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NYSE Liffe

Thomas F. Callahan
President & Chief Executive Officer
NYSE Liffe
20 Broad Street, 10th Floor
New York, NY 10005
T +1 212 656 4300

COMMENT

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By Electronic Mail

January 28, 2009

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

Re: NYSE Liffe Comment on Proposed Rules for Trading Off the Centralized Market, 73 Fed. Reg. 54097 (September 18, 2008)

Dear Mr. Stawick:

On behalf of NYSE Liffe, LLC ("NYSE Liffe"),[1] a Commodity Futures Trading Commission ("Commission") Designated Contract Market ("DCM"), I write with respect to the above-referenced Commission Notice of Proposed Rulemaking. Specifically, NYSE Liffe opposes the CME Group's suggestion that the Commission's revised Guidance should prescribe a direct form of linkage for establishing minimum block trade thresholds between exchanges listing substantially identical products.[2]

The CME Group proposes that the Commission's guidance provide that *"[a]ny DCM listing a particular contract should set its block trade threshold size at the level which would constitute an appropriate minimum size for block trades on the most liquid DCM which lists a substantially identical contract."*[3]

We urge the Commission to reject the CME Group's proposed guidance and not include it in the Commission's final Guidance on Core Principle 9. The CME Group's proposal is contrary to the public interest to be protected by the antitrust laws and several key regulatory objectives that Congress set forth in the Commodity Exchange Act.

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[1] NYSE Liffe is an indirect, wholly-owned subsidiary of NYSE Euronext, the holding company created by the combination of NYSE Group, Inc. and Euronext N.V. NYSE Euronext operates the world's largest and most liquid exchange group and offers the most diverse array of financial products and services. NYSE Euronext, which brings together six cash equities exchanges in five countries and six derivatives exchanges, is a world leader for listings, trading in cash equities, equity and interest rate derivatives, bonds and the distribution of market data.

[2] The CME Group's proposal was included in its comment letter dated January 5, 2009 to David A. Stawick, Secretary to the Commission from Craig S. Donohue, Chief Executive Officer, CME Group, filed in connection with the above-referenced Notice of Proposed Rulemaking ("CME Group Letter").

[3] Id. at 4

First, though feigned as promoting a regulatory goal, the proposed guidance would have the direct effect of stifling much needed competition in the US Futures market. Per the CME Group, the sole claimed regulatory goal advanced by its proposed approach is that allowing a competing DCM to set a lower block threshold "*could* impair the usefulness of the price discovery information being provided by the previously listing exchange."[4] To combat this theoretical, contingent threat, the CME Group's proposed guidance would simply serve to prevent a new, smaller DCM from competing freely by mandating that the new exchange should set an inappropriately high block trade threshold for its competing product which would bear no relevance whatsoever to the (nascent) liquidity of the new market or, therefore, the Commission's "customarily able to be filled" standard. By requiring a higher threshold than necessary for the smaller DCM, the CME Group's proposed guidance violates Section 15(b)'s directive that the Commission use the least anticompetitive means necessary to achieve the objectives of the Commodity Exchange Act. In the existing futures marketplace in the United States, where the CME Group controls over ninety-five percent of exchange-traded futures activity, the CME Group's proposed guidance would in effect allow the CME to maintain a block trading monopoly, with the CME's existing dominant liquidity acting as a barrier to entry for any competing new exchange, setting a high water mark of block trade thresholds for the entire industry. Against this market backdrop, the unproven and highly theoretical threat that the CME Group cites does not justify the wholesale anticompetitive effect of allowing the CME Group in effect to be setting block trade thresholds for its competitors.

Second, and more importantly, the CME Group's proposed guidance would undermine critical regulatory goals of the Commodity Exchange Act by actually *promoting* price distortions and trading disruptions, *harming* price discovery, and *increasing* hedging costs. The CME Group's proposed guidance would force relatively large orders placed on a smaller DCM into that exchanges' central order book. This could cause price distortions and raise execution risk. It would ultimately act as a tax on the investing public by raising the cost of hedging on all US futures exchanges. Such effects would be diametrically contrary to the purposes Congress set forth for the Commodity Exchange Act in Section 3(b). The contracts of the new, competing exchange would not fungible with those of the CME Group. Accordingly, any market participant who has made the choice to trade on the new exchange must be free to manage, adjust or close out his position under rules which are appropriate to, and properly reflect, the conditions and liquidity of that exchange and not another exchange. There are various reasons why a market user might choose to open a position under the terms of a competing contract

[4] Id. at 4 (emphasis supplied).

instead of a CME Group contract. The contract may be cheaper to trade, the specifications might be considered technically superior, the trading platform might offer better performance or functionality, or there might be benefits to be achieved from clearing at a (necessarily) different Designated Clearing Organization (since the competing contracts would not be fungible and would not be cleared at CME Clearing). The CME Group's proposed guidance would be prejudicial to such users, introducing unjust and inappropriate risks to their conduct of business in the competing contract.

In conclusion, we believe that the CME Group's proposed guidance would substantially damage free competition and the overall stability of the US financial markets. If adopted, it would be severely damaging to the regulatory goals Congress articulated for the Commodity Exchange Act. Accordingly, we respectfully request that the Commission not include the CME Group's proposal in the Commission's final guidance on DCMs' rules for trading off the centralized market.

We appreciate the opportunity to provide this comment and request that this letter be included in the public comment file to the proposed amendments to Commission Rule 1.38 and the proposed Guidance on Core Principal 9.

Respectfully submitted,

Thomas F. Callahan
President & Chief Executive Officer
NYSE Liffe, LLC

cc: Acting Chairman Michael Dunn
Commissioner Bart Chilton
Commissioner Walter Lukken
Commissioner Jill E. Sommers
Ananda Radhakrishnan
John Lawton
Richard Shilts
David Van Wagner