

September 8, 2010

VIA ELECTRONIC MAIL

David Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
[secretary@cftc.gov](mailto:secretary@cftc.gov)

Re: Acknowledgement Letters for Segregated Customer Funds and Secured Amount Funds – 75 Fed. Reg. 47738 (Aug. 9, 2010), RIN 3038-AC72

Dear Mr. Stawick:

CME Group Inc. (“CME Group”), on behalf of its four designated contracts markets (“DCMs”) and derivatives clearing organization (“DCO”), appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (the “Commission”) notice of proposed rulemaking (“NPR”) concerning amendments to Commission Regulations 1.20, 1.26 and 30.7 with respect to acknowledgement letters that futures commission merchants (“FCMs”) and DCOs must obtain from depositories holding segregated customer funds or “secured amount” funds of foreign futures or foreign options customers.

CME Group is the parent of four DCMs: (1) the Chicago Mercantile Exchange (“CME”); (2) the Chicago Board of Trade; (3) the New York Mercantile Exchange; and (4) the Commodity Exchange. CME’s clearing house (“CME Clearing”) is among the largest DCOs in the world. Collectively, these DCMs and CME Clearing serve the risk management needs of customers around the globe. As an international marketplace, the CME Group Exchanges bring buyers and sellers together on the CME Globex electronic trading platform and on trading floors in Chicago and New York. 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, emissions, agricultural commodities, metals, and alternative investment products such as weather and real estate.

## Background

In February 2009, the Commission published for comment proposed amendments to Regulations 1.20, 1.26 and 30.7 concerning the obligations of FCMs and DCOs to obtain from each bank, trust company, FCM or DCO holding customer funds in the capacity of a depository a letter acknowledging, among other things, that the customer funds are held in accordance with the provisions of the Commodity Exchange Act ("CEA") and Commission Regulations. In March 2009, CME Group submitted a comment letter together with other members of the Joint Audit Committee (the "JAC Letter"), which generally endorsed the proposal and requested certain additional guidance and amendments.

The Commission's current proposal to amend Regulations 1.20, 1.26 and 30.7 reflects many of the suggestions contained in the JAC Letter and other comment letters received in response to its February 2009 proposal. The current NPR includes newly proposed template acknowledgement letters that would be included in Appendices to Regulations 1.20 and 1.26 and Part 30. The proposed standard acknowledgement letters "would be required to be used" by FCMs and DCOs when customer funds are placed with a depository or invested in money market mutual funds.<sup>1</sup>

CME Group supports the Commission's efforts to amend its Regulations and enhance the regulatory certainty of acknowledgement letters obtained by FCMs and DCOs for segregated and secured amount funds. To further strengthen the Commission's efforts in this regard, we urge the Commission to: (1) amend Regulation 30.7 to exempt a DCO from having to supply acknowledgement letters if it has adopted rules providing for the separation of secured amount funds in accordance with the CEA and Commission Regulations; and (2) revise certain language in the template acknowledgement letters which may cast doubt on the validity and interpretation of existing agreements between FCMs, DCOs and depositories holding customer funds, and ensure that FCMs are given a reasonable amount of time to obtain all of the newly required acknowledgement letters.

### 1. Regulation 30.7 Acknowledgement Letters

The current NPR responds to all but one of the suggestions contained in the JAC Letter. Specifically, pursuant to Regulations 1.20(a) and 1.26(a), acknowledgement letters need not be obtained from a DCO holding customer funds provided that the DCO has adopted, and submitted to the Commission, rules providing for the segregation of customer funds in accordance with the CEA and Commission Regulations.<sup>2</sup> The JAC Letter requested that the Commission amend Regulation 30.7 (which governs the

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<sup>1</sup> 75 Fed. Reg. 47738 (Aug. 9, 2010).

<sup>2</sup> CME is adopting a similar concept for its forthcoming rules for Cleared OTC Derivatives Customer Sequestered Accounts, which will implement the "cleared OTC derivatives" account class adopted by the Commission on May 6, 2010 in amending its Part 190 Bankruptcy Regulations. CME rules will require CME Clearing to separately account for and "sequester" all funds CME Clearing receives from a clearing member "to purchase, margin, guarantee, secure or settle the cleared OTC derivatives trades, contracts or transactions of the clearing member's Cleared OTC Derivatives Customers and all money accruing to such Cleared OTC Derivatives Customers as the result of trades, contracts or transactions...." Because these requirements will be set forth in CME rules, FCMs will not be required to obtain acknowledgement letters in connection with customer "sequestered" funds held by CME Clearing.

treatment of foreign futures or foreign options secured amounts) to exempt a DCO from having to furnish acknowledgement letters if it has adopted rules providing for the separation of secured amount funds in accordance with the CEA and Commission Regulations. CME Group continues to believe that such an amendment to Regulation 30.7 is an appropriate and logical extension of the provisions in Regulations 1.20(a) and 1.26(a). We therefore urge the Commission to revise Regulation 30.7 as requested in the JAC Letter.

## 2. Proposed Standard Acknowledgement Letters

The NPR includes three forms of acknowledgement letters that FCMs and DCOs would be required to obtain from: (1) depositories holding segregated customer funds; (2) depositories holding secured amount funds; and (3) money market mutual funds with whom customer funds are invested. Each proposed form of acknowledgement letter contains the following provision:

*This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.*

CME Group does not believe that the use of an integration clause (*i.e.*, the statement that the letter “constitutes the *entire understanding of the parties* with respect to its subject matter”) is appropriate here. Inclusion of an integration clause in the template acknowledgement letters may have a number of serious and unintended consequences, including, for example, preventing FCMs and DCOs, on the one hand, and depositories and money market mutual funds on the other, from relying upon and enforcing terms of applicable account (or similar) agreements that do not conflict with the acknowledgement letter. In addition, the term “subject matter”, as used in this provision, is ambiguous and could be interpreted very broadly to include, for example, choice of law (which is another required provision in the template letters), thereby creating potential uncertainty as to the substantive law that applies to all prior agreements between the parties.

To avoid casting doubt on the validity and interpretation of existing agreements between the parties, CME Group suggests that the integration clause in the proposed template acknowledgement letters be more narrowly tailored to state as follows:

*This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgement letter, to the extent that such prior agreement is inconsistent with the terms hereof.*

Finally, CME Group notes that the Commission is proposing to give DCOs and FCMs ninety days from the date of publication of the final regulations in the Federal Register to obtain all of the necessary new standard acknowledgement letters from each of the pertinent depositories and money market mutual funds. The basis for this proposed time frame is that “the adoption of a standard template

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acknowledgement letter would eliminate the need for FCMs and Depositories to negotiate new acknowledgement letters that satisfy the proposed regulations.<sup>3</sup> CME Group foresees no problems with CME Clearing obtaining the required acknowledgement letters within the proposed 90-day period, given the relatively limited number of acknowledgement letters at issue and the fact that all of the pertinent depositories and money market mutual funds from which CME Clearing will need to obtain new letters are in the U.S. However, we urge the Commission to give serious consideration to the request in the comment letter of the Futures Industry Association for additional time for FCMs to obtain all of their required acknowledgement letters, particularly with regard to the unique and more challenging issues that FCMs will face when obtaining new, standard-form acknowledgement letters from depositories in foreign jurisdictions.

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 you have any comments or questions, please feel free to contact me at (212) 299-2200 or [Christopher.Bowen@cmegroup.com](mailto:Christopher.Bowen@cmegroup.com); or Lisa Dunsky, Director and Associate General Counsel, at (312) 338-2483 or [Lisa.Dunsky@cmegroup.com](mailto:Lisa.Dunsky@cmegroup.com).

Sincerely,



Christopher Bowen,  
Managing Director,  
Chief Regulatory Counsel

cc: Chairman Gary Gensler  
Commissioner Michael Dunn  
Commissioner Bart Chilton  
Commissioner Jill Sommers  
Commissioner Scott O'Malia  
Phyllis Dietz  
Eileen Donovan

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<sup>3</sup> 75 Fed. Reg. 47738, 47741 (Aug. 9, 2010).