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Craig S. Donohue  
Chief Executive Officer

February 20, 2009

**VIA ELECTRONIC MAIL**

David Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581  
[secretary@cftc.gov](mailto:secretary@cftc.gov)

**COMMENT**

Re: Regulatory Governance – 74 FR 3475 (January 21, 2009)

Dear Mr. Stawick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed amendments to the definition of "public director" contained in its acceptable practices for compliance with Core Principle 15 of the Commodity Exchange Act ("CEA").

CME Group was formed by the merger of Chicago Mercantile Exchange Holdings Inc. and CBOT Holdings Inc. in 2007, and subsequently merged with NYMEX Holdings, Inc. in 2008. CME Group is the parent of four designated contract markets ("DCMs"): (1) the Chicago Mercantile Exchange ("CME"); (2) the Chicago Board of Trade ("CBOT"); (3) the New York Mercantile Exchange ("NYMEX"); and (4) the Commodity Exchange ("COMEX"). CME is also among the largest Derivatives Clearing Organizations in the world. CME Group serves the risk management needs of customers around the globe. As an international marketplace, CME Group brings buyers and sellers together on the CME Globex® electronic trading platform and on trading floors in Chicago and New York. The CME Group DCMs 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, emissions, agricultural commodities, metals, and alternative investment products such as weather and real estate.

**Background**

On July 7, 2006, and January 31, 2007, respectively, the Commission proposed and adopted acceptable practices for compliance with Core Principle 15. Core Principle 15, set forth in Section 5(d)(15) of the CEA, requires DCMs to "establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest." The acceptable practices included three "operational provisions". First, a DCM's board of directors must

be composed of at least 35% public directors; second, a DCM's regulatory programs must be subject to the oversight of a Regulatory Oversight Committee ("ROC") consisting exclusively of public directors; and third, a DCM's disciplinary panels must include at least one person who would qualify as a public director. The acceptable practices also set forth a definition of public director that applied to all three operational provisions.

On March 26, 2007, the Commission sought comment on proposed amendments to the definition of public director in the acceptable practices. The Commission indefinitely stayed the effectiveness of the Core Principle 15 acceptable practices in their entirety on November 23, 2007, since the definition of public director had not yet been finalized. Finally, the Commission issued its current modified proposal regarding the definition of public director, and withdrew its March 26, 2007 proposed amendments. We commend the Commission for confirming that the acceptable practices for compliance with Core Principle 15 in their entirety, including the proposed definition of public director, are non-exclusive, and that there may be other equally acceptable means of compliance with the Core Principle.

The CME Group DCMs previously filed separate comment letters regarding both the original proposed acceptable practices as a whole, and the Commission's earlier proposed amendments to the definition of public director. We agree that it is useful to nominate, for election by the shareholders, qualified individuals who bring experience from a variety of backgrounds. We believe that each publicly traded DCM has an obligation to its shareholders to follow the listing rules of the relevant securities exchange and to nominate for election as directors a mix of individuals based on their ability to create value for the corporation. We do not agree that the numerical standard set out in the acceptable practices or the definition of public director is helpful in accomplishing the goals of Core Principle 15. We have consistently met and exceeded the requirements of Core Principle 15 by means of clear and effective policies and procedures to minimize conflicts of interest in decision making. In fact, some of the Commission's acceptable practices, such as the concept of an ROC for example, are based upon governance standards first implemented by CME.

CME Group continues to believe that the board composition acceptable practices are not related to Core Principle 15 and conflict with the clear Congressional intent in the Commodity Futures Modernization Act of 2000 ("CFMA") to impose no composition requirements on the boards of publicly owned futures exchanges. Notwithstanding our continued belief that the proposed acceptable practices are unnecessary and contrary to Congressional intent, we commend the Commission's efforts to significantly improve the definition of public director as discussed below.

#### The Definition of Public Director

The definition of public director contained in the acceptable practices adopted on January 31, 2007, was not useful. The Commission attempted to address some of the problems of that definition in its March 26, 2007 proposal. The Commission has now offered additional refinements to its definition of public director.

The Commission has not modified its overarching materiality test that requires that a public director must **"have no material relationship with the contract market."** However, the Commission has proposed substantial amendments to its bright line tests that define certain specific relationships as per se material such that an individual would be disqualified from service as a public director under the acceptable practices.

The Commission has appropriately recognized that an individual may be a director of both a DCM and its parent, subsidiary, or entity that shares a common parent with the DCM, and not lose his or her status as a public director. For example, this amendment clarifies that in a corporate structure such as CME Group's, where the holding company and its subsidiary DCMs share identical boards of directors, the same individuals could serve as public directors on each board while continuing to meet the proposed definition.

The Commission has also clarified that a director would be disqualified from serving as a public director if he were a member of the DCM or an officer or director of a member, while recognizing that not all employment relationships with a member would constitute an automatic disqualification. This allows an employee of a member to qualify as a public director unless the DCM determines that his or her particular employment relationship with the member constitutes a material relationship with the DCM. We believe that this amendment appropriately enlarges the potential pool of public director candidates that can bring necessary knowledge and experience to the board of a DCM. It also avoids the automatic disqualification of immediate family members of employees of members who are not directors or officers of such members. However, we urge the Commission to consider a further refinement with respect to immediate family members. In particular, we do not believe that an individual should be considered to have a per se material relationship with a DCM merely because his immediate family member is a director or an officer of a member. Therefore, we suggest that the Commission limit the safe harbor bright line test to only exclude individuals whose family members are executive officers of members.<sup>1</sup> This further modification would serve to permit a person to serve as a public director if, for example, his immediate family member were an independent director of a publicly-traded member or a junior officer who may have no responsibilities with respect to the futures business of a large broker-dealer member. Furthermore, under the acceptable practice definition, such a person would remain subject to the overarching material relationship test.

The Commission has refined the disqualifying payment provision in four significant and appropriate ways. First, it has defined the types of prohibited payments as those for legal, accounting and consulting services. Second, it has limited the payment recipients to the potential public director, and any firm with which he is an officer, partner or director, and eliminated the earlier proposal to include firms of which the potential director was an employee. Third, the current proposal limits the prohibited payment providers to

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<sup>1</sup> This is consistent with the parallel provision in the Independence Policy of the NYSE Euronext Board of Directors, [http://www.nyse.com/pdfs/director\\_independence\\_policy.pdf](http://www.nyse.com/pdfs/director_independence_policy.pdf), and the Securities and Exchange Commission's definition of an independent director of a national securities exchange in its proposed, but never adopted, Rule 6a-5 under the Securities Exchange Act of 1934. 69 FR 71126, 71214-71215 (December 8, 2004). <http://www.sec.gov/rules/proposed/34-50699.pdf>.

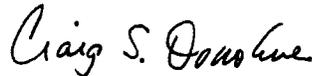
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the DCM and its affiliates, while eliminating members and officers and directors of members, as previously proposed. Fourth, it has clarified that the \$100,000 payment limit does not include compensation for services as a director of an affiliate, in addition to excluding compensation for services as a director of the DCM. These amendments together serve to limit the automatically disqualifying payments, thus appropriately permitting additional persons to potentially serve as public directors of DCMs under the safe harbor definition.

In sum, we believe that the Commission has substantially improved its proposed definition of public director, in connection with the non-exclusive safe harbor acceptable practices for compliance with Core Principle 15. We appreciate the Commission's efforts in this regard.

CME Group thanks the Commission for the opportunity to comment on this matter. 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) 930-8275 or [Craig.Donohue@cmegroup.com](mailto:Craig.Donohue@cmegroup.com); Richard Lamm, Managing Director, Chief Regulatory Counsel, at (312) 930-2041 or [Richard.Lamm@cmegroup.com](mailto:Richard.Lamm@cmegroup.com); or Anne Polaski, Associate Director and Regulatory Counsel, at (312) 338-2679 or [Anne.Polaski@cmegroup.com](mailto:Anne.Polaski@cmegroup.com).

Sincerely,



Craig S. Donohue

cc: Acting Chairman Michael V. Dunn  
Commissioner Walter Lukken  
Commissioner Bart Chilton  
Commissioner Jill E. Sommers  
Rachel F. Berdansky