Kathleen M. Cronin
Senior Managing Director, General Counsel and Corporate Secretary
Legal Department

May 27, 2014

VIA ELECTRONIC MAIL

Securities and Exchange Commission
Office of the Secretary
100 F Street, NE
Washington, DC 20549

Re: Proposed Standards for Covered Clearing Agencies, Release No. 34-71699, SEC File No. S7-03-14

Dear Deputy Secretary Kevin M. O'Neill:

CME Group Inc. ("CME Group")[1] appreciates the opportunity to comment on the rules proposed by the Securities and Exchange Commission (the "Commission" or "SEC") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") in regard to the standards for the operation and governance of certain types of registered clearing agencies that meet the definition of a "covered clearing agency" (the "Proposed Rules").

CME Group supports the SEC's stated goal of contributing to the enhancement of the stability of U.S. securities markets. We also acknowledge the challenges faced in adopting and implementing effective rules and regulations to meet this goal. With these considerations in mind, CME Group respectfully submits the following comments:

I) The proposed definition of a covered clearing agency should be revised to expressly exclude clearing agencies for which the CFTC is the Supervisory Agency as provided in Section 803(8) of the Clearing Supervision Act.[2]

II) We agree with the SEC's definition of qualifying liquid resources as including assets that are readily available and convertible into cash through repurchase agreements and assets that a

[1] CME Group is the parent company for four designated contract markets: the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX"), the Commodity Exchange, Inc. ("COMEX") and the Chicago Mercantile Exchange Inc. ("CME"). CME is also registered as a derivatives clearing organization under the Commodity Exchange Act ("CEA") and is deemed registered as a clearing agency under the Securities Exchange Act of 1934 ("Exchange Act") with respect to swaps classified as "security-based swaps", as that term is defined in the CEA and the Exchange Act. CME is also designated as a systemically important financial market utility under Title VII of the Dodd-Frank Act.
[2] Payment, Clearing, and Settlement Supervision Act of 2010 (Clearing Supervision Act) § 803(8); 12 U.S.C. § 5462(8).

central bank would permit a covered clearing agency to use as collateral, to the extent such covered clearing agency has access to routine credit at such central bank.

I. CME Group Comments on Implications of Covered Clearing Agency Definition

We applaud the Commission's statement that the proposed requirements for covered clearing agencies in Rule 17Ad-22(e) would not apply to CME due to (i) CME's designation as a systemically important financial market utility (ii) CME's dual registration with the Commodity Futures Trading Commission ("CFTC") and the SEC as a derivatives clearing organization ("DCO") and as a clearing agency, respectively, and (iii) CME being subject to the CFTC's Supervisory Agency authority under the Clearing Supervision Act as a systemically important derivatives clearing organization ("SIDCO").[3] By stating in the proposed regulation's preamble that CME would not be subject to proposed Rule 17Ad-22(e) requirements for covered clearing agencies, we trust that it is the SEC's intent to provide an appropriately high level of regulatory certainty, consistent with the language and intent of the Clearing Supervision Act.[4] We applaud the SEC's efforts to support dually registered entities focusing their resources on the important work of maintaining effective systems of governance and enhancing their operational strength.

CME agrees with the SEC's stated view that imposing requirements under proposed Rule 17Ad-22(e) would result in it being subject to duplicative regimes.[5] Avoiding unnecessarily duplicative regulation of dually registered entities allows for the most efficient use of both governmental and private sector resources towards the shared goal of protecting the financial system. Further, by not imposing dual requirements, the SEC recognizes that doing so may result in economic burdens as CME would need to expend resources to demonstrate compliance with additional, albeit substantively equivalent, regulatory requirements of more than just their primary regulator.[6]

CME Group does note, however, that the proposal should be improved to provide a consistent level of regulatory certainty throughout its provisions. For example, the proposal introduces a definition of a "covered clearing agency" and implements a procedure that may undermine the SEC's stated intent to exclude SIDCOs from the application of the Proposed Rules.[7] The

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[3] *See* Standards for Covered Clearing Agencies, 79 Fed. Reg. 16865, 16874 (proposed March 26, 2014) (to be codified at 17 C.F.R. pt. 240) [hereinafter *Proposed Rules*].

[4] *See* Clearing Supervision Act § 803(8)(B); 12 U.S.C. § 5462(8)(B) (providing that one agency shall be designated as the primary regulator for each financial market utility which is subject to the jurisdictional supervision of more than one agency)

[5] *See Proposed Rules* at 16874.

[6] *See id.* at 16952 ("because the proposed amendments result in general consistency with the standards set forth in the PFMI Report and requirements proposed by the Board and adopted by the CFTC, consistency likely fosters efficiency by reducing the risk that covered clearing agencies will be faced with conflicting or duplicative regulation when clearing financial products across multiple regulatory jurisdictions")

[7] Proposed Rule 17Ad-22(a)(7) defines a covered clearing agency to mean "a designated clearing agency, a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 et seq.), or any clearing agency determined to be a covered clearing agency by the Commission pursuant to § 240.17Ab2-2." *Proposed Rules* at 16971. Proposed regulation § 240.17Ab2-2 provides that the Commission may, upon its own initiative determine whether a registered clearing agency should be considered a covered clearing

proposed definition of a covered clearing agency is sufficiently broad to enable the SEC to apply it to SIDCOs, absent an express exclusion from the definition. As the SEC notes elsewhere, "including CME and ICE in the set of covered clearing agencies would potentially subject them to requirements that would be duplicative of CFTC requirements [imposed upon SIDCOs]."[8] The potential for a SIDCO to be determined a "covered clearing agency" is inconsistent with the SEC's acknowledgment of these duplicative requirements and the purpose of the Clearing Supervision Act.

Proposed Regulation § 240.17Ab2-2 proposes to enable the Commission to choose in the future to avail itself of a 30-day process to determine that additional entities would be within the scope of a "covered clearing agency,"[9] and as a result, subject to the full requirements of the rule proposal. This process is based upon factors that may be entirely defined by the Commission during the determination process itself and the process does not provide the subject clearing agency with a mandatory opportunity for a hearing.[10] As currently proposed, the process lacks clear standards for determining when and according to which standards a registered clearing agency would be found to be a covered clearing agency. It is not apparent under this proposed framework that CME Group would be able to meaningfully impact any proceeding in which the SEC seeks to determine that CME should be considered a covered clearing agency, which would further exacerbate regulatory uncertainty for CME Group.

For these reasons, CME Group respectfully requests the SEC consistently provide regulatory certainty by expressly excluding from the final definition of "covered clearing agency" clearing agencies for which the CFTC is the Supervisory Agency under Section 803(8) of the Clearing Supervision Act.

II. CME Group Comments on the Definition of Qualifying Liquid Resources

Rule 17Ad-22(e)(7)(ii) states for any covered clearing agency, in each relevant currency, qualifying liquid resources would include three types of assets:

- cash held either at the central bank of issue or at creditworthy commercial banks;
- assets that are readily available and convertible into cash through either:
    - prearranged funding arrangements without material adverse change limitations, such as committed lines of credit, foreign exchange swaps, and repurchase agreements, or
    - other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and

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agency. In making its determination, the Commission may consider two specific characteristics or "[s]uch other characteristics as it deems appropriate in the circumstances." *See id.* at 16970.

[8] *See Proposed Rules* at 16953.

[9] *See id.* at 16970.

[10] *See id.*

- other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank. [11]

We applaud the Commission's statement that the proposed requirements for covered clearing agencies in Rule 17Ad–22(e)(7)(ii) would include in the definition of qualifying liquid resources assets that are readily available and convertible into cash through repurchase agreements. We agree with the Commission's statement that, "this requirement is appropriate, given the risks that its size, operation, and importance pose to the U.S. securities markets, and will help ensure that a covered clearing agency has sufficient liquid resources, as determined by stress testing, to effect settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios."[12]

We also agree with the Commission's assessment that, "the resulting peak liquidity demands of CCPs are therefore proportionately large on both an individual and an aggregate basis, and the ability of CCPs to satisfy a requirement limiting qualifying liquid resources to committed facilities could be constrained by the capacity of traditional liquidity sources in the U.S. banking sector in certain circumstances funding arrangements determined to be highly reliable even in extreme but plausible market conditions."[13]

However, due to the nature of repurchase agreements being uncommitted, Master Repurchase Agreements do not include Material Adverse Change (MAC) limitations since there is not a financial commitment between parties to the agreement. Therefore, we recommend the Commission remove this reference to MAC clauses when defining qualifying liquid resources to include uncommitted repurchase agreements.

We believe the position taken by the SEC guards against potential unintended negative consequences that the attribution of negative liquidity characteristics to U.S. Treasury securities may influence other jurisdictions to treat U.S. Treasury securities as less liquid. The position also prevents a significant increase in costs for a covered clearing agency in obtaining a challenging amount of committed liquidity, which in turn lessens the costs to market participants.

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[11] *See id.* at 16889–16890; *see also* proposed Regulation § 240.17Ad-22(a)(15) (including within the definition of qualifying liquid resources "committed arrangements, including lines of credit, foreign exchange swaps, and repurchase agreements…."and "[o]ther assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank that permits said pledges or other transactions by the covered clearing agency").
[12] *Id.* at 16890.
[13] *Id.*

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If the SEC would like to discuss any of these issues further, or have any comments or questions, please feel free to contact me at [redacted] or via email at [redacted]. Alternatively, you may contact Christopher Bowen at [redacted] or [redacted]

Sincerely,

Kathleen M. Cronin
Senior Managing Director, General Counsel and
Corporate Secretary