause significant disruption for those market participants who have made considerable investments in having their production environments in close proximity to the exchanges'. If those market participants

choose to withdraw from the market during the "periodic" switch-over, the markets in general could suffer from the loss of liquidity. These risks must be taken into consideration.

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CME Group commends the Commission's efforts in drafting the very comprehensive Regulation SCI. However, for reasons set forth in this comment letter, CME Group believes Regulation SCI needs to be significantly pared back and refined. We further stress that entities like CME that are dually registered with the CFTC where the CFTC is the primary regulator should be excepted from the requirements of Regulation SCI. At a minimum, we believe Regulation SCI should be tailored toward those entities and systems that play a significant role in and could have a significant impact on the Commission's markets. We thank the Commission for the opportunity to comment on this matter, and we would be pleased to discuss any of these issues with Commission or its staff. If you have any comments or questions, please feel free to contact me at [redacted] or Andrew Vrabel at [redacted]

Sincerely,

Joseph Adamczyk
Executive Director, Associate General Counsel
CME Group Inc.