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Futures Industry Association
2001 Pennsylvania Ave. NW
Suite 600
Washington, DC 20006-1823

202.466.5460
202.296.3184 fax
www.futuresindustry.org



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COMMENT

January 21, 2009

Mr. David A. Stawick
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

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U.S. DEPARTMENT OF THE SECRETARIAT

Re: **Proposed Rules for Trading Off the Centralized Market**
73 Fed.Reg. 54097 (September 18, 2008) – Supplemental Statement

Dear Mr. Stawick:

The Futures Industry Association (“FIA”) has had an opportunity to review the letter filed by CME Group Inc. (“CME Group”) in connection with the Commodity Futures Trading Commission’s (“Commission’s”) request for comments on the proposed amendments to Commission rule 1.38 and the related proposed guidance on Core Principle 9 (“Guidance”).¹ FIA is pleased that, in general, CME Group’s views mirrored those expressed by FIA in its comment letter, in particular as they relate to the Commission’s proposals with respect to block trades between affiliates and transitory EFPs.² Moreover, we both agree that any action on the Commission’s proposal should be deferred (although for somewhat different reasons).

Nonetheless, we oppose CME Group’s suggested revisions to the Guidance as it relates to the appropriate minimum size of block trades. Although CME Group generally supports the Commission’s proposal that “the acceptable minimum block trade size should be a number larger than the size at which a single buy or sell order is customarily able to be filled in its entirety at a single price in that contract’s centralized market,” CME Group recommends a radically different approach when a designated contract market (“DCM”) lists for trading a contract that is “substantially identical” to one traded on another DCM. In these circumstances, “where the Commission’s suggested formulation is being relied

¹ Letter from Craig S. Donohue, Chief Executive Officer, CME Group, to David A. Stawick, Secretary to the Commission, dated January 5, 2009.

² Letter from John M. Damgard, President, Futures Industry Association, to David A. Stawick, Secretary to the Commission, dated January 5, 2009.

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upon by a DCM for purposes of falling within the acceptable practices safe harbor, a DCM should be required to set its minimum block trade size at a level that would be appropriate for the most liquid substantially identical contract that is trading on any centralized DCM market.”


We respectfully submit that adoption of the CME Group recommendation would violate section 15(b) of the Commodity Exchange Act (“Act”), which requires the Commission “in issuing any order or adopting any Commission rule or regulation [], or in requiring or approving any bylaw, rule, or regulation of a contract market,” to “take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of [the Act].” Adoption of the CME Group recommendation would inhibit competition by effectively allowing the CME Group to set the minimum block trade size for any DCM listing a “substantially identical contract” to one traded on a CME Group DCM. This is especially the case, since CME Group controls over 95 percent of all trading on DCMs in the US. The competing DCM would be precluded from attempting to attract market participants and liquidity to its new market by establishing a lower block trading threshold than the CME Group would desire even though that lower threshold would meet the “customarily able to be filled” standard in the Commission’s proposal for the less liquid competing DCM. CME Group’s recommendation would add on to the Commission’s proposal an inherently anti-competitive barrier to innovation that would harm challenger DCMs from competing, for no apparent policy reason other than to blunt competition.

FIA urges the Commission not to adopt the CME Group’s recommendation consistent with Section 15(b) of the Act. Each DCM should be able to decide, under the Commission’s guideline, what block trading minimum makes sense for its market without interference, let alone a veto, from its competitor exchanges.

Conclusion

We appreciate the opportunity to this supplemental statement and request that this letter be included in the public comment file on to the proposed amendments to rule 1.38 and the proposed Guidance on Core Principle 9.

Sincerely,



John M. Damgard
President

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cc: Honorable Michael Dunn, Acting Chairman
Honorable Walter L. Lukken, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner

Division of Market Oversight
Richard A. Shilts, Acting Director
Gabrielle A. Sudik, Special Counsel