CME Group

Sunil Cutinho
President, Clearing & Post-Trade Services

October 26, 2020

**Via Electronic Submission**

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

Re: RIN 3038-AE67 Part 190 Bankruptcy Regulations
Supplemental Notice of Proposed Rulemaking

Dear Mr. Kirkpatrick:

Chicago Mercantile Exchange Inc. ("**CME**"), on its own behalf and on behalf of CME Group Inc. ("**CME Group**"),[1] of which it is a wholly-owned subsidiary, appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("**CFTC**" or the "**Commission**") supplemental notice of proposed rulemaking on Part 190 Bankruptcy Regulations (the "**Supplemental NPR**").[2] CME opposes the proposal to add a rule to the subpart C rules set out in the CFTC's notice of proposed rulemaking on Part 190 Bankruptcy Regulations ("**NPR**")[3] that would temporarily stay termination of cleared commodity contracts in the highly unlikely event of a bankruptcy proceeding involving a systemically important derivatives clearing organization ("**SIDCO**"). The CFTC lacks authority under the Commodity Exchange Act ("**CEA**") to adopt such a rule, and such a rule would be unenforceable under the statutorily protected safe harbor rights of clearing members. The proposed rule could contribute to systemic risk by injecting legal uncertainty around the administration of the bankruptcy proceeding and keeping positions open without risk mitigation via the collection of initial margin and exchange of variation payments. It is also unnecessary, and will compound, not solve, commenters' concerns about enforceability of netting rules.

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[1] As a leading and diverse derivatives market operator, 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 CME. 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] *Bankruptcy Regulations*, 85 FR 60110 (Sept. 24, 2020) (supplemental notice of proposed rulemaking).

[3] *Bankruptcy Regulations*, 85 FR 36000 (June 12, 2020) (notice of proposed rulemaking).

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, 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**"). As a SIFMU, CME is also a SIDCO, subject to the Commission's Part 39 subpart C Regulations.

## I. General Comments

As expressed in our comment letter on the NPR ("**Initial Comment Letter**"),[4] CME generally supports the proposed revisions to Part 190 to modernize the rules, improve customer protections and provide clarity around a futures commission merchant or DCO proceeding under subchapter IV of chapter 7 of the Bankruptcy Code. (We refer to the Bankruptcy Code as the "**Code**," and to such a proceeding as a "**subchapter IV proceeding**"). CME also favors setting out rules in a new subpart C that would apply to a DCO subchapter IV proceeding, subject to our comments here and in the Initial Comment Letter on the need to preserve enforceability of a DCO's default rules as written, including close-out netting rules and rules delineating the use of clearing members' guaranty fund deposits.

Under the Supplemental NPR, the Commission is proposing to withdraw proposed Regulation 190.14(b)(2) and (3) in the subpart C rules in the NPR, in light of concerns expressed in some comment letters that the provision could interfere with enforceability of a DCO's close-out netting rules and undermine DCO netting opinions. Proposed Regulation 190.14 addresses the operation of a debtor DCO's estate subsequent to entry of an order for relief in a subchapter IV proceeding. Proposed Regulation 190.14(b)(1) provides that a DCO must, following an order for relief, cease calling for variation or initial margin, except as otherwise provided in paragraph (b). Paragraphs (b)(2) and (3) provide a mechanism by which the trustee may continue to make calls for variation and initial margin for up to six days, with the Commission's approval. As proposed, the trustee could run settlement cycles only if it is feasible to transfer the DCO's operations to another DCO or to expect that the DCO will become subject to a resolution proceeding under Title II of Dodd-Frank. The Commission could approve continued operation of the DCO only if practicable in the sense that the DCO's rules do not compel termination of all or substantially all of the outstanding contracts under prevailing circumstances and substantially all of the clearing members are willing and able to make variation payments owed.

Under the Supplemental NPR, the Commission would retain the prohibition on collecting variation and initial margin in proposed Regulation 190.14(b)(1). The Commission, though, is proposing to replace paragraphs (b)(2) and (3) in proposed Regulation 190.14 with a provision that would prevent termination of commodity contracts in accordance with the DCO's rules based upon a bankruptcy event, for up to 48 hours following the order for relief. The proposed rule would take effect only after the Board of Governors of the Federal Reserve System ("**FRB**"), Federal Deposit Insurance Corporation ("**FDIC**"), and Office of the Comptroller of the Currency take public action to recognize the stay provision as consistent with treating DCO rules as Qualifying Master Netting Agreements ("**QMNAs**") for bank regulatory capital purposes, and the CFTC finds such action is sufficient following public comment. The proposed stay would apply only to a subchapter IV proceeding involving a SIDCO. CME is one of only two SIDCOs,

[4] Letter from Sunil Cutinho, President, CME Clearing to Christopher J. Kirkpatrick, Secretary of the Commission, dated July 13, 2020.

and the Supplemental NPR has direct and significant adverse implications for CME and financial stability.

The Commission states that the proposed revisions are intended to "(1) stay the termination of SIDCO contracts for a brief time after bankruptcy in order to foster the success of a Title II Resolution, if the FDIC is appointed receiver in such a Resolution within that time, but (2) do so in a manner that does not undermine the QMNA status of SIDCO rules."[5] The Commission's apparent concern – one we believe is unfounded – is that a SIDCO would file a voluntary bankruptcy petition to commence a subchapter IV proceeding, which in turn would constitute the order for relief in bankruptcy, triggering termination of commodity contracts before the process to place the SIDCO into a Dodd-Frank Title II resolution proceeding is completed.

Although CME generally supports the Commission's proposal to withdraw proposed Regulation 190.14(b)(2) and (3), those provisions did not create issues for CME. As we explained in our Initial Comment Letter, CME's close-out netting rules, in particular Rule 818, compel termination of open contracts upon a CME bankruptcy event. Thus, the conditions of Regulation 190.14(b)(2) and (3) would not be satisfied and the trustee could not continue CME's DCO operations.

CME objects to the proposal to replace Regulations 190.14(b)(2) and (3) with a temporary stay provision. Ironically, such a rule will achieve the opposite of the Commission's stated objective to address commenters' concerns about protecting enforceability of a DCO's close-out netting rules. A Commission rule of the type proposed will introduce legal uncertainty by interfering with CME's close-out netting rule and weaken the netting opinion we have obtained and that is relied upon by our clearing members. The Commission does not have the statutory authority to adopt such a rule, and this backdoor approach to rewrite a DCO's rules is contrary to the CEA framework for registration, regulation and oversight of DCOs. CME raised similar objections in our Initial Comment Letter to features in proposed Regulation 190.18 that would override a DCO's rules prescribing application of guaranty fund deposits. We find it troubling that the Commission is now proposing to incorporate a second rule provision into proposed subpart C that ignores the CEA rulemaking framework. The Commission should not assume that CME will simply amend its rules to align with any inconsistent subpart C rules the Commission may adopt in this improper manner. CEA Section 5b(c)(2)(A) gives CME reasonable discretion, as a DCO, to establish the manner by which we comply with our obligations under the core principles set out in CEA Section 5b(c) and the more detailed requirements set out in the Commission's Part 39 Regulations. CME is not ceding our statutorily protected rulemaking authority as a DCO.

CME also objects to the substantive terms of the proposal. In particular, CME believes that imposing a temporary stay on terms under which the trustee cannot make any calls for variation or initial margin could aggravate systemic risk, by allowing risk to accumulate in the clearing system, as explained further below.

In addition, as explained below, we believe the temporary stay rule is trying to solve for a non-existent problem, and is thus unnecessary. If the Commission believes, though, that there is a risk a SIDCO will file a voluntary petition in bankruptcy before the process to place a SIDCO in a Title II resolution proceeding has concluded, there is a more straightforward way to address the issue. The Commission could add a provision to the proposed subpart C rules to require a DCO to notify the Commission in advance of filing a voluntary petition for relief under subchapter IV of

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[5] 85 FR 60112.

Chapter 7 of the Code, or of plans to present a resolution to the DCO's board seeking approval to file such a petition.

## II. Specific Objections

### *A. The Commission Lacks Authority to Adopt the Temporary Stay Rule*

The Commission does not have the authority to adopt an agency rule that would impose a temporary stay on the operation of a DCO's close-out netting rules in the event of a DCO subchapter IV proceeding. Moreover, nothing in the CEA – including Section 20 – authorizes the Commission to adopt a rule that would override statutorily protected close-out netting rights that clearing members have under rules of a DCO. Indeed, Code Section 362(o) and Section 4404 of the Federal Deposit Insurance Act ("**FDIA**") protect enforceability of close-out netting rights from such encroachment via agency rulemaking. Rather than promoting legal clarity, the Commission will be injecting substantial legal uncertainty around the administration of a DCO bankruptcy in a subchapter IV proceeding, in turn causing systemic risk, if it adopts a temporary stay rule that is highly vulnerable to successful legal challenge as unenforceable.

The CEA contains certain provisions delineating the CFTC's rulemaking authority. CEA Section 8a(5) grants the Commission general authority "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter." CEA Section 5b(c)(2)(A) recognizes the CFTC's authority to adopt rules pursuant to Section 8a(5) that prescribe how a DCO must comply with the core principles set out in Section 5b(c). At the same time, the provision grants a DCO "reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph," consistent with the CEA's reliance on self-regulation subject to Commission oversight as a foundational element of the CEA regulatory regime. DCOs are subject to rule filing requirements under the CEA and Commission's Part 40 Regulations. As a SIDCO, CME is also subject to heightened obligations under CFTC Regulation 40.10 to provide the Commission with at least 60 days advance notice of any proposed changes to its rules that "could materially affect the nature or level of risks presented by" the SIDCO.

In disregard of this established framework, the Commission is proposing a temporary stay rule that would, if adopted and given effect, have the consequence of amending how CME's close-out netting rules apply. The Commission does not explain in the Supplemental NPR its statutory authority for adopting such a rule. Presumably, the Commission is relying on its rulemaking authority under CEA Section 20 to justify this approach,[6] but if so that reliance is misplaced. Section 20 defines specific limited categories in which the Commission may exercise its authority to adopt rules governing a commodity broker's liquidation in a subchapter IV proceeding; it does not confer open-ended authority to the Commission.

Section 20 authorizes the CFTC to adopt rules to (i) give meaning to definitional elements in subject IV of chapter 7 of the Code, (ii) delineate persons to which customer property and commodity contracts may be transferred, and (iii) determine a customer's net equity. Section 20 also authorizes the Commission to adopt rules setting out "the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition

[6] Proposed Regulation 190.00(a) in the NPR, which describes the Commission's authority to adopt the Part 190 Regulations, states that the Commission "has adopted the regulations in this part pursuant to its authority under sections 8a(5) and 20 of the Commodity Exchange Act."

under such chapter." CEA Sections 8a(5) and 5b(c)(2) give the Commission the authority to adopt rules with which DCOs must comply. Section 20 does not give the CFTC the right to adopt rules that have the effect of directly rewriting a DCO's rules, nor does it allow the CFTC to abrogate protections established in the Code that apply in a subchapter IV proceeding.[7]

Indeed, the legislative history to Section 20 confirms that the Commission must exercise its rulemaking authority in a manner consistent with the policies embodied in subchapter IV. In this regard, Senate Report 95-989 states, in relevant part:

> THE COMMODITY BROKER SUBCHAPTER PROVIDES ONLY A FRAMEWORK WITHIN WHICH COMMODITY BROKER LIQUIDATIONS ARE TO BE ADMINISTERED. DUE TO THE GERMINAL STATE OF REGULATION OF THE COMMODITIES INDUSTRY, THE SUBCHAPTER DOES NOT PROVIDE DETAILED RULES TO COVER EVERY CONTINGENCY. INSTEAD, GENERAL RULEMAKING AUTHORITY HAS BEEN DELEGATED TO THE CFTC WITH RESPECT TO THE CONTENTS AND DETERMINATION OF NET EQUITY; DEFINITION OF 'CUSTOMER PROPERTY,' 'MEMBER PROPERTY,' 'COMMODITY OPTIONS DEALER,' 'COMMODITY CONTRACT,' AND 'CLEARING ORGANIZATION'; THE QUESTION OF WHICH PROPERTY OR CONTRACTS WILL BE SPECIFICALLY IDENTIFIABLE TO A PARTICULAR CUSTOMER IN A SPECIFIC CAPACITY; THE METHOD BY WHICH THE BUSINESS OF THE DEBTOR IS TO BE CONDUCTED OR LIQUIDATED; AND THE PARTIES TO WHICH CUSTOMER PROPERTY AND CONTRACTS MAY BE TRANSFERRED. ***THIS RULEMAKING AUTHORITY IS TO BE EXERCISED WITHIN THE BOUNDS OF THE POLICIES AND FRAMEWORK ESTABLISHED BY THIS SUBCHAPTER.*** [8] (Emphasis added.)

Code Section 767, which is part of Subchapter IV, recognizes that commodity brokers, master netting agreement participants and certain other persons have safe harbor rights under other provisions in Title 11. Those include protections under Code Sections 556, 560, 362(b)(6), 362(b)(17) and 362(b)(27) allowing enforcement of contractual rights under a DCO's rules with respect to termination, netting and offset of commodity contracts, free from the automatic stay that would otherwise apply under Section 362(a). By seeking to adopt a stay rule that abrogates those rights, the Commission is exceeding the limits on its authority under Section 20 to adopt rules that are within the "bounds of policies and framework established by" subchapter IV.

The Commission also lacks the authority to enforce such a temporary stay rule in light of Section 362(o) of the Code. This provision states:

> The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) ***shall not be stayed by any***

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[7] To the contrary, the Commission's authority under CEA Section 8a(7) to alter or supplement the rules of a registered entity, including those of a DCO, is subject to special procedural requirements unrelated to the Commission's rulemaking authority. Under Section 8a(7), the Commission must request the registered entity to amend its rules and provide the registered entity with notice and an opportunity for hearing if it does not make the changes, before the Commission may then itself alter or supplement the registered entity's rules. If the Commission were to request a DCO to change its rules, presumably it would first have to conclude that the DCO's rules do not comply with CEA Section 5b, the Part 39 rules, or other CEA provisions or Commission rules.

[8] S. Rep. 95-989, 8, 1978 U.S.C.C.A.N. 5787, 5794.

> ***order of*** a court or ***administrative agency in any proceeding under this title***. (Emphasis added.)

Of note, Section 362(b)(27) expressly protects the rights of a master netting agreement participant to exercise ***any*** contractual right (as defined in Code Section 555, 556, 559, or 560) it has under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement. As provided in the cited Code sections, "the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act)." Thus, Section 362(b)(27) effectively precludes the Commission from enforcing the proposed temporary stay rule in any DCO subchapter IV proceeding.

Section 4404 of FDIA also prohibits the Commission from restricting netting rights under a DCO's rules, at least in relation to those clearing members that are "financial institutions" as defined in FDIA, including depository institutions. In particular, Section 4404(h) protects the netting rights that financial institutions have under a DCO's rules notwithstanding "any State or Federal law" other than certain enumerated statutes.[9] Rulemaking by the Commission does *not* fall within one of the exceptions to the FDIA "safe harbor," making the Commission's proposed stay under subpart C of Part 190 unenforceable under Section 4404, as well.

If the Commission adopts the proposed stay rule, that will compromise CME's ability to meet its statutory obligations under CEA Section 5b(c)(2)(R). As implemented by CFTC Regulation 39.27, CME must "operate pursuant to a well-founded, transparent, and ***enforceable*** legal framework that addresses each aspect" of CME's obligations as a DCO, including netting arrangements and "other significant aspects" of CME's "operations, risk management procedures, and related requirements" as a DCO.

In our Initial Comment Letter, CME voiced similar objections to proposed Regulation 190.18(c)(1) as an improper exercise of Commission rulemaking authority. Specifically, we oppose the provisions in the rule that would allocate guaranty fund deposits, assessments or similar payments to customer property other than member property, available to cover a shortfall in the funded balances for clearing members' customer accounts in any account class, ignoring DCO rules that prescribe a different manner for allocating guaranty fund deposits to cover losses. Like the proposed stay rule, this rule exceeds the Commission's authority under CEA Section 20, in this case because it is inconsistent with the Code's definition of "member property" in Section 761(16) and thus is outside the bounds of the policies embodied in subchapter IV of chapter 7 of the Code on that basis. The proposed rule is also contrary to CFTC Regulation 39.35(a), which directs a SIDCO to adopt explicit rules and procedures for allocating losses. Indeed, the Commission amended the definition of member property in current Regulation 190.09 in 2013 to "clarify the scope of member property will be determined based on the by-laws and rules of the relevant DCO," recognizing "the diversity of financial safeguard arrangements among DCOs." [10]

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[9] Section 4404(h), states:

> The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15.

[10] *Derivatives Clearing Organizations and International Standards,* 78 FR 72476, 72497 (Dec. 2, 2013).

The Commission further noted that it was prudent to provide this clarity "to materially aid compliance with Core Principle R."[11]

### *B. The Supplemental NPR is Contrary to Sound Risk Management and Could Contribute to Systemic Risk*

The Commission's proposal to stay termination of positions along with payments for up to 48 hours runs counter to the core risk management benefits of centralized clearing. If variation gains and losses are not collected and paid out over the two-day stay period, market participants will not realize the profits and losses on their portfolios and, more broadly, debt in the clearing system will accumulate. To put into context the type of market moves that could be present in the highly unlikely event of a bankruptcy proceeding for a SIDCO, it is instructive to consider the price moves observed during the March 2020 volatility. While no DCO entered bankruptcy, or even recovery, during this period of extreme volatility, the price data for CME's E-Mini S&P futures contract provides one example that validates the cause for concern. The largest two-day down move CME observed was ***13.85%*** and up move observed was ***11.11%***.

Permitting the accumulation of uncovered risk for 48 hours during an extremely volatile time would pose a risk to financial stability. In fact, it is our understanding that this potential financial stability risk was one of the drivers behind previous policy decisions to avoid implementing stay provisions for cleared derivatives contracts. In this regard, in its rules imposing restrictions on qualified financial contracts ("**QFCs**") of systemically important U.S. banking organizations, the FRB was careful to exclude cleared QFCs from the restrictions. The FRB recognized that centralized clearing "provides unique benefits to the financial system as well as unique issues related to the cancellation of cleared contracts." [12]

CME expects that clearing members and their customers may object that the accumulation of uncovered risk exposure during the two-day stay window puts them at unacceptable risk, all the more so if that follows any settlement cycles where the DCO has applied variation gains haircutting in accordance with it default rules.

As the Commission knows, a number of clearing members are members of multiple DCOs. It is likely that the suspension of daily settlement cycles will cause financial distress for clearing members of the debtor DCO, which could cause systemic risk to spread to other DCOs in which those clearing members participate, particularly where their risk exposures at the debtor DCO are offset against risk exposures cleared by another DCO.

### *C. The Proposed Stay Rule is Unnecessary*

The CEA establishes a comprehensive oversight framework for SIDCOs and other registered DCOs. As required under CEA Section 5b, DCOs must adopt and enforce rules to comply with the DCO core principles and with the detailed requirements adopted by the CFTC in the Part 39 Regulations to implement those statutory provisions. A SIDCO's operations are also subject to oversight by the Commission, and by the FRB as well. A SIDCO is subject to heightened obligations under subpart C of the Commission's Part 39 Regulations. Among other things, a SIDCO must maintain recovery and wind-down plans as required under CFTC Regulation 39.39,

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[11] *Id*.

[12] *See Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 81 FR 29169, 29176 (May 11, 2016) (proposed rule).

which the Commission receives pursuant to CFTC Regulation 39.19 in conducting its oversight of a SIDCO. The plans must address both default and non-default losses that threaten its viability as a going concern, and must contain procedures that require the SIDCO to inform the Commission as soon as practicable if it initiates its recovery plan or if wind-down is pending. That obligation is on top of a DCO's obligation under Commission Regulation 39.19(c) to report certain events, including non-default events such as material malfunction of software or hardware systems,[13] that would also alert the Commission if a SIDCO were to be experiencing difficulties long before such events could lead it into bankruptcy.

CME understands that the process to place a SIDCO in a Title II resolution proceeding could take time, as it involves action by the FDIC and FRB to recommend resolution and by the Secretary of the Treasury ("**Treasury**") to determine if the statutory factors for imposing resolution are met. However, under the CEA oversight framework, including a SIDCO's reporting obligations, surely it is reasonable to expect that the Commission, FDIC, FRB and Treasury will be well aware of any circumstances that could portend a SIDCO's failure, whatever the cause, and will be closely monitoring the situation. If the relevant parties are contemplating placing the SIDCO into a Title II resolution proceeding, and doing so is feasible, it is hard to imagine that a SIDCO could file a voluntary petition for relief under subchapter IV of Chapter 7 of the Bankruptcy Code without their prior knowledge.[14] Under these circumstances, there is no compelling reason for the proposed temporary stay rule.

We are troubled by the suggestion in the Supplemental NPR that a SIDCO could deliberately rush to file bankruptcy for the purpose of frustrating the transition to a Title II resolution proceeding. In the highly unlike event a SIDCO were to face a decision whether to file for bankruptcy, it would be one of last resort, taken only after careful deliberation. The decision to file a voluntary petition for relief is certainly not one that CME, or any DCO, would take lightly.

### *D. There is a Better Way to Address the Commission's Stated Concerns*

If the Commission nonetheless believes that some mechanism is necessary to accommodate placing a failing SIDCO into a Title II resolution proceeding before commodity contracts terminate, the Commission should address that in a more direct manner, consistent with its rulemaking authority. For example, the Commission could require a DCO to notify the CFTC in advance of its plan to file a voluntary petition for relief under subchapter IV of Chapter 7 of the Code, to allow Treasury time to determine whether to appoint the FDIC as receiver before the SIDCO files its petition. We note that before a commodity broker may file a voluntary petition for relief under subchapter IV, its board of directors must approve a resolution authorizing the debtor to take that step. If the Commission believes more advance notice is appropriate to allow the FRB, FDIC and Treasury to react on a timely basis, it could require a SIDCO to notify the Commission of plans to present such a resolution to its board.

## III. Conclusion

CME encourages the Commission to adopt final Part 190 amendments, including adoption of new subpart C rules subject to our comments in this letter and in our Initial Comment Letter. The Commission should reject the proposed temporary stay provision, for the reasons explained above. Foremost among them, the CFTC lacks authority to adopt such a rule, and such a rule if

[13] Such events are also reportable under CFTC Regulation 39.18(g).

[14] Conversely, if the Commission expects the process could take a long time, one has to question whether adding 48 hours would provide sufficient time for the process to run its course.

adopted and given effect would likely be unenforceable. Thus, a proposed stay rule would only serve to compromise legal certainty around a SIDCO subchapter IV proceeding, thereby introducing potential risk to U.S. clearing systems. The proposed stay is also objectionable on the merits as contrary to sound risk management, and unnecessary in that it seeks to solve a problem that is, in our view, largely non-existent. If the Commission nonetheless believes that a SIDCO could file a voluntary petition in bankruptcy before the process to place the SIDCO in a Title II resolution proceeding has concluded, it should address the issue more directly. The Commission could add a provision to the proposed subpart C rules to require a DCO to notify the Commission in advance of filing a voluntary petition for relief under subchapter IV of Chapter 7 of the Code, or of plans to present a resolution to the DCO's board seeking approval to file such a petition.

If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

Sunil Cutinho
President, CME Clearing

cc: Chairman Heath P. Tarbert, Commodity Futures Trading Commission
Commissioner Brian Quintenz, Commodity Futures Trading Commission
Commissioner Rostin Behnam, Commodity Futures Trading Commission
Commissioner Dawn Stump, Commodity Futures Trading Commission
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