



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5547
aradhakrishnan@cftc.gov

Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 13-87
No-Action
December 31, 2013
Division of Clearing and Risk

Jason Silverstein
Executive Director and Associate General Counsel
Chicago Mercantile Exchange, Inc.
1 North End Avenue
New York, NY 10282

Dear Mr. Silverstein:

This letter responds to your request for no-action relief for Chicago Mercantile Exchange, Inc. (“CME Clearing”) with respect to complying with new Commission Regulation 39.33(c) as of December 31, 2013 when that regulation becomes effective. In this regard, by letter dated December 20, 2013, you assert that CME Clearing’s Submission No. 13-565R (the proposed “CME Liquidity Rules”), which was filed on December 19, 2013, contains new rules that would bring CME Clearing into full procedural compliance with Regulations 39.33(c). Accordingly, you state that:

“... CME [Clearing] requests that [the Division of Clearing and Risk (“DCR”)] issue a no-action letter confirming that it will not recommend the Commission commence an enforcement action against CME [Clearing] for failing to comply with CFTC Regulation 39.33(c) during the pendency of the Commission’s review of the CME Liquidity Rules. CME [Clearing] requests that this no-action position not expire until the CME [Clearing] is permitted to implement the CME Liquidity Rules pursuant to the procedures established under CFTC Regulation 40.10.”

Background

On December 2, 2013, the Commission published final regulations to establish additional standards for compliance with core principles set forth in the Commodity Exchange Act for systemically important derivatives clearing organizations (“SIDCOs”) and derivatives clearing organizations that elect to opt-in to the SIDCO regulatory regime (the “SIDCO Rules”).¹ These SIDCO Rules, together with the existing derivatives clearing organizations rules establish

¹ Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72476 (Dec. 2, 2013).

Commission regulations that are consistent with the Principles for Financial Market Infrastructures and allow SIDCOs to continue to be Qualifying Central Counterparties (“QCCPs”) for purposes of international bank capital standards.

Among these SIDCO Rules, Regulation 39.33(c) requires a SIDCO to maintain sufficient qualifying liquidity resources to meet, at a minimum, its intraday, same-day, and multiday settlement obligations under multiple stress scenarios, including the default of the clearing member with the greatest exposure to the SIDCO.²

In the SIDCO Rules, the Commission determined that good cause existed to make a number of those rules including, *inter alia*, Regulation 39.33(c), effective on an accelerated basis as of December 31, 2013.³

Discussion

As a SIDCO, CME Clearing is subject to the special certification procedures for the submission of rules, as set forth in Regulation 40.10. CME Clearing states that the CME Liquidity Rules

“add certain requirements and/or capabilities that CME Clearing will employ in its administration of its liquidity risk program. This rules-based approach to liquidity risk management will also rely on and be augmented by CME Clearing’s collateral policy determinations, with liquidity risk management serving as a primary consideration in the enumeration of such collateral policies.”⁴

Because the CME Liquidity Rules involve changes to CME Clearing’s rules that could materially affect the nature or level of risks presented by CME, the CME Liquidity Rules are material rule changes that are subject to the requirements set forth in Regulation 40.10.

Regulation 40.10 provides the Commission with a minimum 60-day review period for material rule changes. As such, unless the Commission decides to grant accelerated approval, the CME Liquidity Rules cannot be effective until the later of February 18, 2014 or 60 days from the date that the Commission receives any further information it may request for consideration of the rule submission. To give the Commission sufficient time to review the CME Liquidity Rules and in light of the accelerated effective date of the SIDCO rules, DCR will, for a period of time,

² Regulation 39.33(c)(1)(i) (“Notwithstanding the provisions of § 39.11(e)(1)(ii), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain eligible liquidity resources that, at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the systemically important derivatives clearing organization or subpart C derivatives clearing organization in extreme but plausible market conditions.”)

³ 78 FR 72498.

⁴ See CME Liquidity Rules.

not recommend that the Commission take enforcement action against CME for failing to comply with Regulation 39.33(c), subject to the following conditions:

(1) Effective Date. This no-action position will be effective on December 31, 2013.

(2) Limited Duration. The no-action relief granted herein shall expire on the earlier of:

(a) (i) February 18, 2014, (ii) the termination of any extended review of the CME Liquidity Rules pursuant to Regulation 40.10(f), or (iii) 90 days after any request for further information concerning the CME Liquidity Rules pursuant to Regulation 40.10(c), whichever is later or

(b) the date upon which the Commission notifies CME Clearing of either an objection to the CME Liquidity Rules pursuant to Regulation 40.10(d) or accelerated approval of the CME Liquidity Rules pursuant to Regulation 40.10(g).

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the Commodity Exchange Act or the Commission's regulations. In addition, the DCR's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations made by CME Clearing to DCR, including representations contained in the CME Liquidity Rules and in CME Clearing's no-action request dated December 20, 2013, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, DCR retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have questions regarding this matter, please contact Robert Wasserman, Chief Counsel (rwasserman@cftc.gov, 202-418-5092) or Laura Astrada, Associate Chief Counsel (lastrada@cftc.gov, 202-418-7622).

Sincerely,

Ananda Radhakrishnan
Director

cc: Robert Wasserman
Laura Astrada
Kirsten Robbins