

April 4, 2011

**VIA E-MAIL AND ON-LINE SUBMISSION**

Ms. Elizabeth M. Murphy  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
**rule-comments@sec.gov**

Re: Registration and Regulation of Security-Based Swap Execution Facilities, SEC Release No. 34-63825 (File No. S7-06-11)(RIN 3235-AK93)

Dear Ms. Murphy:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Securities and Exchange Commission's Notice of Proposed Rulemaking ("Release") concerning the registration and regulation of security-based swap execution facilities ("SBSEFs").

CME Group is the world's largest and most diverse derivatives marketplace. CME Group includes four separate Exchanges, including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products.

CME includes CME Clearing, one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions through CME ClearPort®.

In December 2009, CME Clearing began offering clearing services for credit default swaps ("CDS") based on the CDX North American Investment Grade Index, and CME intends to begin clearing single-name credit default swaps pursuant to our exemption from various registration requirements from the SEC. After the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA or Dodd-Frank") becomes effective, CDS index products will qualify as swaps subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"), and single-name CDS products will qualify as security-based swaps ("SBS") subject to the jurisdiction of the SEC. Any execution facility that provides execution services for the full range of CDS products used by the marketplace will therefore be subject to both regulatory regimes as both a SEF and an SBSEF.

Generally, we urge the Commission and the CFTC to approach the registration requirements for clearing organizations and execution facilities for swaps and SBS with the goal of coordinating requirements to minimize the prescription of operational requirements and standards that are not required under DFA. Imposing such unnecessary requirements will needlessly burden the ability of clearing organizations and

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execution facilities to fulfill DFA's broad objectives of increasing transparency and reducing systemic risk in the swaps markets. As we have previously noted in our comment letters, we also urge the agencies to minimize unnecessary differences in the regulatory approaches where, as is the case with CDS products, organizations offering comprehensive services with respect to swaps products will be subject to both regulatory regimes.<sup>1</sup> In the case of SEFs and SBSEFs, we are particularly concerned that a lack of coordination of the applicable requirements will force any organization offering an execution facility for certain products categories, such as CDS, simply to meet the lowest common denominator (if any can be found) of services and functionality in order to satisfy potentially conflicting requirements. If that happens, market participants may be denied access to useful functionality or the ability to execute particular trading and risk management strategies. Therefore, we urge the Commission to adopt only those requirements for SBSEFs that are clearly necessary and appropriate to effectuate Congressional intent in DFA, and to coordinate with the CFTC to ensure that related requirements imposed by the CFTC on SEFs are aligned to the maximum extent possible. To that end, we ask the Commission to review and consider the many concerns raised in our March 8, 2010 comment letter to the CFTC concerning core principles and other requirements for SEFs (RIN number 3038-AD18) (Fed. Reg. Vol. 76, No. 5, Page 1214) (CME Group's "SEF Comment Letter").<sup>2</sup> Our comments below highlight areas of particular concern.

#### **Definition of a Security Based Swap Execution Facility**

Dodd-Frank defines a SBSEF as "a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system through any means of interstate commerce, including any trading facility that – (A) facilitates the execution of security-based swaps between persons; and (B) is not a national securities exchange." As noted in our SEF Comment Letter, Congress was surely aware of the statutory definition of "trading facility" under the Commodity Exchange Act, which employs nearly identical language concerning participants' ability to accept "bids or offers made by other participants *that are open to multiple participants* in the facility or system."<sup>3</sup> However, in the SBSEF definition, as in the SEF definition, Congress omitted the language found in the trading facility definition that specifically requires that posted bids or offers be "open to multiple participants". Consequently, we do not believe that the requirement in the Release that an SBSEF provide participants with the ability to make and display executable bids or offers accessible to all other participants reflects Congressional intent in DFA. (See detailed discussion at CMEG SEF Comment Letter, pp.7-8.) Such functionality may be valued by many

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<sup>1</sup> In our January 18, 2011 comment letter to the Commission concerning the reporting and dissemination of security-based swap information, SEC Release No. 34-63346 (File No. S7-34-10)(RIN 3235-AK80), we noted that different reporting requirements for swaps and SBS could have a significant negative impact as participants across the marketplace engage in the technological build-out necessary to support the implementation of DFA. Requirements that needlessly force participants to support two separate sets of systems, given the substantial implementation burden that the industry already faces, will ultimately damage the effectiveness of DFA reforms.

<sup>2</sup> A copy of CME Group's comment letter on SEF core principles, which contains a copy of CME Group's comment letter on core principles for designated contract markets, is available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=955>.

<sup>3</sup> Commodity Exchange Act Sec. 1a(34), 7 USC § 1a(34).

participants, and SBSEFs should not be restricted from offering such broadcast-to-all functionality. However, we believe that to require that SBSEFs develop and offer such functionality goes beyond Congressional intent in DFA.

We commend the Commission for not carrying an unsupported interpretation of DFA's reference to "multiple participants" in the SBSEF definition further to propose, as the CFTC did, that request-for-quote (RFQ) functionality on a SBSEF be restricted such that an RFQ would be required to be submitted to a minimum of five market participants. As set forth in our SEF Comment Letter, there is no basis in DFA to impose such a prescriptive functional limitation on SEFs, and we urge the Commission to reject any such limitation in its final rule.

#### **Determination of Swaps "Made Available For Trading"**

The Release seeks comments on objective standards pursuant to which the Commission would determine that a SBS has been "made available for trading", such market participants would be required to execute that SBS only on a SBSEF or national securities exchange. In our SEF Comment Letter to the CFTC, we recommended that the CFTC adopt factors described in a report recently published by the International Organization of Securities Commissions (IOSCO), including the number and types of market participants, product characteristics (including the breadth of interest in a product) and transaction information such as size and frequency of transactions. (CME Group SEF Comment letter p.9.) We also urged the CFTC, as we urge the Commission, to recognize that a very thinly traded product may not be appropriate for designation as a swap that is "made available for trading". The agencies must also balance the interest in promoting pre-trade transparency on SEFs and SBSEFs against the equally-important goals of facilitating smooth functioning of the markets and mitigating risks to market participants that may arise if their choices of trading venues and counterparties are constrained by the execution requirement before the markets for the relevant products on SEFs and SBSEFs have adequately developed.

#### **Block Trades**

The Release provides a summary of concerns regarding block trade definitions and requirements for SBS, and seeks comment on an extensive list of questions. CME believes that the market participants that are likely block trade initiators or liquidity providers for block-sized transactions in SBS are best positioned to comment on the Commission's proposals. However, consistent with CME Group comment letters to the CFTC and the views expressed by other comments submitted in response to the SEC's Proposed Reg SBSR<sup>4</sup>, we note the damage that can occur, to participants' legitimate interests and to the smooth functioning of the markets, if block trade reporting and trading requirements are poorly designed. The imposition of pre-trade transparency requirements on transactions meeting the block threshold, through composite indicative quote reporting and through the requirement that a block trade interact with pre-existing resting bids and offers based on a "fair method", could be particularly damaging. (How such a requirement would be implemented in practice, and what technology development would be needed to

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<sup>4</sup> SEC Release No. 34-63346 (File No. S7-34-10)(RIN 3235-AK80).

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support it, is far from clear.) Again, we urge the Commission to coordinate its approach with that of the CFTC and to implement DFA requirements with regard to block trades in a minimally prescriptive way.

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CME Group thanks the Commission for the opportunity to comment on this matter. If you have any questions, please feel free to contact me at (312) 930-8275 or via email at [Craig.Donohue@cmegroup.com](mailto:Craig.Donohue@cmegroup.com), or Ann Shuman, Managing Director and Deputy General Counsel, at (312) 648-3851 or [Ann.Shuman@cmegroup.com](mailto:Ann.Shuman@cmegroup.com).

Sincerely



Craig S. Donohue

cc: Chairman Mary Schapiro  
Commissioner Kathleen Casey  
Commissioner Elisse Walter  
Commissioner Luis Aguilar  
Commissioner Troy Paredes