



31 December 2015

Via online submission

Supervision of Markets Division
The Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Re: Submission in response to Consultation on Proposed Amendments to the Guidelines for the Regulation of Automated Trading Services

Dear Sir or Madam:

CME Group Inc. ("CME Group"), on behalf of its clearinghouses,¹ appreciates the opportunity to provide comments on the Securities and Futures Commission ("SFC") consultation regarding amendments to the Guidelines for the Regulation of Automated Trading Services ("Guidelines") designed to address the trading and clearing of over-the-counter ("OTC") derivatives.

I. CME Group's General Comments

CME Group applauds the SFC's continued efforts to implement the G20 OTC reforms with an overarching objective of ensuring that derivatives markets continue to meet the needs of the regional and global economy while increasing transparency and the use of centralized clearing of OTC derivatives. We further support the SFC's intent to improve alignment with international standards and best practices, including the Principles for Financial Market Infrastructures ("PFMIs") jointly issued by the then Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (together, "CPMI-IOSCO").

CME Group has long supported a global framework whereby regulators permit access to third-country markets under the concepts of substituted compliance and mutual recognition on an outcome-determinative basis. CME Clearing is recognized or exempted from recognition and permitted to provide clearing services in numerous jurisdictions outside of the U.S., including in Hong Kong pursuant to its ATS registration for futures and options. Mutual recognition facilitates cross-border transactions in our global marketplace by reducing the need to harmonize multiple, and sometimes conflicting, regulatory regimes and the duplicative procedural burdens resulting from their concurrent application. Substituted

¹ CME Group owns CME Clearing, one of the largest central counterparty clearing services in the world, and CME Clearing Europe, which each provide clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions.

compliance for third-country applicants, where appropriate, likewise balances the need to do business with overarching regulatory obligation and creates a fair compliance cost to participants. In addition, providing global central counterparties (“CCPs”) with the ability to efficiently operate in multiple jurisdictions will help obviate the risk of end customers being unable to access central clearing due to clearing member or CCP bandwidth constraints. The potential for such access issues could in turn frustrate the G20 commitment to move standardized, OTC transactions to a centrally cleared environment. We generally support the core standards approach outlined in the Guidelines to the extent these standards are consistent with the goals of mutual recognition and implementing a substituted compliance regime for offshore ATS on an outcome-determinative basis.

To facilitate an outcome-based recognition process for offshore ATS, we support the SFC taking account of the degree to which an offshore ATS provider’s home-country regulatory framework meets the core standards generally, as well as overseeing offshore ATS in a manner that eliminates unnecessary conflicts with home-country regulations and duplicative compliance or reporting requirements. CME Group’s detailed comments on the proposed Guidelines are set forth below.

II. CME Group’s Detailed Comments

STANDARD 2: RISK MANAGEMENT

Paragraph 23 of the proposed Guidelines provides that: “An ATS provider whose facilities are similar to those of a CCP will be expected, among other things, to demonstrate to the SFC’s satisfaction that it complies with the PFMI. An assessment on compliance with the PFMI will also be expected.”

CME Group is a strong supporter of PFMI compliance as a key criterion for ATS regulation. Applicable CFTC regulations require CME to demonstrate PFMI compliance through completion and public posting of the Disclosure Framework for Financial Market Infrastructures published by CPMI-IOSCO² and publication of the CPMI-IOSCO Public quantitative disclosure standards for central counterparties³. We note that standards for the demonstration of compliance with the PFMIs vary among leading markets and financial centers—covered U.S. CCPs must complete and disclose the Disclosure Framework whereas CCPs in other jurisdictions may be required to complete the Self-Assessment. Based on CME Group’s CCP recognition efforts in other jurisdictions to-date, deference to the home-country regulatory requirement for demonstrating PFMI compliance has been the standard and we strongly support this approach as foundational to an effective mutual recognition framework. We further submit that each of the Disclosure Framework and Self-Assessment are detailed documents that serve to adequately demonstrate compliance with the PFMIs. Additionally, the issuance of the CPMI-IOSCO Public Quantitative Disclosures acts as a companion document to the Disclosure Framework and is published in a format developed collaboratively by CCPs worldwide to ensure consistency and comparability. With the aim of reducing potentially duplicative or burdensome requirements on offshore ATS applicants, we support deference to an offshore ATS’ home-country regulatory framework in regard to the form in which it demonstrates PFMI compliance, whether via CPMI-IOSCO Self-Assessment or Disclosure Framework.

² CFTC Regulation 39.37 (17 C.F.R. § 39.37) establishes this requirement. CME Clearing publicly posts its responses to the Disclosure Framework at <http://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf>.

³ Please refer to CPMI-IOSCO’s release concerning public quantitative disclosure standards for central counterparties, www.bis.org/cpmi/publ/d125.htm; CME Clearing’s disclosure can be found here: www.cmegroup.com/clearing/cpmi-iosco-reporting.html.

STANDARD 3: SYSTEM INTEGRITY

Paragraph 24 of the proposed Guidelines provides that: "Among other things, appropriate policies, procedures and controls should be in place to ensure that such high degree of reliability, availability and security are assured and maintained at all times. Proper documentation and change management for the system hardware, software and network configuration are also expected....[this] documentation should be tested, reviewed and modified on a regular basis to ensure [its] suitability and effectiveness."

CME Group supports the inclusion of a System Integrity standard that stresses the importance of policies, procedures and controls that result in a high degree of reliability, availability and security. Recognizing that challenges might reasonably arise is a first step in implementing effective policies, procedures and controls. The common mindset of the financial industry and its regulators should not be that an ATS will be able to ensure that security or other incidents never happen. Instead, CME Group agrees with the emphasis placed on change management and business continuity planning and testing, with the goal of an ATS being reasonably well-equipped to provide a high degree of reliability, availability and security.

Paragraph 25 of the proposed Guidelines provides that: "The SFC may, on a case-by-case basis, require an independent assessment of the integrity of the electronic facilities used for the provision of ATS. In assessing the need for such assessment, the SFC will take into account any past system performance, as well as the potential systemic risks and market significance of the ATS to the Hong Kong market."

CME Group appreciates the pragmatic approach taken by the SFC, recognizing the value of mutual recognition and substituted compliance. In the same spirit, CME Group suggests that regular supervision, including through examination, by an ATS' primary regulator be considered sufficient as an independent assessment of the integrity of the electronic facilities used for the provision of ATS.

STANDARD 4: GOVERNANCE

Paragraph 26 of the proposed Guidelines provides that: "Sufficient checks and balances should be introduced in the decision-making process and stakeholders' interest should be sufficiently taken into account."

CME Group supports the inclusion of market participant views on CCP risk management and actively solicits such input in developing its market-leading risk mitigation practices. We note that the intended scope of 'sufficient checks and balances' is not self-evident and could benefit from further clarification.

STANDARD 5: ACCESS AND PARTICIPATION

Paragraph 28 of the proposed Guidelines provides that: "An ATS provider is expected to have objective, risk-based and transparent access criteria, and requirements which permit fair and open access where circumstances permit. This should help ensure the orderly, efficient and legitimate use of the ATS."

We favor the objective participation criteria outlined in this standard as analogous to those in the CFTC regulations requiring admission and participation requirements that are "objective, publicly disclosed, and risk-based" and that such participation requirements "shall permit fair and open access".⁴ CME Group has long been an ardent supporter of CCPs' ability to ensure their clearing obligations and credit

⁴ Please see CFTC Regulation 39.12(a) (17 C.F.R. § 39.12(a)): http://www.ecfr.gov/cgi-bin/text-idx?SID=2942f3dbd403f4a60dfe9906d3f492a6&mc=true&node=se17.1.39_112&rgn=div8 .

counterparties are defined within the CCPs' own risk management parameters and not through reliance on third parties.

CME Group does however caution against the adoption of mandatory open access between CCPs and execution venues. Such mandated market structure—as contemplated in the EU—is harmful to innovation and competition among infrastructure technology and service offerings, in addition to promoting liquidity fragmentation. Mandatory open access between CCPs and execution venues also potentially increases transmission of risk and perhaps most critically, curtails the ability of CCPs to prudently manage the risks they face.

STANDARD 7: SURVEILLANCE

Paragraph 31 of the proposed Guidelines provides that: "For the purposes of this standard, surveillance carries the meaning of careful watch, and supervision for the purposes of influencing, managing or directing the proper use of its ATS. The level of surveillance expected of an ATS provider will vary depending on the nature of the ATS involved. The ATS provider may also be required to provide access to the SFC to enable the SFC to perform its surveillance functions."

As a registered ATS for clearing futures, CME Clearing conducts the surveillance required of it in the U.S. and expects to cooperate with the SFC, as necessary, where the SFC has a need to investigate a situation involving the ATS. However, we note it is highly uncommon for a foreign regulator to expect access to an offshore CCP for the purpose of surveillance. With the understanding that this standard would apply to an onshore ATS, CME Group respectfully submits that a third-country CCP which is registered as an ATS and conducts surveillance as required in its home jurisdiction should be deemed to meet this standard and further that foreign regulatory agencies should only seek onsite access in connection with the CCP's market surveillance practices in highly exceptional circumstances.

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CME Group thanks the SFC for the opportunity to comment on this matter. We would be happy to discuss any of these issues with the SFC or their staff. If you have any comments or questions, please feel free to contact

CME Group