Sunil Cutinho
Senior Managing Director and President
CME Clearing

CME Group

09/13/2019

VIA ELECTRONIC SUBMISSION

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Re: RIN3038-AE66: Derivatives Clearing Organization General Provisions and Core Principles

To Whom It May Concern:

CME Group Inc. ("CME Group")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") notice of proposed rulemaking on Derivatives Clearing Organization General Provisions and Core Principles (the "NPR").[2]

Chicago Mercantile Exchange Inc. ("CME") is a wholly-owned subsidiary of CME Group. CME is registered with the CFTC as a derivatives clearing organization ("DCO") and is one of the largest central counterparty clearing services in the world. CME's clearing house division ("CME Clearing") offers clearing and settlement services for listed futures and options on futures contracts ("exchange-traded derivatives"), as well as over-the-counter derivatives transactions, including interest rate swaps products. On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). As a SIFMU, CME is also a systemically important DCO ("SIDCO").

We appreciate the work done by the CFTC, represented by this NPR, to make its regulations less burdensome and costly. However, we believe that the proposed amendments in the NPR, in aggregate, will increase, rather than reduce, the regulatory burdens on DCOs and the markets they clear.[3] In several instances, the potential economic impacts on DCOs and their markets and

[1] As a leading and diverse derivatives marketplace, CME Group enables clients to trade in futures, cash and over-the-counter markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME Group's exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products, and metals. CME Group offers futures trading through the CME Globex platform, fixed income trading via BrokerTec, foreign exchange trading on the EBS platform, and central counterparty clearing services at CME Clearing, a division of Chicago Mercantile Exchange Inc. With a range of pre- and post-trade products and services underpinning the entire lifecycle of a trade, CME Group also offers optimization services through TriOptima, and trade processing and reconciliation services through Traiana.

[2] Derivatives Clearing Organization General Provisions and Core Principles, 84 Fed. Reg. 22226 (May 16, 2019).

[3] *Compare* Letter from CME Group to CFTC re Request for Public Input on Simplification and Modernization of Rules (Project KISS) (RIN 3038-AD52), dated Sept. 29, 2017, ***available at*** https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61393&SearchText=cme.

participants could be quite pronounced.[4] Notably, the proposed amendments for new product notification, customer margining, and the new Federal Reserve Bank accounts and services regulations could create significant burdens.

In particular, we caution against the Commission's proposed new product notification requirement since such requirement would be inconsistent with the Commodity Exchange Act ("CEA"), Congressional intent, the risk management needs of market participants, and past Commission action on new product launches. Conversely, we believe our other concerns with the proposals contained in the NPR could be alleviated through adjustments to the proposed regulatory text. We expand on these views below.

Specific Comments

New Product Accepted for Clearing

The Commission is proposing to adopt new § 39.19(c)(4)(xxvi), which would add a step to the product approval process by requiring a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing. In the preamble of the NPR the Commission states that it is proposing this change solely "because § 40.2 requires a DCM or SEF to make a submission to the Commission prior to listing a product for trading that has not been approved under § 40.3, but there is currently no comparable requirement applicable to DCOs."[5] While this rationale suggests the proposed change is only technical or non-controversial, it is neither.

As explained below, CME Group believes that the proposed 30-day notice period directly contradicts the product certification processes as contemplated by the CEA, including the amendments to those processes in the Dodd-Frank Act. In particular, the current product certification process under § 40.2 for designated contract markets ("DCM") imposes only a 1 business day notification for new exchange-traded derivatives contracts to be listed; such contracts cannot be lawfully listed for trading on a DCM without being immediately available for clearing, which is recognized and accounted for under the current product certification process. Moreover, the Commission's stated reason for the 30-day notice period in the NPR is inconsistent with other statements in the NPR, the Commission's prior actions and statements in favor of the current product listing framework, and the Congressional intent underlying the CEA.

a. *The proposed 30-day notice period directly contradicts the product certification process as set forth in the CEA, including the amendments in the Dodd-Frank Act.*

The proposed 30-day notice period directly contradicts the product certification process for exchange-traded derivatives in the CEA as enacted by Congress in 2000 and ratified by Congress in the Dodd-Frank Act; the timeline for a DCM to list an exchange-traded derivatives product is significantly different than the notice period proposed in the NPR for a DCO to clear such a product. The product self-certification process was specifically designed by Congress and endorsed by the Commission to provide the appropriate level of flexibility for registered entities. To that end, CEA Section 5c(c) only requires that a registered entity submit to the CFTC a written certification that the new product complies with the CEA and CFTC regulations.[6] The CEA does

---

[4] *See* Office of Mgmt. & Budget, Memorandum No. M-19-14, "Guidance on Compliance with the Congressional Review Act" (Apr. 11, 2019). The impact of the NPR could potentially be significant enough to qualify as a major rule as defined by the Congressional Review Act and interpreted by the Office of Information and Regulatory Affairs.

[5] NPR at 22242.

[6] *See* 7 U.S.C. § 7a-2(c)(1).

not otherwise restrict a registered entity's self-certification of a new exchange-traded derivatives product. In implementing CEA Section 5c(c), the CFTC added only one procedural requirement: that the CFTC must receive a new product certification at least 1 business day before the product's listing.[7]

In 2010, Congress carefully reviewed and amended CEA Section 5c(c) in the Dodd-Frank Act but left intact the product self-certification process which had been in place since 2000. Legislative history confirms that Congress specifically preserved the flexibility of the existing product self-certification process—a strong indication that the CFTC should not implicitly vitiate the approach set by Congress under CEA Section 5c(c).[8]

1. Prescriptive Approach: Pre-Commodity Futures Modernization Act ("CFMA")

Before 2000, the CEA required a DCM planning to list any new exchange-traded derivatives product to first receive the CFTC's affirmative approval for the new product. The Commission had 180 days or "such longer period as the contract market may agree to" to approve a new product application and, if the Commission instituted a proceeding to determine whether the submission should be disapproved, one year to conclude the disapproval proceeding.[9] This prescriptive, inefficient approach was viewed as cumbersome and time-consuming, often hampering the ability of U.S. exchanges to respond quickly to changes in the marketplace to serve the risk management needs of their market participants.

2. Self-certification: CFMA

In 1999, when Congress solicited industry feedback on the pre-2000 exchange-traded derivatives product approval process, market participants uniformly urged Congress to streamline the process.[10] The CFTC itself was proposing reforms in the product approval area and proposed to permit DCMs "to list new products based only on their certification that the contract and its rules do not violate any applicable provision of the [*CEA*] or Commission rules."[11] In December 2000, Congress responded to these recommendations by enacting the CFMA, which authorized registered entities to "self-certify" a new exchange-traded derivatives product for listing instead of seeking the CFTC's approval.[12] By statute, therefore, registered entities electing to self-certify need only to submit a written certification to the CFTC that the new product complies with the CEA and CFTC regulations. DCMs could then list the new product starting the second business

---

[7] *See* 17 C.F.R. § 40.2.

[8] *Compare* S. 3217, 111th Cong. 2d Sess., § 725(d) (as introduced, Apr. 15, 2010) (imposing a 10-day review period for product and rule certifications) *with* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1735, codified at 7 U.S.C. 7a-2(c)(2) (imposing a 10-day review period for rule certifications *only*); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion[,]" and that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.") (citations omitted).

[9] 7 U.S.C. § 7a(a)(12)(A) (1999).

[10] *See Reauthorization of the Commodity Futures Trading Commission: Hearings Before the Subcomm. on Risk Management, Research, and Specialty Crops of the H. Comm. on Agriculture*, 106th Cong., 1st Sess. 126, 151, 264, 311 (May 18, 20 & June 8, 1999) (testimonies of Patrick Thompson, then-president of New York Mercantile Exchange; James Bowe, then-president and CEO of the Board of Trade of the City of New York; Edward Rosen, speaking on behalf of a coalition of investment and commercial banks; and William Miller, then-chairman of the End-Users of Derivatives Council of the Association for Financial Professionals).

[11] A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 Fed. Reg. 38986, 38992 (June 22, 2000) (proposed rule). The CFTC had proposed a similar product self-certification provision in November 1999. *See* Proposed Revision of the Commission's Procedure for the Review of Contract Market Rules, 64 Fed. Reg. 66428–30 (Nov. 26, 1999).

[12] Commodity Futures Modernization Act, Pub. L. No. 106-554, App. E, tit. I, § 113, 114 Stat. 2763, 2763A-400 (2000) (codified as amended at 7 U.S.C. § 7a-2(c) (2010)).

day following the submission of written certification.[13] Under longstanding statutory and regulatory requirements, any new exchange-traded derivatives product that was listed for trading on a DCM was also required to be cleared.[14] Thus, the process approved by Congress and the Commission contemplated that new exchange-traded derivatives products, once listed, would be immediately available for clearing.[15]

In enacting the CFMA, Congress made it clear that the statute's purposes, among others, were to: (1) "streamline and eliminate unnecessary regulation for the commodity futures exchanges;" (2) "transform the role of the Commodity Futures Trading Commission to oversight of the futures markets" from that of the frontline regulator; (3) "promote innovation for futures and derivatives;" and (4) "enhance the competitive position of United States financial institutions and financial markets."[16] Thus, Congress clearly responded to the concerns that exchanges and market participants had raised with respect to the product approval process under the CFTC's earlier, more-prescriptive regulatory scheme.

3. Product Self-Certification Status Quo: Dodd-Frank Act

The Dodd-Frank Act made major amendments to the CEA but left intact the self-certification process for new exchange-traded derivatives products. The legislative history of the Dodd-Frank Act confirms what is already clear from the text of CEA Section 5c(c): that Congress purposefully insulated the certification process for exchange-traded derivatives products from more burdensome requirements.[17] Prior to the Dodd-Frank Act, Congress and the CFTC had agreed that the listing of new products and rule changes could generally be made effective the second business day following self-certification to the Commission.[18] When enacting the Dodd-Frank Act, Congress carefully reviewed the self-certification process and amended the process in three ways. The first two amendments affected the process for registered entity rule changes, but ***not*** the listing of new products. First, Congress specified that a new rule or rule amendment certified to the CFTC becomes effective 10 business days after the CFTC receives certification, unless the CFTC provides for a shorter review period.[19] Second, Congress provided the CFTC with authority to stay certification of a new rule or rule amendment.[20] Third, Congress enacted special rules for the review and approval of event contracts and swaps.[21] ***None of these changes affected registered entities' ability generally to list a new exchange-traded derivatives product on the second business day after submitting self-certification to the CFTC***.

The legislative evolution of these amendments in the Dodd-Frank Act confirms that Congress made a deliberate choice to leave untouched the exchange-traded derivatives product listing and clearing process. When the Senate bill that eventually became Title VII of the Dodd-Frank Act was first introduced in April 2010, the legislation initially contemplated requiring a 10 business day review period for ***all product and rule certifications*** submitted to the CFTC by registered

---

[13] 17 C.F.R. § 40.2 (2002).
[14] *See* 7 U.S.C. § 7(d)(11)(A); 17 C.F.R. § 38.601.
[15] *See infra* pp. 7–8 Section c.
[16] Commodity Futures Modernization Act, Pub. L. No. 106-554, App. E, § 2, 114 Stat. 2763, 2763A–366 (2000).
[17] *See supra* notes 10, 12.
[18] *See* 7 U.S.C. § 7a-2(c)(1) (2009); 17 C.F.R. §§ 40.2(a)(2), 40.6(a)(2) (2009).
[19] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1735, codified at 7 U.S.C. 7a-2(c)(2).
[20] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1736, codified at 7 U.S.C. 7a-2(c)(3).
[21] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1736–37, codified at 7 U.S.C. 7a-2(c)(5)(C).

entities.[22] The version of the bill that passed the Senate, however, removed such review period ***for product certifications***, while keeping the 10 business day review period for rule certifications only.[23] The Dodd-Frank Act, as enacted, retained the Senate's change to the self-certification provision.[24]

A failure to enact a statutory change itself is evidence of Congressional intent to keep the self-certification process for new exchange-traded derivatives products as it was before.[25] Here, there is even further evidence of Congressional intent because market participants had specifically urged Congress to preserve this process without any change. On December 2, 2009, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing and solicited market participants' feedback on the initial drafts of the Dodd-Frank Act. In that hearing, CME Group's Executive Chairman Terrence Duffy raised concerns that proposed language in pending legislation would revert the exchange-traded derivatives product and rule change review process to the pre-CFMA regime and undermine the competitiveness of U.S. futures market participants:

> "*Each of the [Agriculture] Committee, [Financial Services Committee] and Senate Bills impose some form of prior approval requirements on DCMs respecting new rules or new contracts and amendments to existing rules. Specifically, the pending legislation provides that a new rule and/or contract does not become effective for 10 days and the CFTC can delay the rule or contract from becoming effective for at least 90 days by filing an objection…*
>
> *As each of these bills are currently drafted, the certification process could revert to that which existed pre-CFMA; industry experts have testified repeatedly at the various hearings held over the past few months addressing the Treasury's Title VII and the harmonization efforts of the CFTC and SEC that this archaic process, which is currently employed by the SEC, would put participants in the U.S. futures markets at a significant competitive disadvantage when compared to their foreign competitors.* ***This provision should be deleted or, at a minimum, restricted to rule amendments that materially change the terms and conditions of listed contracts with open interest as was done with the FSC Bill***" (emphasis ***added***).[26]

Congressional action evidences legislative agreement with Chairman Duffy in part, by imposing a 10 business day mandatory waiting period for the certification of ***any new rule or rule amendment*** but preserving the 1 business day waiting period for the certification of a ***new***

---

[22] *See* S. 3217, 111th Cong. 2d Sess., § 725(d) (as introduced, Apr. 15, 2010). As relevant here, the bill provided the following:
> "the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment shall become effective, pursuant to the registered entity's certification, 10 business days after the Commission's receipt of the certification (or such shorter period determined by the Commission by rule or regulation)…"

[23] *See* H.R. 4173, 111th Cong. 2d Sess., Title VII, § 745(d) (as passed the Senate, May 27, 2010).

[24] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Title VII, § 745(b), 124 Stat. 1376, 1735, codified at 7 U.S.C. 7a-2(c)(2).

[25] *See Russello v. United States*, 464 U.S. 16, 23–24 (1983) ("[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended."); *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200 (1974) (conference committee deleting House language "strongly militates against a judgment that Congress intended a result that it expressly declined to enact").

[26] *Over the Counter Derivatives Reform and Addressing Systemic Risk: Hearing Before the S. Comm. on Agriculture, Nutrition and Forestry*, 111th Cong. 77 (2009) (testimony of Terrence A. Duffy, Executive Chairman, CME Group Inc.), *available at* https://www.govinfo.gov/content/pkg/CHRG-111shrg62722/pdf/CHRG-111shrg62722.pdf.

***exchange-traded derivatives product*.**[27] ***Congress's decision to reject the 10 business day waiting period for listing new products clearly demonstrates that Congress did not intend to authorize the CFTC to impose additional procedural burdens on registered entities in their listing a new exchange-traded derivatives product through self-certification*.**

b. *The Commission's stated reason for the 30-day notice period in the NPR is inconsistent with the Commission's prior actions on the topic.*

In the NPR, the Commission states that "[t]he Commission is proposing this change because § 40.2 requires a DCM or SEF to make a submission to the Commission prior to listing a product for trading that has not been approved under § 40.3, but there is currently no comparable requirement applicable to DCOs."[28]

Despite the Commission's assertion in the preamble, the NPR is neither consistent with nor "comparable" to § 40.2. § 40.2 allows a DCM to list a new exchange-traded derivatives product the second business day after self-certification. No purpose is served by listing a product for trading without market participants being able to lawfully trade it. Yet the proposed addition of § 39.19(c)(4)(xxvi) would have exactly that effect because a new exchange-traded derivatives product must be cleared by a DCO in order to be lawfully traded and the NPR would require a DCO clearing the new product to wait at least 30-days before it could start clearing a product that the DCM has certified complies with the CEA. The Commission's preamble does not address this inconsistency. It also does not explain how a 1 business day waiting period to list a product is "comparable" to a 30-day waiting period to clear the same product, when listing and clearing are each prerequisites to lawful trading in an exchange-traded derivatives product.

A prior Commission decision related to § 40.2 also evidences that the CFTC had the opportunity to amend the current self-certification process but did not. The Commission amended § 40.2 in 2011[29], following issuing a notice of proposed rulemaking in 2010.[30] In the notice of proposed rulemaking and the final rule, the Commission made amendments to the contents of a submission for a new product self-certification under § 40.2, but did not make, or even contemplate, changes to the timeline for allowing a product to be self-certified following a 1 business day notice period. The Commission's actions here demonstrate its confidence that the 1 business day notification requirement under § 40.2 is appropriate for the listing of new exchange-traded derivatives products.

c. *The NPR proposes requirements that appear to contradict the requirements for new product certifications under the CEA.*

With respect to accepting new exchange-traded derivatives products for clearing, CME Group's DCO does not operate in a separate legal sphere, untethered to CME Group's DCMs. For a DCM to list a new product through self-certification, the DCM must submit a written certification that the new product would comply with the CEA and CFTC regulations. Because exchange-traded derivatives products must be traded on or subject to the rules of a DCM, no exchange-traded derivatives product could be lawfully traded if it was only subject to the rules of a DCO.[31] As a

---

[27] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, Title VII, § 745(b), 124 Stat. 1736–37, codified at 7 U.S.C. 7a-2(c)(2).
[28] NPR at 22242.
[29] *See* Provisions Common to Registered Entities, 76 Fed. Reg. 44776 (July 27, 2011).
[30] *See* Provisions Common to Registered Entities, 75 Fed. Reg. 67282 (Nov. 2, 2010).
[31] 7 U.S.C. § 6(a).

result, CFTC regulations make the self-certification process for new exchange-traded derivatives products available only to DCMs; however, clearing matters must be taken into consideration when a DCM certifies and lists a product. DCM Core Principle 11 specifically calls for DCMs to establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into on or through their facilities, "including the clearance and settlement of the transactions with a [*DCO*]."[32] Thus, in certifying that a new exchange-traded derivatives product will comply with the CEA, a DCM is certifying that the financial integrity requirement under DCM Core Principle 11 would be met once the new product is listed. To meet that Core Principle, a DCM needs to consult and coordinate with a DCO. However, the CEA and CFTC regulations make clear that the DCM is providing the statutory certification for the new exchange-traded derivatives product and assuming primary legal and regulatory responsibility for its content.

Given this structure, CME Group believes its illogical to have a DCM and DCO go through independent regulatory processes prior to listing a new exchange-traded derivatives product. Under the NPR, given DCM Core Principle 11, a DCM would not be able to list a product for trading until the 30-day notice period for a DCO to accept the product for clearing comes to pass. This is the case even when the DCM certifies that the product would otherwise comply with the CEA and CFTC regulations and, the statute and CFTC regulations allow for next business day listing of new exchange-traded derivatives products. The Commission's proposed approach would thus defeat the new product self-certification process that Congress specifically designed in 2000 and which it has left intact for almost two decades.

d. The existing self-certification process has operated successfully.

The Commission and its Commissioners have endorsed the important public interests served by the self-certification process on many occasions. For example, in May 2004, the Commission stated, "[t]he certification procedure was established by the Commodity Futures Modernization Act of 2000 (CFMA), in order to permit exchanges to react quickly in a competitive and dynamic business environment."[33] In 2005, then-Acting CFTC Chairman Sharon Brown-Hruska touted the benefits of the self-certification process, stating, "[n]ew product and rule amendment certification procedures in the CFMA have also lowered regulatory barriers and fostered innovation by providing exchanges greater flexibility in listing contracts and reacting to developments in the cash markets…In short, the innovation, competition, and customer choice envisioned by Congress in passing the CFMA is bearing fruit."[34] In 2007, then-Acting CFTC Chairman Walter Lukken put the self-certification authority in a larger context, stating, "[t]he CFMA replaced the prior 'one-size-fits-all' regulatory model with a flexible, practical, principles-based model for exchanges. U.S. exchanges also were given the authority to approve new products and rules through a self-certification process without prior CFTC approval, which encouraged innovation and enabled exchanges to act quickly in response to fast-changing market conditions."[35] Last year, the previous CFTC Chairman acknowledged market-driven innovations that the self-certification process for exchange-traded derivatives products has enabled, noting that while 793

---

[32] 7 U.S.C. § 7(d)(11).

[33] *Review Commodity Futures Trading Commission Regulatory Issues: Hearing Before the S. Comm. on Agriculture, Nutrition, and Forestry*, 108th Cong., 2d Sess. 35 (May 13, 2004).

[34] *To Consider the Reauthorization of the Commodity Futures Trading Commission: Hearing Before the S. Comm. on Agriculture, Nutrition, and Forestry*, 109th Cong., 1st Sess. 47 (Mar. 8 & 10, 2005).

[35] *Hearing to Review Trading of Energy-Based Derivatives: Hearing Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture*, 110th Cong., 1st Sess. 13 (July 12, 2007).

products were approved from 1922 until the CFMA was signed into law in 2000, exchanges have self-certified 12,016 products since then.[36]

As explained above, the proposed 30-day notice period for a DCO to clear a new product under new § 39.19(c)(4)(xxvi) would undermine the important benefits of the self-certification process that the Commission has consistently acknowledged and Congress has repeatedly supported. The self-certification regime has worked flawlessly since its inception. Yet, in the face of these facts, the preamble of the NPR is silent on why such a dramatic change is necessary or appropriate. CME Group believes that the proposed notice period would result in an unwarranted, burdensome regulatory requirement that contradicts past practices and current legislative language with no additional benefits; the Commission should not adopt new § 39.19(c)(4)(xxvi).

Federal Reserve Bank Accounts & Services

The Commission is proposing to adopt new § 39.33(d)(5), requiring a SIDCO with access to accounts and services at a Federal Reserve Bank to use such accounts and services "where practical." CME Group appreciates the Commission's ongoing focus on SIDCOs' financial integrity and liquidity risk management.[37] To further this laudable focus, the Commission should clarify that a decision on whether the use of a Federal Reserve Bank's accounts and services is "practical" should take into account the ability of a SIDCO to effectively manage its overall risk. While using a Federal Reserve Bank's accounts and services can provide clear counterparty risk management benefits, striking the appropriate balance between using commercial banks (in their capacities as custodians and cash depositories) and a Federal Reserve Bank allows a SIDCO to diversify its counterparty relationships to holistically manage its liquidity and operational risks. CME Group is confident that allowing for this balance was the Commission's intention since such flexibility increases a SIDCO's ability to efficiently design its clearing and settlement arrangements, including operational structure and procedures, consistent with § 39.38(a).[38]

Access to liquidity during a clearing member default event is critical to a SIDCO's ability to successfully manage the default. Therefore, the impact of using a Federal Reserve Bank's accounts and services on a SIDCO's ability to secure liquidity in a timely manner should be considered. If a defaulted clearing member's non-cash collateral is deposited by a SIDCO at a commercial bank (rather than a Federal Reserve Bank), such collateral may be monetized more efficiently. For example, a SIDCO can liquidate non-cash collateral or execute a repurchase agreement directly and immediately with a commercial bank (or via an entity affiliated with the commercial bank, such as a broker-dealer), but cannot do so if the non-cash collateral is held at a Federal Reserve Bank. Generally, commercial banks support delivery-versus-payment transactions and they (or an affiliate) have access to pools of liquidity via internal trading desks, which can allow a SIDCO to secure liquidity in an efficient and timely manner. In addition, a SIDCO utilizing a committed syndicated credit facility may rely upon accounts and services from its commercial banks, to ultimately allow the credit facility lenders to perfect their security interest in the collateral. It is not clear if a SIDCO can utilize a Federal Reserve Bank's accounts and services in a similar manner as commercial banks that is consistent with the credit facility legal construct and preserves a SIDCO's access to liquidity. Some examples of this include, but are not limited to, establishing additional accounts for a SIDCO for purposes of moving a subset of collateral

---

[36] Remarks of Chairman J. Christopher Giancarlo before the Market Risk Advisory Committee Meeting (Jan. 31, 2018), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement013118#P19_4317.

[37] *See* NPR at 22246.

[38] While CME Group discusses using accounts and services at a Federal Reserve Bank for cash and non-cash collateral herein, note that CME Clearing is permitted to deposit only cash collateral with a Federal Reserve Bank as of this writing.

required to secure a draw, reporting of asset values to ensure the credit facility lenders are lending on a fully secured basis, and ensuring a lien attaches to customer segregated and non-customer segregated collateral consistent with CFTC regulations. Lastly, a SIDCO can move collateral internally with a commercial bank without being bound by the Federal Reserve Banks' operating timeline, which also increases the SIDCO's operational flexibility while managing a clearing member's default.[39]

Further, the impacts of using a Federal Reserve Bank's accounts and services should be considered relative to a SIDCO's access to and diversity of liquidity providers. Commercial banks that provide multiple services to a SIDCO may consider the relationship between providing these services collectively. For example, a commercial bank that provides committed liquidity to a DCO may consider this service offering uneconomical unless the commercial bank also acts as a depository for the DCO. Thus, the elimination of a SIDCO's ability to prudently deposit cash at high quality commercial banks could have negative impacts on its access to liquidity providers and/or the diversity of its collateral acceptance program, which could have knock-on effects on the markets it clears. More generally, the strategic relationships that a SIDCO has with commercial banks may be weakened if its use of their depository services is unnecessarily limited. In times of stress, such relationships can be critical to a SIDCO's ability to efficiently and effectively manage risk.

Consequently, we recommend that proposed § 39.33(d)(5) be revised to ensure that SIDCOs are afforded the appropriate flexibility to maintain the relationships necessary with commercial banks to effectively manage their liquidity risk.

Customer Margin Rules

CME Group supports the Commission's objective to codify the interpretation by the Division of Clearing and Risk regarding the requirements under current § 39.13(g)(8)(ii) for customer margining.[40] In particular, CME Group agrees with the Commission's intention of preserving historical customer margining practices whereby futures commission merchants ("FCMs") "are expected to continue the practice of collecting customer initial margin at a level higher than the minimum required [*by the DCO*], if such action is warranted based on the unique risk profile of an individual customer."[41] However, CME Group is concerned that the proposed amendments to § 39.13(g)(8)(ii) could oblige a DCO to take on the responsibilities of an FCM by requiring the DCO to determine the amount of additional margin that should be collected from an FCM's customers, based on the DCO's (rather than the FCM's) evaluation of the customers' risk profiles. This would undermine historical market practices permitting the DCO to reasonably rely on the FCM's evaluation and ultimately place an untenable burden on DCOs.

CME Group agrees with the proposed amendment under the NPR that would require a DCO to "require its clearing members to collect customer initial margin at a level that is…commensurate with the risk presented by each customer account."[42] CME Group's concerns arise with the following amended requirement that "[t]he derivatives clearing organization shall have reasonable discretion in determining whether and by how much such customer initial margin requirements

---

[39] Federal Reserve Banks' Securities Service operates from 7:30 AM to 2:30 PM Central Standard Time.

[40] CFTC Interpretative Letter, CFTCLR No. 12-08 (Sept. 14, 2012), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-08.pdf.

[41] NPR at 22237 (citing, CFTC Interpretive Letter, CFTCLR No. 12-08 (Sept. 14, 2012)).

[42] NPR at 22272.

must exceed the derivatives clearing organization's clearing initial margin requirements with respect to particular products or portfolios."[43] These proposed amendments undermine historical risk management practices, wherein FCMs are rightfully responsible for evaluating the risk presented by a given customer and determining if additional margin above the DCO's clearing initial margin amount should be required. It is the FCM that maintains the customer relationship, is responsible for the financial performance of its clients, and is the first line of recourse in the event of a default. As a result of an FCM's relationship to its customers, it has the greatest understanding of its customers' risk profiles, including its credit and financial profile, as well as customers' exposures across the markets it clears.

Amendments to § 39.13(g)(8)(ii) should ensure that a DCO's clearing members retain both this responsibility and flexibility. In contrast, the DCO's role should continue to be to determine the appropriate clearing initial margin requirements and the size of any standardized margin top-up that clearing FCMs must, at a minimum, apply to categories of customers with heightened risk profiles. Consequently, CME Group requests that the proposed amendments to § 39.13(g)(8)(ii) be further amended as follows:

> "*The derivatives clearing organization shall have reasonable discretion in determining* ***clearing initial margin requirements for products or portfolios and*** *whether and by how much* ~~*such*~~ *customer initial margin requirements* ***for categories of customers determined to have heightened risk profiles by their clearing members*** *must exceed****, at a minimum,*** *the derivatives clearing organization's clearing initial margin requirements* ***by a standardized amount*** ~~*with respect to particular products or portfolios*~~*.*"
>
> *Deletions are ~~struckthrough~~ and additions are **bolded** and underlined.

CME Group also notes that the use of the term "customer account" under the proposed amendments to § 39.13(g)(8)(ii) appears to be inconsistent with the proposed definition for the term under the proposed amendments to § 39.2. CME Group believes it was the intention of the Commission that the proposed amendments to § 39.13(g)(8)(ii) refer collectively to the individual customer accounts within a "Cleared Swap Customer Account" or "Futures Account" for a given beneficial owner. However, the proposed amendment to § 39.2 defining "customer account" references the definition under § 1.3, which defines the term as referencing "both a Cleared Swaps Customer Account and a Futures Account." Consequently, the use of the term "customer account" under the proposed amendments to § 39.13(g)(8)(ii) would not capture individual accounts collectively within a "Cleared Swap Customer Account" or "Futures Account" for a given beneficial owner of those accounts. CME Group recommends that the Commission clarify its intended use of the term "customer account" under the proposed amendments to § 39.13(g)(8)(ii).

Default Management

The Commission is proposing amendments to § 39.16 relating to a DCO's default management rules and procedures. In line with the DCO Core Principles and related CFTC regulations, CME Group emphasizes the importance of a DCO continuing to have rules and procedures that are designed to allow it to efficiently, fairly, and safely manage a clearing member default event in a timely manner, while continuing to meet its obligations to non-defaulting clearing members. In order to achieve these objectives, CME Group believes it is important for a DCO to maintain the

---

[43] *Id.*

appropriate level of flexibility in its rules to manage the unique circumstances in any particular clearing member default event. Implementing a one-size-fits-all approach to default management or unnecessarily constraining or undermining the ability of a DCO to promptly react to events surrounding a clearing member default could undermine the safety of the DCO and the stability of the broader financial system.

a. Default Committee

The Commission is proposing amendments to § 39.16(c)(1), which would require that a DCO have a default committee, comprised of, at a minimum, clearing members. This committee would be convened in the event of a clearing member default involving substantial or complex positions to help identify market issues with actions the DCO is considering. This requirement appears to contemplate that the default committee would be constituted in advance, and convened in the event, of a default. While CME Group supports, and as appropriate requires, clearing member participation in the default management process, we disagree with the rigid approach set forth in the proposed amendments to § 39.16(c)(1).

The proposed requirement to mandate a default committee and that clearing members of the default committee ***must*** be called to advise on managing a default in any product class risks unnecessarily prolonging and overcomplicating the default management process. This could expose both the DCO and its clearing members to greater risk of loss. Requiring default committee consultation in advance of a DCO taking action to manage a default offers uncertain benefits, yet gives rise to meaningful additional risks as a result of the delay in allowing the DCO to take action. Historically, CME Clearing has liquidated portfolios of suspended clearing members in a matter of hours overnight prior to the opening of markets in U.S. business hours. This would be extremely unlikely in the event a default committee needed to be called and consulted prior to doing so. A DCO is best positioned to determine whether advice from clearing members (with or without a default committee) is necessary. For most markets, the DCO has substantial expertise in managing the related risks and readily available market access for the liquidation of a defaulted clearing member's portfolio and therefore, no further advice is necessary.

DCOs already have the option today to require a committee be constituted and convened under its rules when it deems necessary to manage a clearing member default. Furthermore, a DCO's default management plan and testing program should account for the risks from substantial and/or complex portfolios. CME Group believes it is far more appropriate to address these types of portfolios in the design and testing phases of a DCO's default management plan and its day-to-day risk management, rather than to incorporate by regulation mandatory default committee consultation in the event of an actual clearing member default. As such, CME Group recommends that a DCO be required to adopt rules permitting, but not requiring, the creation of a default committee as it determines necessary in managing a clearing member default. Generally, the more appropriate focus for the NPR is on the quality and periodicity of a DCO's default management plan tests, as proposed under § 39.16(b), which are designed to ensure that the DCO has vetted its practices and properly consulted with market participants on the structure and design of its default management plan.

The proposed requirement under § 39.16(c)(1) could also have the effect of triggering resource scarcity at clearing members precisely when trading expertise is most needed – i.e., in a stress event surrounding a clearing member default. CME Clearing and other clearing houses work to address these potential issues via rotational participation in their tests and default committees.

We are concerned that a CFTC-mandated default committee may undermine this reasoned approach to potential bandwidth constraints at a DCO's clearing members.

Lastly, we note that providing information on a defaulted clearing member's portfolio to all clearing members that constitute a DCO's default committee, independent of their participation in subsequent liquidation or auction processes, increases the risk of information leakage and disadvantageous pricing.

b. Immediate Public Notice of a Clearing Member Default

The Commission is proposing amendments to § 39.16(c)(2)(ii), which would require that, where a clearing member defaults, an immediate public notice of the declaration of the default be published on the DCO's website. While CME Group supports the objective of this amendment to promote transparency, DCOs should have some flexibility in the timing of publishing and the scope of the notice based on their judgment of the potential impact of such a notification on the markets it clears. Mandatory immediate public notification runs the risk of causing disadvantageous pricing for liquidation or auctions, which could increase the costs of managing the clearing member default for the DCO, and if losses are incurred, could ultimately increase the risk of mutualizing losses among its clearing members. Consequently, we recommend that § 39.16(c)(2)(ii) be updated to allow a DCO to exercise discretion on the timing of a public notification where such notification could negatively impact the ability of the DCO to manage a clearing member default event.

c. Mandatory Bidding or Acceptance of a Defaulted Clearing Member's Positions

The Commission is proposing amendments to § 39.16(c)(2)(iii)(C), which would provide that where a clearing member defaults a DCO cannot require a clearing member to bid for a portion or accept an allocation of the defaulter's positions that is not proportional to that clearing member's positions, as measured by initial margin required. CME Group believes mandatory participation in certain default management processes can be beneficial and cautions against unnecessarily prescriptive limitations on such participation.

Initial margin required as the basis for determining limits on potential bidding and allocation requirements under proposed § 39.16(c)(2)(iii)(C) may offer a poor approximation for the risk management capacity, capital availability, and credit quality of a clearing member. These latter criteria are more appropriate considerations in determining whether a clearing member or other market participant can appropriately absorb a defaulter's portfolio, or a portion thereof. A given clearing member's initial margin requirements at the time of a clearing member default are a function of the size and directionality of the clearing member's portfolio; the variance of which over time creates an arbitrary standard on which to limit the ability of a DCO to require a clearing member to bid on a defaulter's portfolio.

The proposed amendments to § 39.16(c)(2)(iii)(C) may needlessly limit the ability of a DCO to require participation in a default management auction from a clearing member that has significant risk management capacity, sufficient capital levels, and strong credit quality. For example, this could occur where a clearing member is well-capitalized and creditworthy with significant risk management capacity but has a moderate initial margin requirement because it has a well-hedged portfolio. This requirement may also create an incentive for clearing members to offload the risk of their portfolios in advance of a clearing member default. Further, solely focusing on initial margin required does not account for how a defaulter's portfolio may be complementary and thus, risk reducing to a non-defaulting clearing member's portfolio.

To the extent a limit on forced bidding or allocations is imposed, it should be based on a clearing member's risk management capacity, capital sufficiency, and credit quality, not solely its initial margin required. We strongly believe that the DCO is best positioned to determine the process for managing a clearing member default that is designed to optimize appropriate risk absorption for its clearing members; an *ex ante* regulatory limit, particularly one based solely on initial margin required, would unnecessarily restrict participation in and could ultimately undermine the effectiveness of a DCO's default management process.

Independent Validations

The Commission is proposing amendments to § 39.13(g)(3) to clarify that a DCO's systems for generating initial margin requirements should be validated on an annual basis. CME Group recognizes that the independent validation of a DCO's risk management models, including its systems for generating initial margin requirements, is an important tool for a DCO to manage model risk. Regarding the proposed amendment to § 39.13(g)(3) to explicitly require that a DCO validate its systems for generating initial margin requirements annually, we believe it should, along with § 39.36(e), recognize regulatory standards and best practices in determining the manner in which such model validations are implemented.

For background, we note model validation standards for banks subject to the oversight of the Board of Governors of the Federal Reserve System state that:

> "*[b]anks should conduct a periodic review—at least annually but more frequently if warranted—of each model to determine whether it is working as intended and if the existing validation activities are sufficient. Such a determination could simply affirm previous validation work, suggest updates to previous validation activities, or call for additional validation activities. Material changes to models should also be subject to validation. It is generally good practice for banks to ensure that all models undergo the full validation process, as described in the following section, at some fixed interval, including updated documentation of all activities.*"[44]

The Bank Holding Company Supervision Manual suggests that the Board of Governors of the Federal Reserve System allows for banks subject to their oversight to take varying approaches to model validations year-over-year. In particular, in some cases, where no material changes have occurred, previous validations could be reviewed and affirmed as part of the annual review process. We believe this well-reasoned approach established by the Board of Governors of the Federal Reserve System should be considered by the CFTC as it updates Part 39 to further clarify its expectations for model validations.

Governance

CME Group agrees with the Commission's decision to codify the governance arrangements applicable to SIDCOs and Subpart C DCOs as new §§ 39.24 through 39.26, and to make them applicable to all DCOs. CME Group further agrees with the definition of market participant as set forth in proposed § 39.26. CME Group has benefited from having a board of directors, oversight

---

[44] Board of Governors of the Federal Reserve System, Division of Supervision of Regulation, Bank Holding Company Supervision Manual – Model Risk Management, Section 2126.0.5 (Feb. 2019), *available at* https://www.federalreserve.gov/publications/files/bhc.pdf.

committee, and risk committees consisting of a variety of market participants with differing views and expertise. CME Group appreciates the Commission taking a principles-based approach by allowing each DCO to determine the best representation of market participants for its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws.

Reporting Customer Positions

The Commission is proposing amendments to §§ 39.13(g)(8)(i)(B) and 39.19(c)(1)(i)(A) through (D) relating to the reporting of customer information from a DCO's clearing members to the DCO and from each DCO to the Commission. Given the relationship noted in the NPR between the clearing member and DCO reporting requirements, the information reported under these respective regulations should be clearly aligned to avoid confusion and duplicative or unnecessarily burdensome reporting. In particular, the proposed amendments to § 39.13(g)(8)(i)(B) require that a DCO have rules requiring its clearing members to provide it "end-of-day gross positions of each ***beneficial owner*** within each customer origin" (emphasis ***added***), whereas the amendments to § 39.19(c)(1)(i)(A) through (D) require that a DCO report to the Commission, margin, cash flow, and end-of-day positions "by each ***individual customer account***" (emphasis ***added***). The amendments to § 39.19(c)(1)(i)(D) further require that a DCO identify each individual customer account, using a legal entity identifier, when reporting end-of-day positions.

While we believe it was the intention of the Commission to have the amendments to §§ 39.13(g)(8)(i)(B) and 39.19(c)(1)(i)(A) through (D) operate cohesively, we believe confirmation that both clearing members and DCOs report information on individual customer accounts for each customer/beneficial owner with a legal entity identifier is warranted. Consequently, the proposed revisions to §§ 39.13(g)(8)(i)(B) and 39.19(c)(1)(i)(A) through (D) should be amended to respectively require that a DCO: (1) have rules that require its clearing members, solely for risk management purposes, to provide it their end-of-day gross positions "by each individual customer account carried for a customer" and using a legal entity identifier; and (2) report to the Commission customer information by "each individual account carried for a customer" and using a legal entity identifier. The legal entity identifier will allow the DCO to aggregate customer exposures within an individual clearing member and across all clearing members on a beneficial owner basis for risk management purposes while allowing the Commission to do so across DCOs.

Enterprise Risk Management

The Commission is proposing new § 39.10(d) to specifically provide that a DCO is required to have an enterprise risk management ("ERM") program. The NPR recognizes, as CME Group does, the importance of maintaining an ERM program to: (1) identify potential events that may affect the enterprise; (2) confirm that the probability or impact of those events on the enterprise as a whole are managed, such that the overall risk remains within the enterprise's risk appetite; and (3) provide reasonable assurances that the enterprise (including the DCO) can continue to achieve its objectives, including compliance with applicable laws and regulations.[45]

The NPR also recognizes, and CME Group agrees, that consistent with § 39.10(b) a corporate group should have in place an enterprise risk framework and ERM program that works best for its specific risk exposures, product types, customer base, market segment, and organizational

[45] *See* NPR at 22231, 22265.

structure and that such framework and program should follow generally accepted standards and industry best practices.[46]

The NPR suggests, and CME Group agrees, that corporate groups that consist of a DCO and legally separate but affiliated entities (as CME Group does) may have in place an ERM program that applies to the entire legal entity and its affiliates collectively rather than limiting such program to a specific entity or service line.[47]

Finally, CME Group agrees with proposed § 39.10(d)(4) that an appropriate individual, with authority, independence, resources, expertise, and access to relevant information, should be designated to manage the ERM program. CME Group believes the individual should have access to the board of directors and its relevant committees and should provide regular reports to that board or its relevant committees. However, we do not believe it is necessary for the enterprise risk officer to have a direct administrative reporting relationship to the board or its committees. CME Group believes that whether a DCO's chief risk officer should also be permitted to serve as the overall organization's enterprise risk officer depends on the organizational structure related to the DCO and the structure of the broader corporate group.

Request for Transfer of Open Interest

The Commission is proposing amendments under § 39.3(g) relating to a DCO's request to transfer its registration and its open interest in connection with a corporate change. These amendments would: (1) separate the procedures for a request to transfer open interest from the procedures to report a change to a DCO's corporate structure or ownership; and (2) change the Commission's procedures for such a request from a request for a Commission order to a § 40.5 approval process.

CME Group supports the proposed amendments under § 39.3(g) with one caveat. We believe that the Commission intended proposed § 39.3(g) to only apply for open interest in contracts not executed on or subject to the rules of a DCM. This is due to the fact that the CEA, CFTC regulations, and the Commission's prior actions all establish that open interest in contracts executed on or subject to the rules of a DCM (e.g., futures) cannot be transferred unless authorized by the DCM through rule amendment or otherwise. For example, DCM Core Principle 11 requires that a DCM establish and enforce rules for the clearance and settlement of transactions entered into on or through the rules of the DCM with a DCO.[48] This statutory duty includes a DCM's obligations to "coordinate with each [*DCO*] ***to which it submits transactions for clearing***…to facilitate prompt and efficient transaction processing" (emphasis ***added***)[49] and "continuously monitor the positions of members and their customers" to monitor members' compliance with the DCM's minimum financial standards.[50] § 38.3(d) also provides procedures for a DCM to transfer open interest associated with contracts listed on a DCM to another DCM, in connection with the transferring DCM's change of registration.[51] Moreover, the CFTC's past

---

[46] NPR at 22232.

[47] *Id* (noting, "[t]he term ''enterprise-wide'' is intended to require that the process of identifying, assessing, measuring, monitoring, and managing risk apply to the entire legal entity and its affiliates as a collective whole, with the objective to manage the risks to the DCO. A DCO would satisfy its obligations under paragraph (d)(1) (and paragraphs (d)(2) and (3), as discussed below) if it is part of a corporate group that has in place an enterprise risk management program that includes the DCO within its scope and complies with the requirements of this section.").

[48] *See* 7 U.S.C. § 7(d)(11)(A); 17 C.F.R. §§ 38.600–07.

[49] 17 C.F.R. § 38.601(b).

[50] 17 C.F.R. § 38.604.

[51] *See* 17 C.F.R. § 38.3(d).

practices reflect the Commission's understanding that the authority to transfer open interest associated with contracts listed on a DCM belongs to the DCM.[52] Given this legal background, a DCO cannot unilaterally transfer to another DCO open interest associated with contracts that are subject to the rules of a DCM. Otherwise, the DCM would have no control over its compliance with key statutory and regulatory obligations.

With that clarification made to the proposed amendments to § 39.3(g), the NPR appropriately expands the scope of the rules to ***all*** DCO requests for the transfer of open interest in contracts not listed on a DCM; the existing rule is limited by its terms to transfers related to corporate changes and transfers of a DCO's assets. In addition, CME Group supports using the § 40.5 approval process for all such requests. Currently, a DCO request for a transfer of open interest must be submitted for Commission approval at least three months prior to the anticipated transfer. Using the § 40.5 process would streamline the process by permitting the transfer to take effect after a 45-day review period, subject to Commission approval.

Chief Compliance Officer

CME Group supports the proposed amendments to § 39.10(c)(1)(ii) to permit the DCO's chief compliance officer ("CCO") to report to the senior officer responsible for the DCO's clearing activities and the proposed amendments to § 39.10(c)(4)(i) to permit the CCO to submit the annual report to said senior officer. As we have noted in prior comment letters, a key function of the CCO is to advise the DCO's senior management on compliance with applicable laws and regulations, and to keep them informed of developments in these areas. Given the CCO's responsibilities, CME Group agrees that it is advisable for the CCO to report to the most senior officer responsible for the DCO's management. The senior officer responsible for the DCO's clearing activities is most familiar with the day-to-day operations of the DCO and its personnel and is therefore generally best positioned to ensure that the compliance program implemented by the CCO is appropriately designed to ensure compliance with the relevant provisions under the CEA and CFTC regulations.

CME Group understands the objective of the proposed amendments to § 39.10(c)(4)(i) is to require that the CCO's annual report describe within it the process for submitting it to the DCO's senior officer or board of directors. However, including the date provided in the report before the report is actually provided to the senior officer or the board presents an issue. For example, while there may be an intention to provide the report at a particular management committee or board meeting on a particular date, those materials must be prepared and provided to the members well in advance of the meeting. Should the agenda or date change for the committee or board meeting, then the date on the CCO's report would not be accurate. CME Group appreciates that the Commission would like all of this information in one document. Consequently, CME Group recommends that the description of the process of providing the CCO's annual report with the ***intended*** date be included within the report, but that a cover sheet be added to the report after the meeting which either confirms the date within the report is correct or provides an alternative date for when the report was actually provided.

---

[52] *See, e.g.*, Order of the Commodity Futures Trading Commission Concerning the Transfer of Contracts and Open Interest from the Board of Trade of Kansas City, Missouri, Inc. to the Board of Trade of the City of Chicago, Inc. (Dec. 9, 2013) (approving the joint request of KCBT and CBOT, two DCMs, to transfer the open interest associated with contracts listed on KCBT from KCBT to CBOT), *available at* https://www.cftc.gov/sites/default/files/stellent/groups/public/@otherif/documents/ifdocs/kcbttransfercontractsorder.pdf; CFTC Announces Approval of Exchange Rules Implementing CME/CBOT Common Clearing Link (July 15, 2003) (approving the transfer of open interest associated with contracts listed on CBOT from one clearinghouse to another pursuant to CBOT's rule amendments), *available at* https://www.cftc.gov/sites/default/files/opa/press03/opa4821-03.htm.

CME Group strongly supports the Commission's proposed amendments to § 39.10(c)(3)(i) to allow a DCO to incorporate by reference the parts of its most recent CCO's annual report containing descriptions of its policies and procedures to the extent that the DCO's written policies and procedures have not materially changed since they were most recently described in a previously submitted annual report. This amendment reduces the requirement to provide duplicative information contained in previous reports and thus, reduces the administrative burden on both the DCO's compliance staff and CFTC staff. CME Group believes the five-year timeframe for re-introducing the materially unchanged policies is appropriate.

Financial Resources Reporting

The Commission is proposing amendments to § 39.11 relating to the reporting of a DCO's financial resources.

a. Identification of Financial Resources

CME Group supports the identification of assets required to meet the resource requirements under §§ 39.11(a)(1) and (2). However, CME Group believes the balance sheet may not be the most appropriate financial statement to identify assets satisfying these requirements. The annual financial statements of a company prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") are comprised of a balance sheet, statement of income, statement of comprehensive income, changes in shareholder's equity and cash flows for the years then-ended, and the related notes to the financial statements. The balance sheet is a statement of the assets, liabilities, and capital of the company at a particular point in time. In accordance with U.S. GAAP, a company would only include on its balance sheet, the financial resources received from clearing members pursuant to § 39.11(a)(1) in cash, whereas, securities and other non-cash collateral received from clearing members pursuant to § 39.11(a)(1) would generally not be reflected on a company's balance sheet. With respect to the size of financial resources required by § 39.11(a)(2), this is determined based on a twelve-month forecast of operating costs. The size of financial resource requirements resulting from this determination is then compared to the company's cash and cash equivalents on the company's balance sheet at the balance sheet date. This calculation and the comparison to the balance sheet should be provided in a separate schedule in the DCO's quarterly financial resources reports.

Consequently, to avoid any conflicts with U.S. GAAP, CME Group recommends the Commission's proposed revisions to §§ 39.11(f)(1)(ii) and 39.11(f)(2)(i) be amended to require that assets allocated by the DCO for the purpose of satisfying §§ 39.11(a)(1) and (2) must be clearly identified in the DCO's quarterly financial resource reports.

b. Submission of Quarterly Financial Resources Report and Annual Report

Pursuant to current § 39.11(f)(4), the due dates for the submission of a DCO's quarterly financial resource reports are 17 business days after the end of the DCO's fiscal quarters. CME Group recommends that the due dates for submitting the DCO quarterly financial resource reports for Q1, Q2, and Q3 under proposed § 39.11(f)(1)(iv), be aligned with due dates for a DCM's submission of financial resource reports pursuant to § 38.1101(f)(4), which requires the reports to be filed no later than 40 calendar days after the end of the DCM's first 3 fiscal quarters. CME Group also recommends that the due date to submit a DCO's financial resource report for the last quarter of the fiscal year under proposed § 39.11(f)(1)(iv), be aligned with the CFTC's due date for submitting required audited financial statements pursuant to current § 39.19(c)(3)(iv) (i.e.,

proposed § 39.11(f)(2)(ii)), which is not more than 90 days after the end of the DCO's fiscal year end.

The proposed requirement under § 39.11(f)(2)(iii)(A) for a DCO to submit a reconciliation—including appropriate explanations of its balance sheet when material differences exist with the balance sheet in its audited year-end financial statement with the balance sheet for the last quarter of its fiscal year—would be unnecessary if the Commission harmonized the submission due date for a DCO's financial resources report for the last quarter of the fiscal year with the submission due date for the audited year-end financial statements.

Event-Specific Reporting
The Commission is proposing to adopt a number of new event-specific reporting requirements under § 39.19(c)(4). As a general observation, in line with current event-specific reporting requirements under § 39.19, CME Group believes that any additional event-specific reporting requirements should have a clear materiality component.[53] Adopting an approach to reporting based on materiality is consistent with the CFTC's objectives, while allowing the CFTC to continue to effectively oversee the DCOs it supervises.[54] Failing to take a materiality approach is overly burdensome on a DCO and the CFTC with limited benefit to the evaluation of a DCO's ongoing compliance with the DCO Core Principles and CFTC regulations, as it could result in a DCO having to report needless information and the CFTC having to review such information. Further, the inclusion of a materiality component for the proposed additional event-specific reporting requirements would be consistent with the NPR's cost-benefit analysis, as the CFTC notes it anticipates a minimal cost burden "in part because the incidents that would trigger such reporting do not occur very often."[55] While we do not believe this was the Commission's intention, without a materiality component, incidents triggering reporting could occur frequently, resulting in an unnecessarily significant burden on a DCO.

Consequently, the addition of the proposed event-specific reporting requirements related to changes in liquidity funding arrangements under proposed § 39.19(c)(4)(xiii), changes for settlement bank arrangements under proposed § 39.19(c)(4)(xiv), changes for depositories of customer funds under proposed § 39.19(c)(4)(xvi), margin model issues under proposed § 39.19(c)(4)(xxiv), and a DCO's recovery and wind-down plans under proposed § 39.19(c)(4)(xxv) should, at a minimum, include a materiality threshold. As such, proposed § 39.19(c)(4)(xiii) with respect to SIDCOs should primarily focus on capturing the reporting of material changes to liquidity funding arrangements that allow for resources to be treated as qualifying liquidity resources.[56] This focus would allow the CFTC to effectively oversee a DCO's liquidity risk management, while avoiding the reporting of immaterial events that do not impact a DCO's ability to comply with § 39.33(c). Additionally, proposed § 39.19(c)(4)(xiv) should primarily focus on capturing the use of new settlement banks, which would avoid the unnecessary reporting of

---

[53] CME Group notes that an approach to reporting based on materiality is already applied for event-specific reporting requirements related to: a) decreases in financial resources under current § 39.19(c)(4)(i); b) decreases in ownership equity under current § 39.19(c)(4)(ii); c) changes in current assets under current § 39.19(c)(4)(iv); d) changes in ownership or corporate or organizational structure under current § 39.19(c)(4)(viii); e) changes in key personnel under current § 39.19(c)(4)(ix); f) financial condition and events under current § 39.19(c)(4)(xii); and g) financial statements material inadequacies under current § 39.19(c)(4)(xiii).

[54] *See* J. Christopher Giancarlo, Chairman Commodity Futures Trading Commission, Remarks at 42nd Annual International Futures Industry Conference (Mar. 15, 2017), ***available at*** https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20. *See also*, Project KISS, 82 Fed. Reg. 23765 (May 24, 2017) (request for information).

[55] NPR at 22261–62.

[56] We believe a similar focus is warranted with respect to current § 39.19(c)(4)(x).

administrative changes and similarly immaterial events that do not impact the DCO's ability to comply with applicable CFTC regulations, such as changes to fees and authorized personnel. This requirement should also provide a DCO 3 business days to make such a report to the CFTC, which would be consistent with processes for opening new customer depository bank accounts which require a filing of an acknowledgement letter with the Commission within 3 business days. Further, proposed § 39.19(c)(4)(xvi) should be removed as it is duplicative with a DCO's obligations under §§ 1.20(g)(4)(vi) and 22.5 for obtaining new acknowledgement letters from customer depositories; however, to the extent it is not removed, it should have a clear materiality component for the same reasons noted relative to proposed § 39.19(c)(4)(xiv). Proposed § 39.19(c)(4)(xxiv) should also primarily focus on capturing events where a DCO's ability to calculate and collect margins was materially impaired. This focus would allow the CFTC to effectively oversee the functioning of a DCO's margin models, including where the "introduction of new products or significant increases in volatility"[57] had a material impact, while avoiding the reporting of immaterial events, such as *de minimis* delays in the calculation of a DCO's initial margin requirements on a given day. Finally, proposed § 39.19(c)(4)(xxv) should primarily focus on capturing changes that have a material impact to a DCO's recovery and wind-down plans, which would avoid the unnecessary submission of a DCO's plans because of administrative changes. However, a DCO should submit its recovery and wind-down plans to the CFTC on at least an annual basis.

Generally, it is unclear to CME Group why the current event-specific reporting requirements noted above and the proposed additional event-specific reporting requirements related to decreases in liquidity resources and settlement bank issues have a materiality component, but many of the other proposed reporting requirements, including under §§ 39.19(c)(4)(xiii), (xiv), (xvi), (xxiv), and (xxv) would not. One of the primary objectives of the additional proposed event-specific reporting requirements noted under the NPR is to allow the CFTC to monitor a DCO's compliance with given provisions under Part 39 and oversee a DCO's risk management practices. Adding a materiality component to these proposed requirements would allow the CFTC to effectively monitor a DCO's compliance with relevant CFTC regulations and oversee a DCO's risk management practices without placing an undue and irrelevant burden on DCOs.

Cross-Margining Agreements

With respect to securities held in cross-margining programs that are required to be reported pursuant to proposed § 39.19(c)(1)(ii)(C), CME Group requests that the Commission clarify that in cross-margining programs where both of the clearing organizations are themselves DCOs that the DCO clearing the securities positions must provide the securities position information.

Business Day

CME Group appreciates the Commission clarifying the definition of holiday for the purposes of Part 39 under its proposed amendments to § 39.2. CME Group observes that on Good Friday some, but not all, markets are closed, yet it is not a Federal holiday so banks remain open. Market practices vary among DCOs for settlements on Good Friday and certain events (such as a release of unemployment numbers on Good Friday) may cause a DCO to conduct limited settlements when it would otherwise be closed with respect to a given market. In discussing the term "foreign holiday" the NPR references the location of the DCO indicating that the foreign DCO need not report if it and its domestic market is not open, but such distinction for the DCO's domicile is not

---

[57] NPR at 22242.

made in the proposed amendments to § 39.2. In light of the disconnect on Good Friday, for example, CME Group recommends that the Commission replace the term “foreign holiday” in the proposed definition under § 39.2 for business day with “market holiday”, so non-Federal holidays in the U.S. where both the DCO and its markets are closed and foreign holidays for non-U.S. DCOs are both recognized.

Conclusion

CME Group appreciates the Commission’s objectives to both clarify and/or codify certain regulations for DCOs. We encourage the Commission to make the adjustments necessary to the NPR to more fully align a final rulemaking with the CFTC’s original goal of making CFTC regulations less burdensome and less costly.

We would be happy to further discuss our comments with the Commission. If any comments or questions regarding this submission arise, please feel free to contact me at +1 312 634-1592 and sunil.cutinho@cmegroup.com.

Sincerely,

Sunil Cutinho
President, CME Clearing
CME Group
20 South Wacker Drive
Chicago, IL 60606