

October 7, 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

Re: Account Ownership and Control Report – RIN 3038-AC 63, Fed. Reg. Vol. 75, No. 137 (July 19, 2010)

Dear Mr. Stawick:

CME Group Inc. (“CME Group”), on behalf of its four designated contract markets (“Exchanges”), appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (the “CFTC” or “Commission”) proposed rulemaking (“Release”) with respect to the collection of certain ownership, control and related information for all trading accounts active on U.S. futures exchanges and other applicable reporting entities. The Release states that the information collected will enhance market transparency, increase the Commission’s trade practice and market surveillance capabilities by leveraging existing surveillance systems and data, and facilitate the Commission’s enforcement and research programs.

CME Group is the world’s largest and most diverse derivatives marketplace. We operate four separate Exchanges, including the 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”)(collectively, the “CME Group Exchanges”). 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.

We also operate 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®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

I. Background

The Commission states in the Release that it proposes to collect ownership and control information via an account "Ownership and Control Report" ("OCR") submitted weekly by all U.S. futures exchanges and other reporting entities (collectively, "Reporting Entities"). The Release outlines the proposed content of the OCR as well as the form and manner in which the required data will populate the OCR. The information contained in the Release incorporates comments received by the CFTC from the public as part of an Advanced Notice of Proposed Rulemaking ("ANPR") originally published in the Federal Register on July 2, 2009. The Commission made minor modifications to the proposal in response to comments received during the ANPR process including the addition of several new data points. However, the OCR is generally the same as described in the ANPR.

The Commission states in the Release that its need for ownership and control information reflects "fundamental changes in the technology, products, and platforms of U.S. futures trading."¹ The Release provides that volume growth and changes in trading technologies have coincided with equally important developments in the business of futures trading such as the economic integration between designated contract markets ("DCM") contracts and their equivalents traded on exempt commercial markets ("ECMs") and foreign boards of trade ("FBOT"). In addition, an increased dispersion of market participants has intensified as U.S. exchange trading floors are replaced by a broader, global and electronic customer base requiring the surveillance of millions of daily records.

The Release also provides that, in many cases, the Commission already receives the information it requires for effective regulation, including large trader reports for market surveillance and exchange trade registers for trade practice surveillance. However, the OCR is designed to integrate the existing resources and leverage them in dynamic new ways.²

CME Group supports the efforts of the CFTC to ensure that U.S. futures markets accurately reflect the underlying forces of supply and demand for all products traded and that futures markets are free from fraud and abuse. We understand the CFTC believes that additional ownership and control information will allow the CFTC to perform more complete and accurate studies and provide more targeted guidance to the Commission staff in pursuing trade practice violations and attempted manipulations. However, we also believe it is important to minimize costs associated with industry reporting requirements and to avoid unnecessary financial burdens and operational complexities on DCMs, futures commission merchants ("FCMs") and other industry participants whenever possible. CME Group believes that the costs associated with the proposed OCR are prohibitive compared with manageable and cost-conscious changes that could be made to systems and reports that are already being used and are familiar to industry participants. We also believe that data the Commission already receives, along with changes to existing systems and reports which are discussed below will provide the CFTC with the trade data it needs to achieve its desired regulatory objectives.

¹ 75 FR 41776

² 75 FR 41777

II. Issues Associated With OCR Proposal

a. Costs to implement OCR

It is uncontroverted that the Commission's proposed OCR will result in very substantial capital and human resource costs being incurred by all Reporting Entities on a one-time and on-going basis. CME Group performed an initial assessment of the costs associated with the implement of the OCR in its current form across CME, CBOT, NYMEX and COMEX using the cost-benefit information contained in the Release. Based on that information, which we believe is on the low end of a range, CME Group would spend approximately 31,000 man hours in the first year implementing the OCR proposal at a cost of \$3 million to \$3.5 million. The tasks associated with this initial development cost estimate primarily include:

- Development of an industry-wide FIXML format and field definitions for all OCR reports;
- Creation of a system at CME Group to take in all clearing firm FIXML files on a weekly basis, consolidate those files and then send the files to the CFTC;
- Incorporation of the data into the CME Group regulatory systems; and
- Creating audit processes and performing those audits on a regular basis.

Estimated on-going costs related to the OCR will also be substantial for CME Group. We integrate trading account information into our regulatory systems and those functions are performed and overseen by Database Administrators who ensure data is correctly loaded and that related accounts are properly aggregated. The OCR data received by CME Group will also need to be integrated into our regulatory systems and we conservatively estimate that the human resources necessary to integrate the OCR data into the systems will be approximately \$225,000 to \$450,000 on an annual and on-going basis. Obviously, first year implementation and on-going costs would be imposed on all other exchanges and FCMs that are also required to comply with the OCR requirements.

We believe our estimated first year and on-going annual costs associated with the implementation of the OCR are conservative. However, our experience with similar projects is that the time, human capital and costs associated with such projects come in much higher than what is originally estimated. For example, CME Group recently participated in a project with other DCMs and the CFTC to create an FIXML format for trade capture. That project ultimately took much longer and was a great deal more costly than originally estimated by industry participants.

b. Problematic or Duplicative OCR Data Points

Generally speaking, in its current form, the proposed OCR requires the collection and transmission of certain data points that are duplicative for clearing firms or that clearing firms either do not have or which cannot be obtained without causing severe and disruptive changes to their current operations. Other information, to the extent it is available, is likely to be retained in disparate formats and systems across the industry.

A particularly troublesome aspect of the Release is that the Commission did not include CFTC Form 102³ reporting as part of its overall OCR proposal even though there is substantial overlap between the data that will be collected via the proposed OCR and the existing Form 102 process. In fact, after completing a line-by-line comparison, 15 of the 28 data points requested by the CFTC on its OCR proposal overlap with information that is already on the manual CFTC Form 102, which is required from clearing firms as part of the CFTC's Large Trader Reporting System.⁴ Of the remaining data points requested on the OCR, three are "reporting date" requirements that could be systemically generated. The remaining 10 items either provide limited regulatory value or would create undue burdens on clearing firms to collect and provide in this structure. For example, three CFTC requested items are NFA ids for individual account owners, for corporate owners (i.e. non-individual owners) and for the account controller. The NFA maintains this information in a public database which the CFTC could use to access the information on an as-needed basis. This information changes frequently and clearing firms often are not apprised of such changes to registration status. However, requiring clearing firms to look up and maintain this information in an up-to-date manner in electronic reports to the CFTC is costly to the firms and could be obtained by the CFTC directly from the NFA. Similarly, most firms do not record birthdates of account owners and controllers in their databases or new account information files. Obtaining this information may require clearing firms to re-document hundreds of thousands of customer accounts. This would be a time intensive and expensive process that would provide data of marginal regulatory value.

Also, many of the same data points requested in the OCR are already supported by and available through data stored internally by book-keeping services that have business relationships with the FCM community. SunGard and ION Trading provide book-keeping services for virtually the entire FCM community and these book-keeping services currently populate and/or maintain data fields for many of the relevant data points that the CFTC plans to collect through the OCR as well as the data points required on Form 102 data fields. We believe the OCR proposal is an extremely expensive option for the

³ A CFTC Form 102 must be filed with the CFTC when a new account reaches a designated reportable level in a futures or options contract and is part of the CFTC's Large Trader Reporting System.

⁴ Information available on CFTC Form 102 that is also required on the proposed OCR:

- Trading account number
- Trading account's ultimate beneficial owner(s) (natural and non-natural owners) including:
 - First, middle and last name
 - Address of primary residence
- For trading account controller(s)
 - First, middle and last name
 - Name and primary business address of the entity that employs each controller with respect to the account
- The special account number associated with the trading account, if assigned
- An indication of whether the trading account is part of a reportable account under the CFTC's Large Trader System
- An indication of whether the trading account is a firm omnibus account, and if so, the name of the firm
- The name of the clearing firm for the trading account, and its unique identifier reported in the reporting entity's trade register
- The name of the reporting entity submitting the OCR to the Commission

industry that provides minimal benefit for the CFTC compared to other measured changes discussed below.

c. Conceptual Concerns with OCR Proposal

The proposed OCR appears to require the end of the omnibus account structure within the industry. Omnibus accounts have been an integral part of the futures industry and should not be functionally banned by requiring a carrying clearing firm to obtain all of its end clients' information for accounts within the omnibus account. Instead, omnibus accounts should be identified as such in the OCR and the CFTC and other regulatory authorities can request ownership and control information directly from customers or through the clearing firm on an as-needed basis.

If omnibus accounts are no longer permitted, there could be a serious disruption in market liquidity and foreign market participation in U.S. markets. Foreign brokers and non-clearing FCMs generally use omnibus accounts to aggregate and control small retail accounts. These brokers earn commissions by servicing their customers through omnibus accounts. Without omnibus accounts, these brokers would have no incentive to look for customers and develop a business if they were not being compensated for their activities. In addition, as a point of clarification, we believe the CFTC should obtain data only from carrying brokers and not from executing brokers. Executing brokers do not possess account ownership data and they should not be required to obtain such information.

Finally, the CFTC states in the Release that, "trading authority is sufficient to qualify as controller."⁵ However, this proposed definition expands the historical definition of "control" in this context and also expands the conventions for reporting control in Large Trader position reporting systems. We believe the CFTC should maintain the existing definition of trading control, which is legal control pursuant to a power of attorney or in circumstances where there are independent account controllers under an entity that are not aggregated to that entity for position limit purposes.

III. Alternative Means to Obtain OCR Data

CME Group notes that the Release states the Commission does not intend to convene an industry working-group to develop the OCR. In addition, the Release provides that upon the adoption of any final OCR rules, the Commission will grant Reporting Entities and root data sources considerable time to coordinate, develop and implement the OCR. We believe this approach is problematic on several fronts. First, we believe the OCR proposal in its current form should be withdrawn and an industry group should be convened to develop account ownership and control standards based on thoughtful input from the entire industry. It is imperative that an industry working-group be convened to further develop and refine the OCR or an agreed upon alternative to the OCR.

The proposed OCR may result in costly unintended consequences if the Reporting Entities that are responsible for providing the requested trading data, including the applicable service bureaus, are not able to engaged in a thoughtful exchange of ideas and information. As clearly evidenced during the

⁵ 75 FR 41781

CFTC's OCR Roundtable meeting on September 16, the Reporting Entities and the service bureaus all have different pieces of information to contribute to the trade data puzzle and any attempt to make such a significant change in the industry's reporting structure should not be performed in a vacuum without a back-and-forth free flow of ideas among subject matter experts. In light of all of the complex issues associated with trade data and accounts, failure to involve all of the required participants in a discussion and attempting to rely on written submissions is not only counterproductive but will result in an inferior final product.

There are several basic principles that an industry working group can pursue to provide the CFTC with the account ownership and control data it needs to satisfy its regulatory responsibilities without imposing extreme financial and operational burdens on industry participants. These principles are: (i) using data currently available in existing systems; (ii) creating a new report at the back office vendor level that would extract the required data points; and (iii) creating a standardized format that the entire industry can use for ownership and control reporting.

We believe that the Commission should take this opportunity to modernize and automate the core information required under Form 102 which will result in more efficient and accurate transmission of data rather than require the industry to engage in two separate but largely redundant account identification processes. By automating the Large Trader Reporting System and the Form 102 process and mining additional information currently available through the industry's book-keeping services, the CFTC has the relevant data necessary for effective regulatory surveillance. In addition, it will be to the benefit of the entire industry if all participants in the trade data and ownership and control chain work together to develop a thorough and well-developed reporting structure. We also firmly believe that this alternative approach will be less expensive for industry participants, reduce redundancy and be quicker to market while still achieving the desired regulatory objectives.

SunGard and ION Trading, the two book-keeping services in the industry, maintain a wealth of trade data information in their systems and they also have a number of data fields available that are not being fully used. CME Group believes that by leveraging the information already available or easily attainable through the book-keeping services along with updating and automating the CFTC's Large Trader Reporting System and Form 102 process, the CFTC can obtain the regulatory surveillance information it is seeking with a much smaller cost to the entire industry. This alternate approach will be expensive and take time to implement. However, it will be much less expensive and much quicker to market compared to the Proposed OCR.

IV. Equal Implementation of OCR

Another limitation associated with the proposed OCR which requires further discussion is the general implementation of the OCR requirements. As proposed, the OCR would be limited to information relating to accounts on U.S. futures exchanges and some "linked" contracts. We believe the Commission should expand the reporting requirement to include trading on exempt commercial markets ("ECMs") and foreign boards of trade ("FBOT") that have received permission to offer U.S. traders electronic access to their trading platforms through no-action letters issued by the Commission. Failure to include ECMs and FBOTs in the Commission's enhanced reporting requirements for the OCR would result in an incomplete

data set for effective regulation and encourage market participants to evade information and disclosure obligations by directing the trading activity in comparable instruments to ECMs and FBOTs. Further, exclusion from certain data collection responsibilities and the costs associated therewith would give ECMs and FBOTs an unfair competitive advantage over U.S. futures. In addition, the Commission should seek to ensure that foreign regulators also apply similar account ownership and control requirements on an international basis so traders and trading firms do not engage in regulatory arbitrage based upon which regulator requires or does not require such information.

V. Unique Account Identification Numbers

The CFTC and the industry self-regulatory organizations have a long history of being proactive in requiring and gathering information on market participants and accounts at both the Large Trader reporting and trading account levels. The regulatory systems include functionality that allows for the aggregation of account owner information and for the performance of daily regulatory surveillance. In fact, based on the performance of these systems, CME Group has specific identifying information on over 80% of its volume every day. In addition, CME Group has made a substantial financial commitment in regulatory systems to database and use account owner information for various surveillance activities.

In light of the effective regulatory systems that are already in place, we do not believe that a Unique Account Identifier Number ("UAIN") is necessary for effective monitoring of market participants. Additionally, such a system would require a central registration database which would be very expensive to establish and maintain and would impose a large operational burden on participants, many of whom are small accounts. We believe an UAIN would be of limited value to a person who trades a few contracts once per year and would likely create more burdens than benefits. Markets are most efficient and beneficial to society at large when they are open to everyone and they operate with minimal costs to participants. Further, imposing an UAIN would disproportionately disadvantage firms that serve small clients and ultimately discourage these smaller clients from trading.

A study of random days indicated that nearly half of the accounts that are active at CME trade less than 10 contracts per day and the study showed that about 70% of the active accounts trade less than 100 contracts per day. A large amount of the accounts that CFTC would be identifying in its current proposal would be small accounts. These small clients and firms that service these small clients would be impacted particularly hard by the costs that a UAIN would impose. Many of these parties may simply avoid these markets altogether.

VI. Conclusion

CME Group applauds the efforts of the Commission to attempt to integrate various types of trading data and account information and to leverage them in new ways. We believe the data requested in the proposed OCR, however, is duplicative of existing trade data and account information already received by, or available to, the CFTC. In addition, the proposed OCR requirements will impose large unwanted and unnecessary capital costs on DCMs and clearing firms.

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CME Group believes that the OCR proposal should be withdrawn and an industry working group with representatives from exchanges, clearing firms, book-keeping services and the CFTC should develop a unified and thorough account ownership and control reporting system. We believe an industry working group could create a less expensive, less complicated and equally effective approach the CFTC could use to achieve the same regulatory goals as those set forth in the OCR. Modernizing and automating the CFTC's existing Form 102 process and integrating data already available to the industry's book-keeping services would be a positive starting point to provide the CFTC with the relevant trade data and account information it indicates it needs in the Release

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 (312) 930-3488 or Kathleen.Cronin@cmegroup.com or Stephen Szarmack, Regulatory Counsel at (312) 648-5422 or Stephen.Szarmack@cmegroup.com.

Sincerely,

A handwritten signature in black ink that reads "Kathleen M. Cronin". The signature is written in a cursive, slightly slanted style.

Kathleen M. Cronin

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