

**13.3.2 OSC Notice and Request for Comment – Chicago Mercantile Exchange Inc. – Application for Exemption from Recognition as a Clearing Agency**

**OSC NOTICE AND REQUEST FOR COMMENT**

**CHICAGO MERCANTILE EXCHANGE INC.**

**APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY**

**A. Background**

Chicago Mercantile Exchange Inc. (CME) has applied (the Application) to the Commission for an order pursuant to section 147 of the *Securities Act* (Ontario) (OSA) to exempt CME from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA. Among other factors set out in the Application, the exemption is being sought on the basis that CME is subject to an appropriate regulatory and oversight regime in its home jurisdiction in the United States by its primary regulator, the Commodity Futures Trading Commission (CFTC).

CME's Clearing Division clears and settles exchange-traded futures and options on futures, as well as over-the-counter (OTC) derivatives trades.

In reviewing the Application, staff followed the process and assessed the Application against the criteria set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (Staff Notice).

**B. Draft Order**

In the Application, CME describes how it addresses each of the criteria set forth in the Staff Notice. Subject to comments received, staff propose to recommend to the Commission that it grant CME an exemption order with terms and conditions in the form of the proposed draft order attached as Appendix A to the Application (Draft Order).

The Draft Order requires CME to comply with various terms and conditions, including relating to:

1. Regulation of CME
2. Governance
3. Filing requirements
4. Information sharing
5. Submission to jurisdiction and agent for service

**C. Comment Process**

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order.

[OSC Web Editor's Correction Note dated 2013-05-17: The Notice and request for comment "OSC Notice and Request for Comment – Chicago Mercantile Exchange Inc. – Application for Exemption from Recognition as a Clearing Agency - (2013) 36 OSCB 5209" has an incorrect final date for submission of comments under "C. Comment Process". The date "June 16, 2012" should have appeared as "June 16, 2013".]

You are asked to provide your comments in writing, via e-mail and delivered on or before **June 16, 2012** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca).

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

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May 6, 2013

Ontario Securities Commission  
20 Queen Street West, Suite 1903  
Toronto, ON  
Canada M5H 3S8  
Attention: Antoinette Leung, Manager, Market Regulation Branch  
Maxime Paré, Senior Legal Counsel, Market Regulation Branch

**Re: Chicago Mercantile Exchange Inc. – Application for Relief pursuant to section 147 of the Securities Act (Ontario)**

Dear Sir or Madam,

We are Canadian counsel to Chicago Mercantile Exchange Inc. (“**CME**”) in connection with this application to the Ontario Securities Commission (“**OSC**”) for an exemption from subsection 21.2(0.1) of the *Securities Act* (Ontario) (“**OSA**”) pursuant to section 147 of the OSA relating to CME’s business as a clearing agency with respect to certain over-the-counter (“**OTC**”) derivative products and related exchange-traded futures and options on futures products, as more fully described herein.

This application is divided into the following Parts I to V, Part III of which describes how CME satisfies OSC Staff’s criteria for recognition (or exemption from recognition) of clearing agencies:

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**PART I INTRODUCTION**

**1. CME Services to Ontario Residents**

- 1.1 CME currently has three clearing members that have a head office or principal place of business in Ontario and that are OTC derivatives clearing members, with privileges to clear interest rate swap (“**IRS**”) OTC derivatives products on their own behalf, and on behalf of their branches and affiliated companies. In addition, one of such clearing members is a Commodity Exchange Inc. (“**COMEX**”) clearing member (“**COMEX Exchange Clearing Member**”) that currently has

privileges to clear COMEX exchange-listed futures and options on futures on its own behalf, and on behalf of its branches and affiliated companies. It became a COMEX Exchange Clearing Member on December 1, 1997.

- 1.2 CME Clearport is a web-based graphical user interface owned, maintained and operated by CME to view and submit bilaterally negotiated transactions (e.g., block trades, OTC swap futures substituted for exchange-traded futures and OTC derivatives) into CME for clearing and settlement services by clearing firms and their customers in the United States (“U.S.”). CME ClearPort is not a clearing system as it does not clear trades or serve as a central counterparty (“CCP”) for trades submitted via CME ClearPort to CME in the U.S.
- 1.3 CME does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory, except for a CME Group Inc. (“CMEG”) marketing office in Calgary, Alberta whose activities are limited to marketing and development of energy products.
- 1.4 CME proposes to offer direct clearing access in Ontario to certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 Definitions) that have a head office or principal place of business in Ontario as clearing members with privileges to clear OTC derivative products (“**OTC Derivatives Clearing Members**”), and/or exchange-traded futures and options on futures on one or more of CME, COMEX, Board of Trade of the City of Chicago, Inc. (“**CBOT**”), New York Mercantile Exchange, Inc. (“**NYMEX**”) and Board of Trade of Kansas City, Missouri, Inc. (“**KCBT**”) (together, the “**CMEG Exchanges**”) (individually, “**CME Exchange Clearing Member**”, COMEX Exchange Clearing Member, “**CBOT Exchange Clearing Member**” and “**NYMEX Exchange Clearing Member**”, and collectively, the “**CMEG Exchange Clearing Members**”) (together with the clearing members referred to in paragraph 1.1, the “**Ontario Clearing Members**”).
- 1.5 CME proposes to offer direct clearing access in Ontario to the Ontario Clearing Members, for purposes of clearing the OTC derivative products and exchange-traded futures and options on futures products described in paragraph 3.1 of Part II of this Application.

## 2. Background to the Application

- 2.1 On June 8, 2012, CME submitted an application for a temporary exemption from subsection 21.2(0.1) of the OSA. The OSC granted the order effective June 19, 2012, with a termination date on the earlier of (i) June 30, 2013, and (ii) the effective date of a subsequent order exempting CME from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the OSA (“**Interim Order**”). CME subsequently applied for, and obtained, an order from the OSC on August 31, 2012 to vary the Interim Order by extending the deadline for submission of an application for an exemption from subsection 21.2(0.1) of the OSA until September 10, 2012. CME currently carries on business in Ontario pursuant to the Interim Order, as varied on August 31, 2012.

## PART II BACKGROUND TO CME

### 1. Regulatory Oversight of CME

- 1.1 The primary legislation for derivatives clearing organizations (“**DCOs**”) such as CME is the U.S. Commodity Exchange Act (“**CEA**”). In July 2010, the U.S. Congress passed the *Dodd Frank Wall Street Reform and Consumer Protection Act* (“**Dodd Frank Act**”), which amended the CEA and thus provides the U.S. Commodity Futures Trading Commission (“**CFTC**”), a U.S. federal regulatory agency, with the authority to pass additional regulations in relation to its oversight of DCOs and other registered entities. The primary regulations issued by the CFTC that are applicable to DCOs may be found in Part 39 of the CFTC regulations.
- 1.2 The CFTC conducts periodic examinations and holds regular meetings with employees of CME to analyze a variety of different topics including CME’s compliance with the DCO core principles (“**DCO Core Principles**”) and the related regulations promulgated thereunder. The DCO Core Principles are listed below:
  - Core Principle A: Compliance with Core Principles;
  - Core Principle B: Financial Resources;
  - Core Principle C: Participant and Product Eligibility;
  - Core Principle D: Risk Management;
  - Core Principle E: Settlement Procedures;
  - Core Principle F: Treatment of Funds;

- Core Principle G: Default Rules and Procedures;
  - Core Principle H: Rule Enforcement;
  - Core Principle I: System Safeguards;
  - Core Principle J: Reporting;
  - Core Principle K: Recordkeeping;
  - Core Principle L: Public Information;
  - Core Principle M: Information-Sharing;
  - Core Principle N: Antitrust Considerations;
  - Core Principle O: Governance Fitness Standards;
  - Core Principle P: Conflicts of Interest;
  - Core Principles Q: Composition of Governing Boards;
  - Core Principle R: Legal Risk.
- 1.3 On an ad hoc basis, the CFTC examines CME in relation to its compliance with one or more of the DCO Core Principles listed above. These examinations generally cover various different DCO Core Principles with particular emphasis on financial resources and risk management. In addition to these periodic examinations, CFTC staff meets with CME to review margin models and analyze margin coverage on a bi-weekly basis.
- 1.4 CME also has numerous reporting obligations under CFTC Regulation 39.19 – *Reporting*. CME must submit both routine reports on various different cycles and event specific reports related to, among other things, significant changes to the financial profile of CME and/or its clearing members.
- Cyclical Reports
    - Daily: Reports covering initial margin, daily variation margin, all other daily cash flows and end of day positions at the clearing house;
    - Quarterly: Reports demonstrating compliance with financial resources requirements of DCOs as required by CFTC Regulation 39.11 – *Financial resources* which include projected operating costs over a 12 month period and valuation of financial resources; and
    - Annual: Report by the Chief Compliance Officer (“**CCO**”), which must contain, among other things, a description of the DCO’s written policies and procedures, review policies and procedures designed to comply with each core principle, provide an assessment of the effectiveness of these policies and procedures, discuss areas for improvement, list any material changes to policies and procedures since the last report, describe resources available for compliance with the CEA and CFTC regulations and describe any material compliance matter including incidents of noncompliance.
- 1.5 CFTC Regulation 39.10(c) – *Compliance with core principles* mandates that all DCOs establish the position of CCO, designate an individual to serve as CCO and provide the CCO with the full responsibility and authority to develop and enforce, in consultation with the Board of Directors and senior management, appropriate compliance policies and procedures to fulfill the duties set forth in the CEA and CFTC regulations. As mentioned above the CCO for CME has numerous responsibilities related to compliance of CME with the CEA and CFTC regulations including, but not limited to:
- developing policies and procedures to ensure compliance with the CEA and applicable CFTC regulations;
  - instituting and maintaining an effective compliance communication program at CME;
  - developing an annual compliance work plan designed, among other goals, to review CME’s compliance with the CEA and CME’s compliance policies and procedures;

- preparing regular reports to CME senior management as appropriate in connection with the compliance program; and
  - establishing procedures for the remediation of any noncompliance issues.
- 1.6 CME is both a designated contract market (“**DCM**”) and a DCO within the meanings of those terms under the CEA. The DCM and DCO operations are organized under separate divisions within CME: CME Exchange Division and CME Clearing Division. CME is subject to regulatory supervision by the CFTC and is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces a DCO’s adherence to the CEA and the regulations thereunder on an ongoing basis, including but not limited to, the DCM core principles (“**DCM Core Principles**”) and DCO Core Principles relating to compliance with the core principles, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards.
- 1.7 CME is deemed to be registered with the U.S. Securities and Exchange Commission (“**SEC**”) as a securities clearing agency, effective July 16, 2011, in accordance with certain provisions under Subsection 763(b) of the Dodd Frank Act, and is therefore also subject to limited regulatory supervision by the SEC in connection with its offering of clearing services for single stock and narrow-based security index products.
- 1.8 On July 18, 2012, CME was designated by the Financial Stability Oversight Council (“**FSOC**”) as a systemically important financial market utility under Title VIII of the Dodd Frank Act.
- 1.9 On November 21, 2012, CME became registered with the CFTC as a swap data repository (“**SDR**”) to provide SDR services supporting CDS, IRS, commodities and foreign exchange (“**FX**”) asset classes through its CME Repository Service. Pursuant to sections 737 and 738 of the Dodd Frank Act, all swaps – whether cleared or uncleared – are required to be reported to SDRs, which are required to perform specified functions relating to the collection and maintenance of swap transaction data and information.
- 1.10 On March 11, 2013, the CFTC’s clearing mandate for swaps came into effect. CFTC Regulation 50.4 – *Classes of swaps required to be cleared* provides that CDS and IRS with certain specifications are required to be cleared by a DCO under to subsection 2(h)(1) of the CEA. CME expects that the CFTC will expand the clearing mandate to cover additional classes of swaps in the future.
- 1.11 The CFTC is expected to release final rules establishing registration procedures for swap execution facilities (“**SEFs**”) in Q2 or Q3 of 2013. SEFs are an alternative venue to DCMs for the execution of cleared swaps and, similar to the CFTC’s clearing mandate, are designed to enhance transparency, promote standardization and reduce systemic risk in the swap market. Swaps offered on SEFs will be cleared at a DCO designated by one of the swap counterparties. CME will review the final SEF rules when they are released to determine the potential impact on its business.
- 1.12 CME is the DCO for, and provides clearing services to, each of the CMEG Exchanges. CME also serves as the CCP for all trades executed on the CMEG Exchanges and all OTC trades submitted for clearing, as described below.

## **2. Ownership of CME**

- 2.1 CME is a corporation organized under the laws of the State of Delaware in the U.S. and is a wholly owned subsidiary of the CMEG, a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. CMEG is the ultimate parent company of: (i) CME; (ii) CBOT; (iii) COMEX; (iv) NYMEX and (v) KCBT.
- 2.2 CMEG receives a majority of its revenue from clearing and transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through CMEG’s trading venues.

## **3. Products Cleared by CME**

- 3.1 CME is one of the largest central counterparty clearing services in the world and provides clearing and settlement services for exchange-traded futures and options on futures, as well as for OTC derivatives transactions. CME clears OTC derivatives in the following asset classes: agricultural commodities; credit; energy; environmental commodities; equities; FX; interest rates; and metals. The exchange-traded futures and options on futures products cleared by CME include, but are not limited to, the following: short-term interest rates (Eurodollar, Euribor, U.S. Treasury Bills); government bonds (U.S. Treasury Bonds and Notes); medium and long-term swap rates (U.S. Dollar), narrow-based equity indices (U.S.-related S&P, NASDAQ and DJIA indices and Nikkei indices); commodity index swaps (gold, crude oil, UBS commodity index); and a broad range of commodities (e.g., gold, silver, platinum, palladium, copper, steel and

uranium, cocoa, coffee, corn, sugar, wheat, oats, soybeans, live cattle and butter). In addition, CME clears freight futures, forwards and options, iron futures, options and swap futures, fertilizer swaps and electricity swap futures. The full list of products cleared by CME is available on its website at [www.cmegroup.com](http://www.cmegroup.com).

- 3.2 Under CME's clearing model, clearing members of CME act as agents on behalf of undisclosed principal end-users and guarantee all trades submitted by such end-users for clearing. Non-affiliate customers of CME's clearing members are generally not visible to CME. CME's clearing members grant session IDs that are associated with every trade submitted for clearing to CME. These identifiers and CME rule provisions enable CME to obtain end-user information from its clearing members when conducting an investigation or for enforcement purposes, but information about end-user customers is not otherwise created by or provided to CME.

#### 4. CME's Clearing Members

- 4.1 CME's clearing members represent one of the largest memberships among derivatives clearing organizations worldwide. CME's clearing members consist of banks, securities houses/investment banks, commodity brokers and traders and, to a very limited extent, industrial companies.

### PART III APPLICATION OF APPROVAL CRITERIA TO CME

The following is a discussion of how CME meets the relevant criteria for recognition and exemption for clearing agencies set out in Appendix A to OSC Staff Notice 24-702 – *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (“**Staff Notice 24-702**”).

#### 1. Governance

##### 1.1 The governance structure and governance arrangements of the clearing agency ensures:

- (a) **effective oversight of the clearing agency;**
- (b) **the clearing agency's activities are in keeping with its public interest mandate;**
- (c) **fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;**
- (d) **a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;**
- (e) **the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;**
- (f) **each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and**
- (g) **there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.**

- 1.1.1 As a DCM and a DCO, CME is highly committed to supporting public interests of fostering fair and efficient markets, employing and enforcing sound and comprehensive risk management practices, and offering a market-leading financial safeguards package. CME is committed to ensuring the integrity of the contracts it clears and the stability of the financial system, in which market infrastructure plays an important role. CME operates on a basis consistent with best practices of other clearinghouses and exchange-traded markets.

- 1.1.2 CME's trade practice and market surveillance activities are conducted by its Market Regulation Department under CME's rules. The Market Regulation Department utilizes regulation advisory notices to make public notifications. The Market Regulation Department's objectives include: protecting market integrity by maintaining fair, efficient, competitive and transparent markets; issuing, monitoring and enforcing rules to protect all market participants from fraud, manipulation, and other abusive trading practices; and proactively identifying and mitigating potential risks and preventing damage to the marketplace.

Division of Management at CME

- 1.1.3 Each of CME's clearing and exchange operations function as separate divisions within CME (e.g., CME Clearing Division/CME Exchange Division). CME Clearing Division is headed by a President, appointed by the CEO of CME and approved by the Board of Directors, as set forth in CME Rule 801 (Management). The President of CME Clearing Division has a direct reporting line to the CEO of CME and regularly reports to the Market Regulation Oversight Committee ("**MROC**") and the Clearing House Risk Committee ("**CHRC**"). The President delegates authority for certain aspects of the daily operation of CME Clearing Division to a senior management team that includes the chief risk officer ("**CRO**"), the CCO, and a Managing Director, Audit Department.
- 1.1.4 As required by CFTC Regulation 39.13(c), CME Clearing Division has appointed a CRO responsible for implementing its risk management framework. The CRO makes recommendations concerning procedures, policies and controls to the applicable CME risk committees (i.e., CHRC, the Credit Default Swaps Risk Committee ("**CDSRC**"), and the Interest Rate Swaps Risk Committee ("**IRSRC**", each a "**CME Risk Committee**" hereafter and collectively referred to as the "**CME Risk Committees**"). CME Clearing Division's CRO reports directly to the President of CME Clearing Division and is ultimately responsible for supervising employees engaged in credit and market risk management. The CRO also has a direct reporting line to a non-executive director on the Board of Directors who is the chairman of the CHRC, CDSRC, and the IRSRC.
- 1.1.5 Also as required by CFTC Regulation 39.10(c), CME Clearing Division has appointed a CCO. The CCO has full responsibility and authority to develop and enforce appropriate compliance policies and procedures for CME Clearing Division, review CME Clearing Division's compliance with the DCO Core Principles and all other applicable legal and regulatory requirements, and resolve conflicts of interest and any other non-compliance issues that may arise. The CCO reports directly to the President of CME Clearing Division, with an additional reporting relationship to CMEG's Global Chief Compliance Officer. The CME Clearing Division CCO regularly reports to MROC.

Diversity of the Board

- 1.1.6 CMEG seeks candidates with a variety of talents and expertise to ensure its Board of Directors as a whole is operating effectively and is focused on creating long-term value for shareholders while ensuring the integrity of the markets.
- 1.1.7 The Board of Directors of CME is comprised of the same individuals as the Board of Directors of CMEG and generally operates together with the CMEG Board of Directors. CMEG believes its Board of Directors and the Boards of its member exchanges should be composed of individuals from diverse professional backgrounds who combine a broad spectrum of experience and expertise with a reputation for integrity and who exercise their good judgment to provide practical insights and different perspectives. In selecting candidates, the Board of Directors endeavors to find individuals who have a solid record of accomplishment in their chosen fields and who display the independence of mind and strength of character to effectively represent the best interests of the shareholders and the marketplace.

Independence of the Board

- 1.1.8 The experience and diversity of the Board of Directors has been, and continues to be, critical to CMEG's success. CMEG's Corporate Governance Principles require that the Board of Directors be composed of at least a majority of independent directors. Additionally, in accordance with listing standards applicable to CMEG as a public company, the members of the Audit, Compensation, Governance, and Nominating Committees must be independent. For a director to be considered independent, the Board of Directors must affirmatively determine that the director has no direct or indirect material relationship with CMEG and its subsidiaries, including CME. The Board of Directors has adopted Categorical Independence Standards to assist it in making its determinations regarding director independence. These standards conform to and exceed the independence criteria specified in the listing standards of the NASDAQ, the stock exchange that lists CMEG's shares. They specify the criteria by which the independence of the directors will be determined, including relationships and transactions between each director, any member of his or her immediate family, his or her affiliates, charitable organizations with which he or she is affiliated, and CMEG subsidiaries.
- 1.1.9 The Board of Directors believes that all of its non-executive directors act independently of, and effectively monitor and oversee the actions of, management. In addition, the chair of the Governance Committee acts as a lead outside director, presiding over meetings of the independent and non-executive directors and serving as the contact for shareholder communications with independent directors. Based on CMEG's Categorical Independence Standards, at its meeting held in February 2012, the Governance Committee made a preliminary assessment of the independence of the directors and director nominees and, based on this assessment, made a recommendation to the CMEG Board of Directors regarding their independence. Some of CMEG's directors are members of its CMEG Exchanges, which provides them with access to the open outcry trading floors, lower trading fees, the ability to vote on certain matters relating to the operation of the trading floors, and, for members of CME, the ability to elect six directors. Directors who are members of the CMEG Exchanges may make payments directly to the CMEG Exchanges or indirectly through a

clearing firm in connection with their trading activity on a CMEG Exchange. To ensure that such payments did not exceed the monetary thresholds set forth in the listing standards of the NASDAQ, the Governance Committee reviewed the directors' and their affiliated clearing firms' trading activities and relationships with the CMEG Exchanges as part of its independence determination. The Governance Committee and the Board of Directors noted that all payments were made in the ordinary course of business, were on terms consistent with those prevailing at the time for corresponding transactions by similarly situated unrelated third parties, and were not in excess of the applicable payment thresholds.

#### Nomination of Directors

- 1.1.10 After considering information provided by the directors and director nominees in their annual questionnaires, the payments made to CMEG relating to trading activities of directors and director nominees who are members of a CMEG Exchange, as well as additional information gathered by the Office of the Secretary, the Governance Committee recommended and the Board of Directors determined which directors and nominees should be classified as independent. More than 75% of the Board of Directors has been classified as independent.
- 1.1.11 As a dually-registered DCO and DCM, CME is required to ensure compliance with both the DCM and DCO Core Principles, including the maintenance of processes and procedures to address potential conflicts of interest that may arise in connection with the operation of the CME Exchange Division found in the DCM Core Principles. Significant representation of individuals who do not have relationships with the CMEG Exchanges, referred to as "public directors" in the CFTC Regulations, play an important role in CMEG's processes to address potential conflicts of interest. The Board of Directors has assessed which directors would be considered "public" directors based upon their lack of relationship with the CMEG Exchanges and the industry in accordance with CFTC Regulations. Currently 30% of the Board of Directors is comprised of public directors. Additionally, the MROC is composed solely of public directors.
- 1.1.12 Within the CME Clearing Division, various functional committees also have been established to oversee risk management issues and financial safeguards for CME. These committees include the CHRC, CDSRC, and IRSRC. Each CME Risk Committee represents a balanced constituency of clearing members and industry experts and is chaired by a member of the Board of Directors. These committees evaluate clearing member applications and determine whether to grant the applicant direct access to CME clearing services. The Charters of the CHRC, CDSRC and IRSRC each specify requirements regarding the appointment of members to the committees by the CME Chairman of the Board of Directors.
- 1.1.13 The CHRC is composed of not less than seven members, including co-chairmen who are members of the CME Board of Directors. At least five of the seven CHRC members are required to be representatives of clearing members, and at least one member of the CHRC must be a non-member of CME (i.e., neither a member of any of the CMEG Exchanges nor a representative of a CME Exchange Clearing Member or an affiliate).
- 1.1.14 The CDSRC is composed of not less than eleven members (and not more than sixteen members), including a chairman who must be a member of the CME Board of Directors. At least five and as many as nine members must be representatives of CDS clearing members, with a specified distribution of clearing activity designed to ensure that both large and small CDS clearing members are represented. At least two CDSRC members must be independent members (i.e., neither an employee or director of CME nor a representative of any CDS clearing member or an affiliate).
- 1.1.15 The IRSRC is composed of not less than eight members (and not more than sixteen members), including a chairman who must be a member of the CME Board of Directors. At least two and as many as nine members must be representatives of IRS clearing members, with a specified distribution of clearing activity designed to ensure that both large and small IRS clearing members are represented. At least two IRSRC members must be independent members (i.e., neither an employee or director of CME nor a representative of any IRS clearing member or an affiliate).
- 1.1.16 The CHRC is charged in its Charter with "guid[ing] the Board of CME in maintaining and enhancing CME Clearing's role as the industry leader in risk management." The CHRC advises CME Clearing Division's management on risk management issues relating to the financial condition of Clearing Members, performance bond policies for products supported by the Base Guaranty Fund and the risk implications of proposed clearing programs. The CHRC is also tasked with monitoring the sources and amounts of the financial safeguards for the Base major asset class and making recommendations to the Board of Directors with respect to any changes to the financial safeguards. The CHRC reviews and approves Clearing Member applications and material changes and is responsible for overseeing the unwinding of a Clearing Member in a default situation impacting the Base Guaranty Fund. The CHRC also has primary responsibility for reviewing and approving amendments to rules impacting CME Clearing Division and for making recommendations to the Board of Directors concerning such amendments to the CME Rules. Finally, under CME Rule 403.A (Jurisdiction and General Provisions), the CHRC may take action against a Clearing Member whose financial condition jeopardizes or may jeopardize the integrity of CME, and under CME Rule 403.C (Emergency Actions), the CHRC may take emergency action if it determines that an emergency exists and emergency action is warranted.



- 1.1.17 The CDSRC is established as a Committee of CME under CME Rule 8H27 (CDS Risk Committee) to provide oversight on major risk management policy issues and financial safeguards for CME's CDS clearing services, as described in Chapter 8H of the CME Rulebook. The CDSRC regularly reviews CME's financial safeguards system for CDS products, including the levels and sources of resources supporting the CDS Guaranty Fund and CME's overall risk management policies and practices relating to CDS clearing. The CDSRC reviews and approves CDS Clearing Member applications, provides guidance as to the financial deterioration of any CDS Clearing Member and is responsible for overseeing the unwinding of a CDS Clearing Member in a default situation and for convening the CME CDS Default Management Committee. The CDSRC has oversight of CME's regulatory and risk management audit functions for CDS products. The CDSRC also has primary responsibility for reviewing and approving amendments to the CME Rules concerning CDS products or directly impacting CDS clearing and CDS Clearing Members.
- 1.1.18 The IRSRC is established as a Committee of CME under CME Rule 8G27 (IRS Risk Committee) to provide oversight on major risk management policy issues and financial safeguards for CME's IRS clearing services, as described in Chapter 8G of the CME Rulebook. The IRSRC regularly reviews CME's financial safeguards system for IRS products and CME's overall risk management policies and practices relating to IRS clearing. The IRSRC reviews and approves IRS Clearing Member applications, provides guidance as to the financial deterioration of any IRS Clearing Member and is responsible for overseeing the unwinding of an IRS Clearing Member in a default situation and for convening the CME IRS Default Management Committee. The IRSRC has oversight of CME's regulatory and risk management audit functions for IRS products. The IRSRC also has primary responsibility for reviewing and approving amendments to the CME Rules concerning IRS products or directly impacting IRS clearing and IRS Clearing Members.
- 1.1.19 As described in the Corporate Governance Principles, the Board of Directors annually reviews its own performance, structure and processes in order to assess how effectively it is functioning. The assessment is implemented and administered by the Governance Committee through an annual board self-evaluation survey. In addition, the Audit, Compensation, Finance, Governance, Market Regulation Oversight, and Nominating Committees each conduct an annual self-assessment. To enhance the Governance Committee's performance, beginning in 2013, the self-evaluation process includes assessment of the performance of the individual directors. The Governance Committee is currently evaluating trends in the process for conducting such evaluation and will make a recommendation to the Board of Directors in advance of the 2013 self-evaluation process.
- 1.1.20 Each of the CHRC, CDSRC and IRSRC is charged with annually evaluating the adequacy of its Charter and submitting any recommended changes to the Board of Directors of CME for approval.
- 1.1.21 CFTC Regulation 39.13(b) mandates that every DCO establish and maintain written policies, procedures and controls, approved by the Board of Directors, that at a minimum establish an appropriate risk management framework, address the monitoring and management of risk, and provide a mechanism for internal audit. The CRO of CME is responsible for implementing the risk management framework and for making appropriate recommendations to CME's risk management committee or Board of Directors, as applicable. CME Rules 230.k and 257 govern the authority of the Board of Directors in emergencies and its ability to delegate that authority. The CHRC has authority to take emergency action under CME Rule 403.C if it determines that an emergency exists and an emergency action is warranted.
- 1.1.22 Senior management of CME Clearing Division reports directly to the President, who reports directly to the CEO of CME. As noted above, the CME CRO is responsible for implementing the risk management framework of CME. The CRO is the head of the Risk and Audits Department and has a direct reporting line to the President of CME and the Board-level chairman of the CHRC, CDSRC, and IRSRC. Ongoing monitoring of the Risk and Audits Department's policies and procedures is conducted by the Internal Audit Department (which conducts surveillance of the policies and procedures of CME and CMEG business units).
- 1.1.23 CFTC Regulation 39.10 requires each DCO to establish and staff the position of CCO. One of the CCO's duties is to review CME's compliance with the DCO Core Principles, including the risk-management framework designed by the CRO. The CCO has an additional reporting relationship to CME's Global Chief Compliance Officer and regularly reports to the MROC.
- 1.1.24 CME does not believe there is an inherent conflict between CME and CMEG affiliates because it is in the CMEG affiliates' interests to ensure the integrity of CME. Nonetheless, CME has governance arrangements in place to deter potential conflicts.
- 1.1.25 The MROC, which is composed entirely of public directors, receives regular reports from CMEG Exchange staff and determines whether the CRO and the Managing Director, Audit Department are able to implement their department's self-regulatory responsibilities free from improper interference or influence. As noted above, the CCO of CME ensures compliance with the DCO Core Principles and reports directly to the MROC.

- 1.1.26 CME Risk Committee members are specifically charged with evaluating the matters before them with regard to maintaining the financial integrity of the CME Clearing Division, rather than with regard to the interests of any clearing firm of whom the committee member is a representative. This standard is set forth in the agreements signed by each CME Risk Committee member, and it is included in the CHRC, CDSRC and IRSRC Charters.
- 1.1.27 In addition, CMEG has adopted general policies and procedures to address potential conflicts of interest. In order to ensure that the Board of Directors effectively avoids or minimizes conflicts of interests and quickly resolves any that arise, the Board of Directors has adopted a code of ethics, a conflict of interest policy, and a related party approval policy. In accordance with these policies, members of the Board of Directors are required to act in the best interests of the organization, disclose any potential for the director to receive any private benefit in connection with a matter being presented to the Board of Directors, and to preserve the confidentiality of information provided to them, as well as not to use their positions for their personal benefit.
- 1.1.28 Additionally, certain transactions in which a director or executive officer would have a material benefit must be approved by the Audit Committee of CMEG. As an example, members of the Board of Directors must recuse themselves from both the deliberations and voting with respect to any "significant action", as defined in each of the CMEG Exchange's Rule 234 (Avoiding Conflicts of Interest in "Significant Actions"), if the Board member knowingly has a direct and substantial financial interest in the result of the vote, based upon either CMEG Exchange or non-CMEG Exchange positions that could reasonably be expected to be affected by the action, or is otherwise conflicted based on existing CMEG Exchange policy.
- 1.1.29 CMEG has also adopted a Code of Conduct which applies to all employees, including the executive officers of the CMEG Exchange. The provisions of the Code of Conduct address potential and actual conflicts of interest. On an annual basis, employees are required to certify that they have received and agree to abide by the provisions of the Code of Conduct.
- 1.1.30 Members of Board and non-Board level committees also are subject to CME Rule 300.F (Use of Disclosure of Material, Non-Public Information), which prohibits use or disclosure of material non-public information obtained by committee members as a result of their participation on such committees.
- 1.1.31 The members of the Management Team of CMEG have the same titles at CME. Under CME's Corporate Governance Principles, Directors should have the highest professional and personal ethics and values, the relevant expertise and experience required to offer advice and guidance to the President, the ability to make independent analytical inquiries, an understanding of CME's business and should be willing to devote adequate time and effort to Board of Directors responsibilities. Each Director is expected to ensure that his or her other commitments do not materially interfere with his or her service overall as a Director. Board members are nominated by the CMEG Nominating Committee. CME's Bylaws specify that no member of the Board of Directors or any Committee established by CME shall be eligible to serve on the Board of Directors or any such Committee if the individual has committed a "disciplinary offense" as defined by CME Rule 300.D (Disqualification from Certain Committees and Governing Boards).
- 1.1.32 As noted above in paragraph 1.1.29, CMEG has also adopted a Code of Conduct that applies to all employees, including the executive officers of CME. The provisions of the Code of Conduct address conflicts of interest, anti-competitive conduct, discrimination, and fairness, among other areas that bear upon fitness and propriety. On an annual basis, employees are required to certify that they have received and agree to abide by the provisions of the Code of Conduct.
- 1.1.33 CMEG's independent Nominating Committee recommends candidates for election to the Board of Directors who are submitted to the shareholders for approval. In considering candidates for the Board of Directors, the Nominating Committee considers the entirety of each candidate's credentials, including their representation of diverse viewpoints. With respect to the nomination of current directors for re-election, the individual's contributions to the Board of Directors are also considered. In assessing new candidates for the Board of Directors, CMEG has not adopted a set of firm criteria that an individual must meet to be considered. The Nominating Committee reviews the qualifications and backgrounds of potential directors in light of the needs of the Board of Directors and CMEG at the time and selects a slate of Equity director nominees to be nominated for election at the annual meeting of shareholders. In evaluating potential director nominees, the Nominating Committee will take into consideration, among other factors, whether the nominee:
- has the highest professional and personal ethics and values;
  - is independent of management under the Categorical Independence Standards (a copy of which is available at <http://investor.cmegroup.com/investor-relations/independence.cfm>);
  - has the relevant expertise and experience required to offer advice and guidance to CMEG's CEO;

- helps the Board of Directors reflect the industry diversity of interest composition requirements set forth in the CMEG bylaws (See Section 3.5 of the bylaws available at <http://investor.cmegroup.com/investor-relations/corporate-policies.cfm>);
- has the ability to make independent analytical inquiries;
- can dedicate sufficient time, energy and attention to the diligent performance of his or her duties;
- has the ability to represent the interests of the shareholders of CMEG and to create long-term value;
- has any special business experience and expertise in a relevant area;
- would be considered an audit committee financial expert or financially literate, as such terms are defined in applicable rules, regulations and listing standards; and
- has an understanding of CME Group's business, products, market dynamics, and customer base.

CME's Certificate of Incorporation Article FIFTH limits liability for directors for breach of duty, except for liability (i) for any breach of the director's duty of loyalty to CME or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. CME Bylaws Article VII and CME Rule 256 (Indemnification of Certain Persons) provide that CME will indemnify directors and officers of CME to the maximum extent allowable under law.

## **2. Fees**

### **2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.**

2.1.1 For the majority of products, clearing fees are charged for the service of clearing and guaranteeing trades and execution fees for transactions executed through the proprietary CME Globex trading system or through open outcry. Certain other activities related to trading and delivery, such as back office position transfers, give-up transfers, and options exercise and assignments also incur fees which are all listed in the applicable fee schedule.

2.1.2 In certain circumstances, CME and the other CMEG Exchanges will create market making or other incentive programs to enhance market liquidity. Such programs may include a variety of fee incentives in return for liquidity providing services. These programs are considered to be rules under the CEA and are all reviewed by the CFTC during a ten business day self-certification period prior to implementation. Clearing fee incentive programs are generally also subject to the review of the SEC due to CME being deemed as a registered clearing agency with the SEC under the Dodd Frank Act. Uniformly included in all of CMEG's program self-certification filings to the CFTC is CMEG's analysis of how participants are selected, and how the eligibility criteria comply with the DCO Core Principles depending on the program type. Any questions that the CFTC has prior to implementation of a program related to compliance with the CEA and/or the DCO Core Principles, including selection criteria, must be answered by CMEG staff prior to implementation.

### **2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.**

2.2.1 Product fee determinations occur through collaboration between research teams and product line management teams at CMEG. Fees are differentiated at the product level by a number of different factors, including historical prices of similar products cleared by CME and the expected demand for the product. All fees for all products cleared by CME are publicly available on the CMEG website. Furthermore, all incentive programs offered by CME are publicly filed with the CFTC and SEC and are subject to regulatory review in light of the relevant CFTC and SEC regulations.

## **3 Access**

### **3.1 The clearing agency has appropriate written standards for access to its services.**

#### **Access to CME**

3.1.1 The membership requirements of CME are objective, publicly disclosed and permit fair and open access. There are five types of clearing memberships (CME, CBOT, NYMEX, COMEX and OTC) which provide clearing members with the right to clear different types of products. For example, CBOT Exchange Clearing Members may clear products traded on CBOT whereas NYMEX Exchange Clearing Members may clear products traded on NYMEX. OTC Derivatives

Clearing Members may only clear OTC products with CME. The only cross-over between clearing membership types is the ability of CME Exchange Clearing Members to expand their clearing memberships (subject to meeting certain requirements of CME) to allow them to clear OTC products as well. The standards for each different clearing membership type are applied on a uniform basis to all clearing members and clearing member applicants.

3.1.2 CME Rules 901 (General Requirements and Obligations), 8G04 (IRS Clearing Member Obligations and Qualifications), 8H04 (CDS Clearing Member Obligations and Qualifications) and 8F004 (OTC Clearing Member Obligations and Qualifications) set out the high level requirements and obligations for various types of members of CME. For example, all clearing members must meet certain operational and financial thresholds. More detail on the requirements for clearing members may be found in Chapters 8 (Clearing House and Performance Bonds) and 9 (Clearing Members) of the CME Rulebook, which set out the admission and eligibility standards that applicants for clearing membership must satisfy to become a CME Exchange Clearing Member of CME. Please note that IRS OTC, CDS OTC and OTC clearing members are all collectively under the rubric of OTC Derivatives Clearing Members.

3.1.3 Among other requirements, these standards require that the applicants for CME Exchange Clearing Member must:

- have all necessary licenses to become a CME Exchange Clearing Member;
- have all necessary memberships or made required membership deposit of:
  - if CME: 2 CME divisions, 2 International Money Market (“**IMM**”) divisions, 2 Index and Option Market (“**IOM**”) divisions and 1 Growth and Emerging Markets (“**GEM**”) division;
  - if CBOT: 2 CBOT FULL memberships;
  - if NYMEX: 2 NYMEX FULL memberships;
  - if COMEX: 2 COMEX FULL memberships
  - if OTC: US\$5 million membership deposit if not already a CME Exchange Clearing Member;
- meet minimum capital requirements of the greatest of:
  - US\$5 million if conducting futures/options on futures;
  - US\$20 million if guaranteeing locals trading on CME ClearPort who are not otherwise Eligible Contract Participants;
  - US\$50 million if conducting OTC activity;
  - CFTC or SEC minimum regulatory capital requirements;
- have made a contribution to the Guaranty Fund of:
  - US\$500,000 if conducting futures/options; or
  - US\$2.5 million if conducting OTC (except CDS or IRS);  
PLUS
  - US\$50 million for IRS clearing membership;  
PLUS
  - US\$50 million for CDS clearing membership.
- satisfy the applicable CME Exchange(s) as to its fitness and propriety, financial, operational, technical, and risk management capacity and competence; and
- satisfy the applicable CME Exchange(s) that it has written anti-money laundering, risk management, disaster recovery, and business continuity policies.

- 3.1.4 All of the CMEG Exchange clearing membership requirements are designed to permit fair and open access while protecting the CMEG Exchanges, CME and its CMEG Exchange Clearing Members. A CMEG Exchange does not intend to deny an applicant membership in the CMEG Exchange if it satisfies all of the CMEG Exchange clearing membership requirements.

**Membership application process**

- 3.1.5 To apply for CMEG Exchange clearing membership, an applicant must complete a CMEG Exchange Clearing Member Application and Agreement for Membership ("**Clearing Member Application**") and submit them with the required documentation to CME. The Audit Department of CMEG, which conducts financial surveillance of CMEG Exchange Clearing Members and OTC Derivatives Clearing Members, will initially review the submitted application and request additional information from the applicant, if necessary. After the Audit Department determines that the application is complete, it will submit the application for review and consideration by the CHRC, IRSRC or CDSRC as applicable, which will make the final determination of whether the applicant meets the objective and fair standards for clearing membership for the applicable CMEG Exchange. Each CME Risk Committee is made up of senior level employees of CME and representatives of the constituent group of clearing members (i.e., IRS clearing member representatives on the IRSRC).
- 3.1.6 CME anticipates that the CME Risk Committee review will take place within eight weeks of receipt of the completed application. The CME Risk Committee will notify the applicant in writing of its decision.
- 3.1.7 CME maintains records of its CMEG Exchange Clearing Member and OTC Derivatives Clearing Member application reviews and any resulting hearings or appeals. Complete records are maintained for each CMEG Exchange Clearing Member and OTC Derivatives Clearing Member.
- 3.1.8 Any applicant whose request to become a CMEG Exchange Clearing Member or OTC Derivatives Clearing Member is denied will be provided with an explanation and reasons for the decision. An applicant whose application is denied may appeal to the Board of Directors only on the basis that the CME Risk Committee's determination was arbitrary, capricious, or an abuse of its discretion.

**3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of**

**(a) each grant of access including, for each participant, the reasons for granting such access, and**

- 3.2.1 The CME Risk Committee is responsible for reviewing and approving or rejecting applications for clearing membership and all CMEG Exchange Clearing Member mergers, changes and withdrawals.
- 3.2.2 The CME Audit Committee will review all clearing member applications in light of the requirements (financial, operational and otherwise) set out in the relevant CMEG Rulebook and the CMEG Clearing Membership Handbook. The papers submitted to the CME Risk Committee will document the review conducted by the Audit Department and the Audit Department's view on whether the applicant meets the relevant clearing membership requirements and criteria. The documentation provided to the meetings, as well as the minutes documenting the discussion held at the CME Risk Committee meeting will be retained in accordance with CME's document retention procedures and obligations.

**(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.**

- 3.2.3 As stated above, all applications for access (membership) will be considered by the CME Risk Committee. The papers and minutes relating to these meetings will document the reasons why the CME Risk Committee approved or denied access to an applicant and will be retained in accordance with CME's document retention policy.

**4. Rules and Rulemaking**

**4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and**

- (a) are not inconsistent with securities legislation,**
- (b) do not permit unreasonable discrimination among participants, and**
- (c) do not impose any burden on competition that is not necessary or appropriate.**

4.1.1 Chapters 8 (Clearing House and Performance Bonds) and 9 (Clearing Members) of the CME Rulebook and any other rules, policies, advisories or procedures that meets the definition of “Rule” under CFTC Regulation 40.1 – *Definitions* (collectively the “**CME Rules**”) are available on an unrestricted basis to the public and may be found on the CMEG website ([www.cmegroup.com](http://www.cmegroup.com)). The CME Rules are designed to fulfill the obligations of CME with the requirements set forth in the CEA and CFTC regulations. The CME Rules are not inconsistent with applicable derivatives regulations, do not permit unreasonable discrimination among participants and do not impose any burden on competition that is not necessary or appropriate. The CME Rules are subject to the self-certification and/or approval procedures contained in CFTC Regulation 39.4 – *Procedures for implementing derivatives clearing organization rules and clearing new products* (“**CFTC Regulation 39.4**”), Part 40 of the CFTC regulations (“**CFTC Part 40**”) and, in the case of new cleared-only products, CFTC Regulation 39.5 – *Review of swaps for Commission determination on clearing requirement* (“**CFTC Regulation 39.5**”). Please note that CME was deemed to be a systemically important financial market utility on July 18, 2012, and as a result of this designation, CME is subject to CFTC Regulation 40.10 – *Special certification procedures for submission of rules by systemically important derivatives clearing organizations* (“**CFTC Regulation 40.10**”), as described below.

**4.2 The clearing agency’s rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.**

4.2.1 The CME Rules must be self-certified or approved with the CFTC depending on the type of rule and the potential impact on the marketplace. In all cases, the rule will be submitted to the CFTC for review and then posted publicly (on the CMEG and CFTC websites at [www.cmegroup.com](http://www.cmegroup.com) and [www.cftc.gov](http://www.cftc.gov)) with the exception of portions of a rule filing which qualify for confidential treatment under CFTC Regulations 40.8 – *Availability of public information* and 145.9 – *Petition for confidential treatment of information submitted to the Commission*. In most circumstances, CME has the obligation to concurrently post its rule filings on the CMEG website. An overview of the most relevant portions of CFTC Regulation 39.4, CFTC Part 40 and CFTC Regulation 39.5 is provided below.

4.2.2 **CFTC Regulation 39.4:** This regulation sets out the different avenues through which a registered DCO may implement new rules. A DCO may seek approval for new rules via the procedures of Regulation 40.5 – *Voluntary submission of rules for Commission review and approval* (“**CFTC Regulation 40.5**”) (see CFTC Regulation 39.4(a)), may self-certify or notify new rules via the procedures of CFTC Regulation 40.6 – *Self-certification of rules* (“**CFTC Regulation 40.6**”) (see CFTC Regulation 39.4(b)), may accept new cleared only products for clearing via the procedures CFTC Regulation 39.5 (see CFTC Regulation 39.4(c)), may request an order concerning the competitive impact of a new rule (see CFTC Regulation 39.4(d)) and may seek portfolio margining relief via the procedures of CFTC Regulation 40.5 (see CFTC Regulation 39.4(e)).

4.2.3 **CFTC Regulation 39.5:** Pursuant to the procedures of Regulation 39.5, a DCO must submit certain information to the CFTC that it will use to make a clearing determination prior to accepting any new swap for clearing. If the swap is within a group, category, type or class of swap that the DCO already accepts for clearing, this submission must be made at least one business day prior to the DCO accepting the swap for clearing. The submission should include, among other things, quantitative and qualitative assessments of:

- (a) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;
- (b) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;
- (c) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract;
- (d) the effect on competition, including appropriate fees and charges applied to clearing; and
- (e) the existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

4.2.4 Where a swap is not within the group, category, type or class of swap that the DCO already clears, it must seek confirmation of its eligibility to clear the swap prior to submitting the swap for a clearing determination as described above.

4.2.5 **CFTC Regulation 40.5:** Pursuant to the procedures of CFTC Regulation 40.5, a DCO may seek approval for a new rule or the establishment of a portfolio margining program. Such approval will only be provided by the CFTC where the new rule or rule amendment is not inconsistent with the CEA or the CFTC’s regulations. CFTC Regulations 40.5

submissions must, among other things, contain the text of the rule or rule amendment, a proposed effective date, provide an explanation and analysis of the purpose of the rule and its compliance with the CEA and DCO Core Principles, must certify that the submission was posted on the registered entity's public website and provide a brief explanation of any relevant substantive opposing views to the new rule or rule amendment. All new rules or rule amendments will be deemed approved within 45 days of their submission unless previously approved by the CFTC or extended per the CFTC's authority under CFTC Regulation 40.5(d).

- 4.2.6 **CFTC Regulation 40.6:** Pursuant to the procedures of CFTC Regulation 40.6(a), a DCO may self-certify certain new rules and rules changes with the CFTC. These self-certifications are subject to a ten business day review period and must, among other things, be posted concurrently on the registered entity's public website, include the text of the rule, must include the date of implementation of the rule, contain a concise analysis of how the new rule or rule amendment complies with the CEA and core principles and include a brief explanation of any opposing views to the new rule or rule amendment. The CFTC has the authority under CFTC Regulation 40.6(c) to stay the new rule or rule amendment for 90 days during the 10 business day self-certification and during this stay there will be a 30 day public comment period on the rule. CFTC Regulation 40.6(d) provides registered entities with the option to provide after the fact notifications of certain non-material rule changes including non-substantive revisions and de minimis fee changes.
- 4.2.7 **CFTC Regulation 40.10:** This regulation only applies to DCOs deemed to be systemically important by the U.S. Financial Stability Oversight Council. All new rules and rule amendments by DCO's deemed systemically important that could materially affect the nature or level or risks presented by the DCO are subject to a 60 day advance notification requirement under CFTC Regulation 40.10. All CFTC Regulation 40.10 submissions must meet the filings requirements contained in CFTC Regulation 40.6(a) above and describe the nature of the change and expected effect on the risks to the systemically important DCO, its clearing members and the market along with an explanation of how the systemically important DCO plans to manage the identified risks. These submissions must also be concurrently provided to the Board of Governors of the Federal Reserve System. Information about the definition of "materiality" may be found in CFTC Regulation 40.10(b).
- 4.2.8 As noted in paragraph 1.8 of Part II above, CME was designated by the FSOC as a systemically important financial market utility under Title VIII of the Dodd Frank Act on July 18, 2012. An additional consequence of this designation is that CFTC Regulation 40.10 and Federal Reserve Regulation HH: Financial Market Utilities ("**Regulation HH**") apply to CME and require it to give the CFTC and the Board of Governors of the Federal Reserve "not less than 60 days advanced notice of any proposed change to [CME's] rules, procedures or operations that could materially affect the nature or level of risks presented by" CME as a DCO. Such changes may include, but are not limited to, "changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards ... and governance."
- 4.2.9 In addition to the advance notice requirements, Regulation HH contains risk management standards for systemically important financial market utilities but Section 234.1 of Regulation HH specifically exempts "derivatives clearing organizations registered under Section 5b of the Commodity Exchange Act" from compliance with these standards. CME is registered under Section 5b of the CEA. Thus, the only material consequence for CME of being designated as a systemically important financial market utility at this juncture is being subject to an enhanced review requirement for certain material changes to CME.

#### 4.3 **The clearing agency monitors participant activities to ensure compliance with the rules.**

##### General Overview

- 4.3.1 CME monitors its clearing members' (futures commission merchant ("**FCM**") and non-FCM) compliance with clearing house rules and CFTC regulations covering minimum financial, segregation/secured/ sequestered, recordkeeping, and reporting requirements through a variety of ways including routine risk-based examinations in addition to daily, semi-monthly, monthly and annual submissions of various required financial information.
- 4.3.2 The CFTC has oversight responsibility of the U.S. commodity industry. The clearing houses and National Futures Association ("**NFA**") have been given primary responsibility for ensuring market participants are adhering to rules and regulations. The Joint Audit Committee ("**JAC**") was formed to enhance uniformity among participants as well as lessen the regulatory burden for firms which are members of multiple exchanges.
- 4.3.3 The JAC is a representative committee of the Audit and Financial Surveillance departments of U.S. clearing houses and regulatory organizations. Through the JAC, FCMs are assigned a lead commodity regulator referred to as the designated self-regulatory organization ("**DSRO**"). The DSRO is responsible for performing risk-based examinations designed to meet the goals of customer protection and exchange financial integrity. Such examinations (of both FCMs and non-FCMs) are conducted in accordance with the JAC Audit Program, which is reviewed by the CFTC. On a

quarterly basis, the CFTC reviews a sample of the examinations performed by DSROs to ensure DSROs are performing examinations in accordance with the JAC Audit Program. The CFTC may, at its discretion, perform its own examination of an FCM.

- 4.3.4 The CFTC requires that a risk-based examination be performed of an FCM within nine to eighteen months of the “as of” date of the previous examination. In performing a risk-based examination, an assessment is made of the FCM so that areas of risk are targeted for review. While the work performed helps ensure that the firm is in compliance with capital, segregation/secured/sequestered, recordkeeping, and reporting requirements, some sections of the JAC Audit Program may not be performed on every examination. However, all core program sections must be performed, as applicable, at least once every three examination cycles.

**Risk-Based Examination Overview**

- 4.3.5 Risk-based auditing allows the evaluation of a firm’s risks to determine the level and degree of testing to be performed. As a result, the planning and scope-setting process is a critical element in performing a risk-based exam. The following information of a firm is utilized to determine appropriate testing including, but not limited to results of preliminary risk analysis review, significant financial trends noted in the monthly monitoring of the firm, past audit results, customer base, lines of business, significant growth, customer complaints, recent mergers or acquisitions and new regulations.

- 4.3.6 A risk-based examination is composed of three parts:

**(a) General**

- 4.3.7 In addition to other items, a general questionnaire is completed which documents the firm’s financial, operational and risk management procedures and practices. Topics covered include, among other things, the controls, policies, personnel, and systems of the firm’s financial records, changes in relationships with third parties, account monitoring procedures (margining and risk management analysis), customer, proprietary, noncustomer, and affiliate trading and segregation of cash and settlement responsibilities.

**(b) Compliance**

- 4.3.8 Compliance testing is performed to ensure FCMs and non-FCMs, their branch offices and their guaranteed introducing brokers are in compliance with applicable requirements. The JAC Audit Program contains the following compliance areas which must be completed at least once every three examination cycles: Books and Records, Customer Accounts, Discretionary Accounts, Margins, Anti-Money Laundering, Disaster Recovery, Sales Practice and Privacy Rules.

**(c) Financial**

- 4.3.9 The financial audit programs review the firm’s procedures for reconciling its account balances, presenting financial information, computing net capital, and reporting segregation, secured and sequestered amounts. There are four regulatory financial statements which are reviewed in a risk-based examination:

- The Net Capital Computation reflects the firm’s net capital amount which is computed as current assets less liabilities (adjusted for subordinated debt) less applicable haircuts/charges.
- The Segregation Statement reflects balances related to U.S. and foreign domiciled customers’ commodity trading activities on U.S. commodity exchanges protected under CFTC regulations. Specifically, this statement demonstrates that the firm has enough assets in segregated accounts to pay all segregated customer liabilities. Firms are required to prepare daily segregation computations and maintain segregated funds to meet all segregated liabilities on all days in accordance with CFTC regulations.
- The Secured 30.7 Statement reflects balances related to customers’ commodity trading activities on foreign commodity exchanges protected under CFTC regulations.
- The Sequestered Statement reflects balances related to customers’ trading activities in Cleared OTC Markets. CME currently has rules and regulations pertaining to the sequestration statement which are similar to the CMEG Exchange rules and regulations regarding segregation. The CFTC regulations regarding Cleared OTC products will be effective in November 2012.

- 4.3.10 The JAC Audit Program contains the following financial areas which must be completed at least once every three examination cycles: Cash at Banks, Securities, Receivables from/Payables to and Deposits with U.S./Foreign Commodity Clearing Organizations, Receivable from/Payables to Registered FCMs and Foreign Commodity Brokers,



Receivables from Traders on U.S. and Foreign Boards of Trade, Equities in Customers', Noncustomers', and General Partners' Commodity Accounts, Liabilities Subordinated to Claims of General Creditors, Subsequent Review and Statement of the Computation of the Minimum Capital Requirements.

- 4.3.11 The above descriptions are meant as a general guide to what the JAC reviews. It is not meant to be an exhaustive list of all the audit steps performed or the areas reviewed. There are several additional JAC Audit Programs which are not required to be performed, but may be performed if considered necessary.

**Audit Conclusions**

- 4.3.12 All risk-based examinations are reviewed by the audit team's management and the results discussed with the firm's management. A report is issued to the firm's senior management noting significant problems and material adjustments (hereafter jointly referred to as "**exceptions**") and requesting, if necessary, a written response addressing the items noted. The relevant CME Risk Committee will review risk based examination reports that contain exceptions and may take disciplinary action against the firm if deemed appropriate. Such disciplinary action may include letters of warning or charging the firm with CMEG Exchange violations. Once charged, a firm has the option of offering a settlement, appearing before the CME Risk Committee and/or requesting a hearing.

- 4.3.13 In addition to risk-based examinations, the following financial information is also submitted to the Audit Department (by FCM clearing members) and the NFA (by FCMs for which the NFA is the DSRO) as indicated:

**(a) Limited Reviews**

- 4.3.14 On a surprise basis, outside of the regular risk-based examinations, limited reviews of customer segregated, secured 30.7 and sequestered statements are performed in accordance with a review program adopted by the JAC.

**(b) Daily Submissions**

- 4.3.15 Effective May 1, 2012, all FCM clearing members are required to file daily segregated, secured 30.7 and sequestered statements as described above. Excess funds must be maintained at all times.

**(c) Semi-Monthly Submissions**

- 4.3.16 Effective July 1, 2012, all FCM clearing members are required to file semi-monthly reports of investments reflecting how customer segregated, secured 30.7 and sequestered funds are invested and where those funds are held. The report identifies the type of investment as well as the identity of and dollar amount held at each depository utilized. Such investments are reviewed for compliance with CFTC Regulation 1.25 – *Investment of customer funds*.

**(d) Monthly Submissions**

- 4.3.17 On a monthly basis, FCM and non-FCM clearing members are required to file a suite of financial statements including, but not limited to, a balance sheet, capital computation, net income statement and segregation/secured/sequestered statements. Such statements are reviewed for compliance with minimum financial requirements and unusual trends are highlighted and discussed with the firm.

**(e) Annual Submission**

- 4.3.18 As of an FCM or non-FCM clearing member's fiscal year end, a certified independent public accounting report must be submitted. Statements of financial condition, net capital computation, income (loss), cash flows, changes in ownership equity, changes in liabilities subordinated to the claims of general creditors, segregation/secured/sequestered statements, in addition to various other statements and footnotes, must be filed. An Accountant's Report and Accountant's Report on Material Inadequacies must also be submitted for review.

- 4.3.19 Any exception noted in the above reviews may also be taken to the CME Risk Committee for review. If an exception was noted, the same procedure identified for risk-based audits above would be followed.

**4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.**

- 4.4.1 The following CME Rules summaries briefly set out the policies and procedures with respect to non-compliance by clearing members.

- 4.4.2 **CME Rule 403 (Clearing House Risk Committee) ("CME Rule 403"):** The relevant CME Risk Committee may conduct investigations, issue charges and consider offers of settlement on its own initiative or by referral from CME

staff, the Probable Cause Committee, or the Business Conduct Committee (“BCC”). The CME Risk Committee may take appropriate action if it determines that a clearing member’s financial condition jeopardizes or may jeopardize the integrity of CME. The CME Risk Committee has jurisdiction to enforce the CME Rules pertaining to: (i) the financial integrity of clearing members, and (ii) a clearing member’s business conduct of and compliance with the CME Rules.

4.4.3 A respondent that is the subject of an investigation or charges may submit for the CME Risk Committee’s consideration a written offer of settlement in disposition of such investigation or charges, and may do so without admitting or denying the CME Rule violations provided that an offer must include consent to entry of the CME Risk Committee’s findings and penalty to be imposed. If the Audit or Market Regulation Department does not oppose the respondent’s offer of settlement, the written offer and the Audit or Market Regulation Department’s supporting statement will be submitted to the CME Risk Committee for consideration. If the Audit or Market Regulation Department opposes an offer of settlement, the written offer and the Audit or Market Regulation Department’s written opposition shall be submitted to the CME Risk Committee. If the CME Risk Committee accepts the offer, a written decision setting forth the CME Risk Committee’s findings and sanction shall be issued, and written notice of the decision shall be given to the respondent. If the CME Risk Committee rejects the offer, the respondent will be notified of the rejection and the offer will be deemed withdrawn. If an offer is withdrawn or rejected by the CME Risk Committee, the respondent shall not be deemed to have made any admissions by reason of the offer and shall not otherwise be prejudiced by having submitted the offer.

4.4.4 Under CME Rule 403.C., the following events and/or conditions may constitute emergencies:

- (a) any circumstances which may materially affect the performance of contracts traded on CME, including failure of the payment system;
- (b) any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on CME;
- (c) the actual or threatened bankruptcy or insolvency of any clearing member or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a clearing member of CME which may affect the ability of that clearing member to perform on its contracts;
- (d) any circumstance in which it appears that a clearing member or any other person or entity has failed to perform contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, clearing members, and/or CME; and/or
- (e) any other circumstance which may have a severe, adverse effect upon the functioning of CME, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of CME Rule 701.

4.4.5 The CME Risk Committee is authorized to determine whether an emergency exists and whether emergency action is warranted. If the CME Risk Committee determines that an emergency exists, it may take appropriate emergency action. All emergency actions must be taken by majority vote of the committee members of the CME Risk Committee who are present. The CME Risk Committee must promptly notify the Board of Directors and the CFTC of the emergency action in accordance with CFTC regulations.

4.4.6 Appeals of administrative fines in excess of US\$25,000 are heard by a panel comprised of the co-chairman and three members of the CME Risk Committee, and whose decision is final. An appellant must be advised of its right to appear at the hearing and its right to be represented by legal counsel or certain prescribed members of CME, and may present evidence. The panel shall not set aside, modify or amend the decision appealed from unless the panel determines by a majority vote that the decision was: (i) arbitrary, capricious or an abuse of CME staff’s discretion; (ii) in excess of CME staff’s authority or jurisdiction; or (iii) based on a clearly erroneous application or interpretation of the CME Rules.

4.4.7 **CME Rule 974 (Suspension of Member Firm Privileges):** If the Audit Department determines that a clearing member fails to meet the prescribed minimum financial requirements or neglects to promptly furnish a statement upon request, it may recommend that the relevant CME Risk Committee suspend the privileges of the clearing member. The CME Risk Committee, upon receiving such a recommendation from the Audit Department, will conduct a hearing into the matter. If the CME Risk Committee finds that the minimum financial requirements are being violated, it may suspend the clearing member’s privileges. The CME Risk Committee must immediately notify the CFTC of any clearing member which fails to meet the minimum financial requirements.

4.4.8 If certain CME member firms prescribed under CME Rule 106 (Transfers, Security Transactions, and Authorizations to Transfer or Sell) (i) have notified CME or CME becomes aware of a “significant event”, (ii) that are FCMs and fail to

meet CFTC minimum financial requirements, or (iii) neglect to promptly furnish a statement upon request, the CME Risk Committee may suspend the membership privileges of the member firm, subject to obtaining the required approval from CME management.

4.4.9 **CME Rule 976 (Suspension of Clearing Members):** A clearing member that becomes insolvent must immediately notify CME of the insolvency. The President of CME must announce the insolvency, following which the clearing member will be deemed to be automatically suspended. If a clearing member who becomes insolvent, or is suspended from CME, the officers, owners or partners who are members of CME may also be suspended. As noted above in respect of CME Rule 403, a clearing member may be suspended by the relevant CME Risk Committee if it fails to meet the capital requirements of the CME Risk Committee or the CFTC, or if its financial condition, or the financial condition of one of its affiliates, is such that its continued operation would jeopardize the integrity of the CME.

4.4.10 **CME Rule 979 (Suspended or Expelled Clearing Members):** If a clearing member has been suspended or expelled, it must comply with all orders of the Board of Directors, the relevant CME Risk Committee, and the President of CME. Where a clearing member refuses to comply with any order placed upon it, CME may take whatever means necessary to effect the order. A clearing member of any member suspended as a result of a clearing member's insolvency may be reinstated upon affirmative proof to the CME Risk Committee of the clearing member's financial responsibility. An exchange member may withdraw from the clearing member and may apply for reinstatement to exchange membership in CME provided that the insolvency of the clearing member was not caused by the exchange member's ilful, reckless or unbusinesslike conduct.

## **5. Due Process**

5.1 **For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:**

- (a) **an applicant or a participant is given an opportunity to be heard or make representations; and**
- (b) **the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.**

5.1.1 As described in Sections 2.1, 3.1 and 4.4 above, the CME Risk Committee decides whether applicants meet the criteria for clearing membership and has the authority to investigate, issue charges and sanction clearing members for violations of the CME Rules. Where the CME Risk Committee concludes that charges should be issued against a clearing member for violation of the CME Rules, any hearing on such charges will be conducted by the BCC pursuant to the provisions of CME Rule 408 (Conduct of Hearings) ("**CME Rule 408**"). Applicants that have been denied clearing membership and clearing members subject to sanctions have the right to appeal decisions of the CME Risk Committee, the BCC and CME staff.

### **Appeals Process for Clearing Membership Applicants**

5.1.2 All applicants to CME receive written notifications of the CME Risk Committee's decision regarding their clearing membership application. Applicants that are denied membership receive a written explanation of the reasons for the denial and have the opportunity to appeal the decision of the CME Risk Committee to the Board of Directors. This appeal must be lodged within ten days of the decision by the CME Risk Committee. The Board of Directors may approve the applicant, despite the denial by the CME Risk Committee, by a majority vote if it is satisfied that the CME Risk Committee's decision to deny membership was arbitrary, capricious or an abuse of the CME Risk Committee's discretion. The decision by the Board of Directors is final.

### **Appeals Process for Disciplinary Actions**

5.1.3 Hearings on charges issued by the CME Risk Committee are held by the BCC pursuant to CME Rule 408. Clearing members have the right to appeal decisions of the BCC where they are found guilty of an offense and assessed a fine greater than US\$10,000 or imposed a suspension or access denial greater than five business days. This appeal shall be made to an Appellate Panel made up of members of the Board of Directors and must be filed with the CME Legal Department within ten days of receiving notice of the decision. All appeal requests must be in writing and specify the grounds for the appeal and the specific error or impropriety of the original decision. The filing of this request shall stay the decision appealed unless the Market Regulation Department objects to such stay and the Chairman of the Board of Directors or BCC Hearing Panel Chair from which the appeal is taken specifically directs that the decision is not stayed pending appeal.

5.1.4 No member of the Board of Directors may serve on a particular Appellate Panel if the director has a personal, financial, or other direct interest in the matter under consideration. The Chairman of the Board of Directors shall appoint a

director to serve as the Appellate Panel chairman, who shall conduct the hearing, and two additional directors to serve on the Appellate Panel. One of these directors shall be a non-member. Any party to the appeal may request the Chairman of the Board to strike any director for good cause shown. The Chairman of the Board may then excuse such director and shall then select an alternate director from the Board of Directors. An Appellate Panel shall consist of directors that possess sufficiently diverse interests so as to ensure fairness.

- 5.1.5 The Appellate Panel is required to make a determination as to whether sufficient grounds exist to hold a hearing on the appeal based only on the written request. CME Rule 411 (Appeal to a Hearing Panel of the Board of Directors) states that sufficient grounds exist if there is a reasonable basis to conclude that the appellant might be able to meet one of the three appellate standards that would permit the Appellate Panel to set aside, modify, or amend the appealed decision or refusal to issue charges. The Appellate Panel may set aside, modify, or amend a decision or refusal to issue charges that (i) was arbitrary, capricious, or an abuse of the committee's discretion; (ii) was in excess of the committee's authority or jurisdiction; or (iii) was based on a clearly erroneous application or interpretation of the CME Rules.
- 5.1.6 If the Appellate Panel determines that the appellant has failed to prove that he might be able to meet one of these standards, it will decline to convene an appellate hearing and affirm the decision of the original committee. If, however, the Appellate Panel determines that the appellant might be able to meet one of these standards, then the Appellate Panel will allow the parties to file written briefs in further support of their arguments. The timeframe in which the written briefs must be filed is set by the CME Legal Department.
- 5.1.7 The parties are limited to the facts in the record. The Appellate Panel will not hear new evidence or new legal theories that were not presented to the CME Risk Committee or BCC unless the appellant can make a clear showing that the evidence or theories were not available to it at the time.
- 5.1.8 In addition to the avenues for appeal under the CME Rules, pursuant to CFTC Regulation 9.20 – *Notice of Appeal*, a clearing member in a disciplinary case may appeal to the CFTC. This provision provides that a clearing member may file an appeal within thirty days after receiving notice of the disciplinary action against him.

#### **Appeal of Administrative Fines**

- 5.1.9 Pursuant to CME Rule 852 (Surcharges for Errors, Delays and Omissions), CME staff may impose surcharges against clearing members for errors, delays and omissions with respect to trade data and certain other information required to be provided to CME. A schedule of these surcharges is updated from time to time and provided to clearing members. CME Rule 403.D. (Appeal of Administrative Fines) gives clearing members the right to appeal such surcharges if they are in excess of US\$25,000. This appeal will be heard by a panel comprised of the co-chairman and three other members of the CME Risk Committee. The appellant has the right to representation at a hearing before the panel and may present evidence in support of its appeal. The panel may set aside the surcharge(s) if it finds by majority vote that the decision to impose the surcharge(s): (i) was arbitrary, capricious, or an abuse of staff's discretion; (ii) was in excess of staff's authority or jurisdiction; or (iii) was based on a clearly erroneous application or interpretation of the CME Rules.

### **6. Risk Management**

#### **6.1 The clearing agency's settlement services are designed to minimize systemic risk.**

- 6.1.1 CFTC Regulation 39.11 – *Financial Resources* (“**CFTC Regulation 39.11**”) requires CME to meet its financial obligations “notwithstanding a default by the clearing member creating the largest financial exposure” and to enable it to cover its “operating costs for a period of at least one year, calculated on a rolling basis.” CME collects initial margin, variation margin (via mark to market) and requires its clearing members to post collateral for its Guaranty Funds in order to manage its risk as a clearing house and meet CFTC Regulation 39.11. The adequacy of CME's default resources are stress tested on a daily basis.

#### **Margin and Variation Requirements**

- 6.1.2 CME manages its counterparty and market risk by margining each clearing member's contracts on a daily and intra-day basis according to the Risk Management Procedures. Risk is further mitigated through CME's payment to and collection from clearing members of variation margin determined through the variation settlement process.
- 6.1.3 CME's Standard Portfolio Analysis of Risk system (“**CME SPAN**”) is a sophisticated methodology that calculates performance bond requirements by analyzing the “what-ifs” of virtually any market scenario. It is used to calculate a clearing member's “Margin Requirement.” CME SPAN simulates the effects of changing market conditions and uses tailored options pricing models to determine a portfolio's overall risk. CME SPAN constructs scenarios of price and

volatility changes to estimate the potential loss arising if an entire portfolio must be closed out over a one-day time horizon. The resulting Margin Requirement is designed to cover this potential loss at a 99% confidence level.

- 6.1.4 The Margin Requirement forms part of the collateral required by CME in respect of each contract. It is calculated in a different way (net or gross basis) in respect of each type of account (e.g., House Account, Non-Segregated Client Account or Segregated Client Account).
- 6.1.5 CME calculates the "Variation Requirement" for contracts at least twice daily. The Variation Requirement consists of a mark-to-market revaluation of contracts based on current market prices. CME uses the Margin Requirement and the Variation Requirement to calculate the "Net Settlement Amount" for the settlement cycle.

**Guaranty Fund**

- 6.1.6 CME maintains three Guaranty Funds, which are an important element of the financial safeguards for the protection of CME and its clearing members. The three Guaranty Funds are an IRS Guaranty Fund for IRS products, a CDS Guaranty Fund for CDS products and a Base Guaranty Fund for all other products including futures and options on futures. CME will maintain the Guaranty Funds in accordance with the CME Rules and the CME Clearing House Manual of Operations ("**Clearing House Manual**").
- 6.1.7 As of December 31, 2012, the financial safeguards packages, which include the relevant Guaranty Funds, for the various product groupings were:

	<b>Base Financial Safeguards package</b>
<b>CME Contribution</b>	US\$100,000,000
<b>Guaranty Fund Contributions</b>	US\$2,899,000,000
<b>Assessment Powers</b>	US\$7,974,000,000
<b>Aggregate base financial safeguards</b>	US\$10,973,000,000

	<b>IRS Financial Safeguards package</b>
<b>CME Contribution</b>	US\$150,000,000
<b>Guaranty Fund Contributions</b>	US\$1,125,000,000
<b>Minimum Total Assets Available for Default</b>	US\$1,275,000,000

	<b>CDS Financial Safeguards package</b>
<b>CME Contribution</b>	US\$50,000,000
<b>Guaranty Fund Contributions</b>	US\$771,000,000
<b>Minimum Total Assets Available for Default</b>	US\$821,000,000

- 6.1.8 In the event that a Guaranty Fund is depleted in the course of handling a clearing member default, CME currently has an assessment power against non-defaulting clearing members for 275% of the original Guaranty Fund contribution of the clearing members with respect to that Guaranty Fund.

**Eligible Collateral**

- 6.1.9 Clearing members are required to make their Guaranty Fund contributions and Margin deposits in Eligible Collateral. Collateral may be in the form of cash or U.S. Treasury bills, strips, notes or bonds, government agencies or certain IEF2 funds in the case of the Guaranty Funds. A broader range of collateral is acceptable for initial margin/performance bond requirements. These collateral options include: gold, certain foreign sovereign debt, select mortgage backed securities, certain corporate bonds and select stocks from the S&P 500. Differing types of collateral are subject to different haircuts which are liquidity, market and credit risk. More information on the eligible collateral may be found on <http://www.cmegroup.com/clearing/financial-and-collateral-management/index.html>.
- 6.1.10 Appropriate haircuts will be applied to cash only when it is utilized to meet CME requirements in other currencies. Appropriate haircuts will be applied to all securities and physical collateral utilized to meet CME requirements. FX rates

will be taken into account when setting haircuts for securities, to account for the fact that securities may be lodged in currencies other than the currency of the liability. Haircuts will be based on a minimum of the 99% confidence level over twelve months of one-day moves.

- 6.1.11 From time to time, CME will decide to add securities as Eligible Collateral (this would generally be on the initiative of the Head of Banking and Settlement or the Head of Risk and Audits and may be the result of requests from clearing members). Proposals to accept new securities as Eligible Collateral will need to be approved by the CME Risk Committee and the Board of Directors. If the proposal is for a completely new type of Eligible Collateral (i.e. a new asset class, such as precious metal), then CME may also be required submit the change with the CFTC for review.
- 6.1.12 This historical percentile analysis is considered alongside the following other quantitative measures: Extreme Value Theory (EVT), Exponentially Weighted Moving Average (EWMA) and Normal Mixtures.
- 6.1.13 In addition to using quantitative data from these methodologies, qualitative information is also incorporated into the analysis. An example of qualitative information is a change in market fundamentals pertaining to the collateral that may not yet be reflected in the quantitative information. Additionally, further investigation into the cause of a period of increased volatility may indicate that the indicated level of haircut is not warranted and therefore the haircut may be set at a lower level, but at all times ensuring the 99% confidence level is maintained.

#### **Stress Testing**

- 6.1.14 CME runs a comprehensive suite of risk-based stress testing analysis on a daily basis to inform decisions on margin and Guaranty Fund adequacy, determine the need for additional margin requirements, and for general clearing member monitoring. CME employs three separate stress-testing models to assess potential clearing member exposures across all markets, each of which is currently used by CME:
- Largest Net Debtor Stress Testing;
  - Concentration Margin Stress Testing;
  - Trend Analysis Stress Testing.

#### **Default Rules**

- 6.1.15 CME's default rules can be found in Chapter 8 (Clearing House and Performance Bonds) of the CME Rulebook.
- 6.1.16 The CME Rules permit CME to apply any surplus assets available after it has finalized the default management of a defaulter's house account positions to meet any shortfall in relation to the defaulting clearing member's client account positions. CME is not permitted to apply a net sum related to the CME Segregated Client Account of a defaulting clearing member to cover a shortfall in the defaulting clearing member's house account. In that context, client accounts have a priority over house accounts.
- 6.1.17 CME is able to use the Guaranty Fund (including the contribution from non-defaulting clearing members) to cover shortfalls in relation to a defaulting clearing member's client accounts, house account, or both. For more information on CME's financial safeguards package please refer to Section 6.1 above and the CMEG website at <http://www.cmegroup.com/clearing/files/financialsafeguards.pdf>.

#### **6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.**

- 6.2.1 CME has set up a number of processes and internal management practices to ensure the proper operation of the clearing house. The risk department has a number of internal policies in place which are all considered and approved by the CME Risk Committee.
- 6.2.2 In addition, CME's clearing procedures contain procedures relating to audits, risk management and the Guaranty Fund. These are available on the CMEG website.
- 6.2.3 The Risk and Audits Department reports directly to the President of CME, who is a member of the CME Management Team. In addition, the Head of the Risk and Audits Department have dotted line reporting to the relevant CME Risk Committee, and under the DCO Core Principles, all DCOs are required to have chief risk officers. Ongoing monitoring of the Risk and Audits department's policies and procedures are conducted by the Internal Audit Department (which conducts surveillance of the policies and procedures of CME and CMEG business units).

- 6.2.4 The Risk and Audits Department team staff are required to have sufficient qualifications, skills and experience to perform their roles, and this will obviously depend on the level of the role and the responsibilities undertaken. The specific requirements will be stated in job descriptions and verification of the necessary skills will form part of the interview and selection process. There is no formal written requirement regarding the skills or experience of members of the CME Risk Committee, although it is to clearing members' advantage to nominate a representative with sufficient ability, qualifications and aptitude.
- 6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:**
- 1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.**
- 6.3.1 CME acts as a CCP and it rigorously controls the risk it assumes. This is achieved by having an experienced, dedicated risk management team. The risk management policies and procedures, put in place to ensure consistency and transparency, are approved by the CME Risk Committee, the Board of Directors and self-certified with the CFTC.
- 6.3.2 As described in Section 6.1 above, CME has in place financial safeguards to ensure the integrity of the marketplace and the contracts it clears. The activities of CME are designed and focused on ensuring that it maintains best practices and fulfills its role as a financial market utility.
- 2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.**
- 6.3.3 CME minimizes principal risk by waiting for confirmation of the movement of cash (or securities) from clearing members before it releases the corresponding securities (or cash).
- 3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.**
- 6.3.4 As stated in the Clearing House Manual, CME operates two settlement cycles each day and may require the clearing member to transfer Collateral to it or make payment to the clearing member at the end of each settlement cycle in satisfaction of a Net Settlement Amount. However, for certain Transactions, the clearing house may, in practice, only require the clearing member to transfer Collateral or make payment to the clearing member at the end of one settlement cycle each day.
- 6.3.5 The Variation Requirement consists of a periodic mark-to-market or revaluation of contracts and the determination of any final settlement amounts. The Variation Requirement also takes account of other amounts payable under the contracts relating to an Account such as premiums. Under volatile market conditions, the clearing house will conduct additional Variation Requirement calculations.
- 6.3.6 To calculate the intra-day Variation Requirement, CME uses current market prices and applies them to the position data submitted by clearing members prior to the relevant time set out on the CMEG website on that Business Day. For the end-of-day Variation Requirement, CME uses final settlement prices and applies them to the position data submitted by clearing members prior to the relevant time set out on the CMEG website.
- 6.3.7 CME uses the Margin Requirement and the Variation Requirement to calculate the Net Settlement Amount for the settlement cycle. The Net Settlement Amount for each clearing member is reported to the clearing member at the end of each settlement cycle.
- 4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.**
- 6.3.8 In order to ensure that CME has adequate liquidity each day for required payments and settlements, it invests in rolling overnight repurchase agreements, which provides CME with a daily pool of liquidity from which to manage outgoing payments. This policy means that CME only re-invests any cash which is not required to manage liquidity.
- 5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.**

6.3.9 Where the Net Settlement Amount is payable to CME, it shall be provided in the form of Eligible Cash. The clearing member may subsequently substitute part or all of such Collateral with an amount of Eligible Securities which is of an equivalent value as at the date of the substitution.

6.3.10 All of CME's acceptable collateral is of very high quality and is very liquid. However, in order to account for potential credit or liquidity risk, haircuts from current market value are applied when recognizing the value of Eligible Collateral. According to internal CME policy, haircuts will be based on a minimum of the 99% confidence level over 12 months of one-day moves. The haircuts are established and reviewed based on volatility using several value-at-risk (VaR) methodologies and historical observations for varying periods of time and confidence intervals. In addition to using the quantitative data from these methodologies, qualitative information is also incorporated into the analysis.

**6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.**

6.3.11 CME does not have any such links. Were it to establish one or more in the future, it would focus on ensuring that the legal structure and general risk management of the linkage or linkages was such as to reduce residual risks to a minimum.

**6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.**

6.4.1 CME is a DCM in addition to a clearing house. However, the CFTC oversight of CME mitigates the risk of the activities of the DCM from affecting the financial viability of the clearing house by having separate financial resources requirements for DCOs and DCMs. Thus, the CME DCM and DCO must separately have sufficient assets to meet their respective financial resources requirements.

**7. Systems and Technology**

**7.1 For its settlement services systems, the clearing agency:**

(a) **develops and maintains,**

(i) **reasonable business continuity and disaster recovery plans,**

(ii) **an adequate system of internal control,**

(iii) **adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;**

7.1.1 To retain its registration as a DCO, CME must meet the CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”). This regulation sets out certain requirements around testing and recovery time for a DCO's systems.

7.1.2 CFTC Regulation 39.18 requires that all DCOs have a program of risk analysis in relation to their operations and automated systems to identify and minimize sources of operational risk. This program must address information security, business continuity/disaster recover planning, capacity and performance planning, systems development/quality assurance and physical security/environmental controls. The required recovery time after an interruption is no later than the next business day following the day on which the disruption occurred. All DCOs are obligated to perform regular, periodic and objective testing of their automated systems and Business Continuity Plan (“**BCP**”)/disaster recovery capabilities. Further, DCOs must ensure that their BCP/disaster recovery plans are coordinated with their clearing members to enable effective resumption of daily processing, clearing and settlement following a disruption.

7.1.3 The core systems standards and procedures that underpin performance and resilience are those established and reviewed by CMEG. CMEG's internal audit function will draw on IT audit experts from an external auditor.

7.1.4 The CME Clearing IT Department includes a dedicated Quality Assurance Team responsible for manual and automated testing of all clearing systems. The team provides test coverage for each of the systems described above. It has developed a large suite of regression test cases that cover all existing functionality and continues to add new test cases to cover new functionality added to the various systems. It executes various types of tests, including testing



individual systems in isolation as well as end-to-end integration tests that exercise the functions of the clearing systems.

- 7.1.5 In addition, the CME Clearing IT Department includes a dedicated performance and reliability testing team responsible for executing tests that stress the clearing systems with large numbers of transactions to ensure that the systems are sized to support at least twice the last known transaction volume peak. Additional hardware will be added as necessary to meet increasing transaction volumes. The Quality Assurance Team also executes tests that simulate various types of system failure and ensures that these scenarios are handled predictably and can be recovered with no impact on data integrity.
- 7.1.6 CME has defined business-critical IT systems with appropriate redundancy, including immediate recovery time objectives for core components and up to four hours recovery for certain ancillary systems. In practice, the business could withstand a system outage of up to eight hours. The CME Operations, IT and Client Support Team are responsible for overall monitoring of the operation of the CME IT systems. Monitoring includes system performance, availability, and integrity of the relevant systems.
- 7.1.7 CME has implemented disaster recovery plans in the event of a failure of their systems. While these plans are designed to ensure that business operations can continue in the event of a wide range of disaster situations, IT failure is at their core.

#### **Facilities**

- 7.1.8 CMEG maintains data centres at three facilities in the Chicago area. One data centre facility houses the production electronic trading infrastructure and the disaster recovery clearing servers for both front-end and back-end clearing. Another data centre facility houses the disaster recovery electronic trading infrastructure and production back-end clearing infrastructure and the production front-end clearing infrastructure.
- 7.1.9 The data centre and the network equipment at the locations are operated and maintained by a number of departments within CMEG's Information Technology Division. Data centre access is restricted to a core group of staff.

#### **Recovery Procedures**

- (1) All critical applications are tested at minimum twice per year:
  - (2) Clearing: The recovery time objectives for CMEG's clearing applications are four hours or less.
  - (3) Electronic Trading: The recovery time objectives for CMEG's electronic trading platform are four hours or less if there is a disruption in the data centre where CME Globex's production facilities are housed. There will be no recovery time needed if the disruption occurs in the data centre where the CME Globex production facilities are not housed. In that case, the CME Globex markets shall remain open.
  - (4) All Other Business Processes: The recovery time objectives for recovering all other business processes shall be determined as part of the Business Impact Analysis (BIA) process and shall be incorporated into the Resumption and Recovery component of the BCP.
- 7.1.10 CMEG currently has extensive monitoring on hardware, applications and software using OVO monitoring software as central repository for anomalies and alert notification to prompt a failover to backup or automatic failover for minimal disruption to business and customers. Alerts are recorded and appropriate escalation and recovery is addressed through the Technology Operations Command Center ("**TOCC**"), proficient in manual and scripted intervention and escalation. The TOCC team is the central point for crisis management of all technology issues and recordation in addition to follow up for incident reviews (lessons learned) from customer impacting events.
- (b) **on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,**
    - (i) **makes reasonable current and future capacity estimates,**
- 7.1.11 All automated systems employed by CME meet the International Organization of Securities Commissions (IOSCO) Principles for the Oversight of Screen-Based Trading Systems issued in 1990, as supplemented in October 2000, including those involving physical security, environmental controls, network management, capacity, and systems testing.

7.1.12 The CME clearing system has been configured initially to handle a level of transactions per day that provides significant headroom above the level currently handled by CME. The type of product cleared has no impact on system capacity. CME believes this is a suitable and prudent capacity for initial activity, with considerable excess capacity, and will be kept under periodic review.

7.1.13 As noted in paragraph 7.1.5 in response to (a) above, the CME Clearing IT Department includes a dedicated performance and reliability testing team responsible for executing tests that stress the clearing systems with large numbers of transactions to ensure that the systems are sized to support at least twice the last known transaction volume peak.

**(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,**

7.1.14 As stated under (b)(i) above, CME will keep capacity under periodic review and will at least annually conduct capacity stress tests to ensure systems are able to process transactions in an accurate, timely and efficient manner.

**(iii) tests its business continuity and disaster recovery plans; and**

7.1.15 CMEG tests the full capabilities of its Disaster Recovery Clearing systems at least twice a year. CME is included in disaster recovery planning and testing.

7.1.16 In the first part of the year CMEG does not test with clearing members. For the second test of the year, CMEG carries out a full test of its Disaster Recovery systems with its clearing members (the Futures Industry Association's futures industry disaster recovery test).

7.1.17 In addition, CMEG tests the BCP with participation from all CMEG business units.

**(c) promptly notifies the regulator of any material systems failures.**

7.1.18 Pursuant to CFTC Regulation 39.17 – *Rule enforcement*, it is the duty of the DCO to notify the CFTC of certain event-specific issues including: any hardware or software malfunction, cyber security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation reliability, security or capacity. All DCOs must also notify the CFTC in situations where they activate their BCP.

**7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).**

**Internal Audit Department**

7.2.1 The Internal Audit Department has established independent assurance functions that report functionally to the audit committees of their respective boards of directors. The functions are established with reporting lines that are independent of management and governed by terms duly approved by their audit committees and staffed with qualified and credentialed audit personnel.

**Clearing, Technology and Related Processes**

7.2.2 CME has implemented formal business processes with a system of internal controls to operate, manage and control CME.

**Independent Systems Review**

7.2.3 The Internal Audit Department performs periodic risk assessments of CME business processes and system of internal controls. The scope of this risk assessment includes processes managed and operated internally by CME as well as processes performed by CMEG. This risk assessment is used to prepare a schedule of internal audits that are approved by, monitored and reported to the CMEG Audit Committee (chaired by independent non-executive directors). This schedule of internal audits includes coverage of Clearing and Technology services. The Internal Audit Department conducts independent audits of CME Clearing and Technology processes and prepares reports in accordance with established audit standards and provides the reports to CMEG Management, which uses them to draw independent conclusions about the relevance of results to CME.

7.2.4 The audits performed by the Internal Audit Department provide reasonable assurance that processes included in the system of internal controls are designed and operating effectively. Among other areas, these audits examine the integrity, completeness and timeliness of processing as well as the design and operating effectiveness of technology

processes. Technology processes audited include among others: Access Controls, Business Continuity Management, Change Management, Database Management, Disaster Recovery Planning, Information Security, Network Management, Systems Configuration, Systems Development, Technology Operations and Quality Assurance.

7.2.5 Beginning in 2012, CMEG engaged an independent external firm, McGladrey LLP (“**McGladrey**”), to perform a Service Organization Control 1 (“**SOC 1**”) over CME Globex Trading, CME ClearPort and CME Clearing Services. The SOC 1 includes testing related to:

- Application Development and Change Management;
- Trade Clearing Processing;
- Logical Access;
- Deliveries;
- Physical Access;
- Exchange Fee System;
- IT Scheduling, Monitoring and Backups;
- Report Generation;
- Globex Trade Processing;
- Audit Trail Gateway; and
- CME ClearPort.

7.2.6 In addition, McGladrey performed a Service Organization Control 2 (“**SOC 2**”) relevant to Security and Availability over CME Co-Location Services Systems. The Security principle refers to the protection of the system from unauthorized access, both logical and physical. The Availability principle refers to the accessibility to the system, products, or services as advertised or committed by contract, service-level, or other agreements. Each of these principles has criteria defined by the American Institute of Certified Public Accountants (AICPA) for which adequate controls must be in place. Criteria are categorized into four broad domains, including Policies, Communications, Procedures and Monitoring. The scope of the SOC 2 includes the Customer Support Portal, Enterprise Database, Geoffrey Access Control System, and GLink Routers.

## **8. Financial Viability and Reporting**

**8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.**

### **Financial Resources**

8.1.1 Under CFTC Regulation 39.11 – *Financial resources requirements* (“**CFTC Regulation 39.11**”), a DCO must hold financial resources sufficient to:

- (a) cover its exposures with a high degree of confidence and enable it to perform its functions in compliance with the DCO core principles; and
- (b) cover potential business losses that are not related to clearing members’ defaults, so that the DCO can continue as an ongoing concern.

8.1.2 CME has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices of clearing houses. CFTC Regulation 39.11 requires CME to meet its financial obligations “notwithstanding a default by the clearing member creating the largest financial exposure” and to enable CME to cover its “operating costs for a period of at least one year, calculated on a rolling basis.” CME is obligated to update its estimate of twelve month operating costs on a monthly basis and provide the CFTC with a report which includes the amount of its financial resources, the value of each financial resource available and the manner by which CME meets the liquidity requirements.

- 8.1.3 CME demonstrates its compliance with the financial resources requirements for DCOs by submitting quarterly financial resources reports to the CFTC pursuant to CFTC Regulation 39.11(f). CME submitted its most recent DCO Quarterly Financial Resources Report to the CFTC on January 25, 2013. Based on the most recent DCO Quarterly Financial Resources Report, CME meets all financial resources requirements imposed by the CFTC under CFTC Regulation 39.11.

**Staff Resources**

- 8.1.4 CME participates in a group-wide performance management program on a semi-annual basis to assess the calibre of its talent base and skill set. This performance planning tool aims to capture data and feedback related to individual performance, objectives of the role within CME and to identify any additional training/learning that may be required to ensure the job holder can develop and fully perform his or her role with the capabilities required. All CMEG employees participate in this program.
- 8.1.5 CME also participates in a headcount planning and approval workflow to allow the business to make business justification for additional headcount to support recruitment. In addition, CME participates in an annual budget planning process whereby additional resources are requested and approved. This is driven by the President of CME. CME has grown from 123 employees in May 2012 to 160 employees in June 2012 with a current authorized headcount of 182 employees. The June 2012 headcount can be broken down by employee as follows: Financial (16 employees), Risk (34 employees), Operations & Systems (64 employees), Administrative (8 employees), Clearing Solutions (18 employees) and Executive (20 employees).

**9. Operational Reliability**

**9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.**

- 9.1.1 CME regularly performs two daily settlement cycles, the end-of-day settlement cycle (the “RTH” cycle), and the intra-day settlement cycle (the “ITD” cycle). In addition to these regularly scheduled settlement cycles, CME retains the right to run additional settlement cycles as market conditions warrant.

- 9.1.2 CME currently lists for trading many products that settle in foreign currency denominations. This means, for example, that futures mark-to-market and performance bond requirements are calculated by CME in Japanese yen for the Euro Yen futures product. Additionally, CME accepts as performance bond collateral many different asset types that are denominated in foreign currencies. Examples of foreign denominated performance bond collateral include Canadian Treasury bills and bonds and Japanese yen cash.

- 9.1.3 When CME runs a settlement cycle, different settlement methods are employed to appropriately take into account the specialized programs that CME supports, as well as the multi-currency character of the performance bond requirements, settlement variation (futures mark-to-market and option premium pass-through), and performance bond collateral utilized in the settlement process. In running any settlement cycle, CME normally:

- calculates clearing firm performance bond excess/deficit amounts, and calls for additional margin collateral in the form of U.S. dollar cash; and
- calculates clearing firm settlement variation per settlement currency.

- 9.1.4 However, in running any settlement cycle, CME has the flexibility to:

- calculate settlement variation in all settlement currencies, or only for some settlement currencies;
- change the settlement method employed for a settlement currency;
- establish rules and thresholds applicable to specific attributes of a settlement cycle. For example, CME may re-define the threshold under which ITD settlement variation amounts are “not banked” (i.e., the absolute value of settlement variations under a specified amount that are not sent by CME to settlement banks for processing); and
- coordinate settlement variation and performance bond requirement calculations with other clearing organizations.

- 9.1.5 Current CME practice is to release excess U.S. dollar cash or call for additional performance bond collateral in U.S. dollar cash at each of the ITD and RTH settlement cycles. CME also normally processes only U.S. dollar settlement

variation and performance bond margin at the ITD settlement cycle, and processes U.S. dollar and foreign-denominated settlement variation and USD performance bond margin at the RTH settlement cycle.

## 10. Protection of Assets

### 10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

#### Accounting Practices

10.1.1 All clearing deposits are included in the overall financial reporting of CME and are reviewed by management and the independent members of the Board of Directors on a monthly basis.

10.1.2 All financial information of CMEG, including all of its subsidiary companies, is also consolidated and reported in the 10Q and 10K filings submitted to the SEC.

#### Internal controls

10.1.3 The Internal Audit Charter, approved by the Audit Committee of the Board of Directors, sets forth the responsibilities of the department and grants the authority to carry out those responsibilities.

10.1.4 Execution of the Internal Audit Department's responsibilities begins with the Annual Risk Based Planning Process ("**Risk Planning Process**"). Working closely with CME management, this process entails preparation of a risk universe, assessing the universe, prioritizing and publishing the planning results, and finalizing and resourcing the plan.

10.1.5 Once the audit plan has been developed based on the Risk Planning Process, the plan is assigned resources and budgeted hours are finalized. The reviews that result from the Risk Planning Process are staffed with qualified Internal Audit professionals.

10.1.6 The standard Internal Audit report provides an overall summary and conclusion for each of CME's reviews. This product is delivered to CME's clients, including CMEG management, to communicate results and provide recommendations for improvement.

#### Safekeeping and segregation

10.1.7 All DCOs, including CME, maintain separate accounts for each clearing member: (i) a customer account for clearing the trades of the clearing member's customers, and (ii) a house account for clearing the trades of the clearing member itself or of any affiliates or other third parties whose accounts are classified as proprietary. CME is subject to segregation requirements for funds it holds with respect to the customer account. CME, as required by CFTC rules, will hold customer funds deposited by or accruing to its clearing members on a commingled, or omnibus, basis in segregated deposit accounts at a bank or trust company. Consistent with CFTC requirements, the deposit account would bear a name indicating that it is a segregated account for the benefit of futures customers and CME would obtain segregation acknowledgement letters from the custodians carrying the accounts.

10.1.8 Please note that the CFTC has issued new regulations regarding the treatment of cleared swap customer collateral which requires all DCOs to hold cleared swap customer collateral pursuant to the requirements of the Complete Legal Segregation Model ("**Segregation Model**") as of November 8, 2012. This will result in accounts for each cleared swap customer that are legally segregated but operationally commingled. CME will comply with the Segregation Model in a timely manner. For more information, please see the CFTC's final rule on *Protection of Cleared Swaps Customer Contracts and Collateral: Conforming Amendments to the Commodity Broker Bankruptcy Provisions*. Collateral for futures customers will continue to be held pursuant to the futures or omnibus model, unless otherwise required by future CFTC regulations.

10.1.9 The financial institution (i.e., the bank or trust company) holding customer funds in deposit accounts for the clearing member or CME would hold the funds in segregated deposit accounts. As explained above, the CEA makes it unlawful for any person receiving customer funds from an FCM for deposit in a segregated account to hold, dispose of, or use those funds as belonging to the depositing FCM or to any person other than the depositing FCM's customers. This statutory provision is intended to protect customer segregated funds in the event of the failure of any custodian holding such funds.

10.1.10 As a DCO, CME may not apply excess funds in a clearing member's customer account to meet the clearing member's obligations to CME in the house account. However, CME may apply excess funds in the house account to meet the clearing member's obligations in the customer account.

**11. Outsourcing**

**11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.**

11.1.1 CME does not outsource any of its key functions.

**12. Information Sharing and Regulatory Cooperation**

**12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.**

12.1.1 CFTC Regulation 39.22 – *Information sharing* requires all registered DCOs to enter into, and abide by, appropriate and applicable domestic and international information-sharing agreements. Further, it states that DCOs should use the information obtained through such agreements in carrying out their risk management programs. CME coordinates the International Information Sharing Memorandum of Understanding and Agreement (“**Information Sharing MOU**”), to which it is a signatory. CME has been a signatory to this agreement since 1996 and has historically shared information with its fellow market operators and CCPs pursuant to its terms. In its role as a CCP and an exchange, CME regularly shares information with its home regulator and pertinent international regulators with which it has regulatory standing as an overseas clearing house or exchange. Additionally, all of CME’s clearing members authorize CME and CMEG, via the Clearing Member Application, to disclose and release information to regulators and all signatories to the Information Sharing MOU.

**PART IV SUBMISSIONS**

**1. Submissions**

1.1 CME submits that it meets the criteria set out for recognition as a clearing agency, all as outlined in Appendix A to Staff Notice 24-702. CME further submits that it would be appropriate and would not be contrary to the public interest for the OSC to exempt CME from recognition due to the fact that it is already subject to appropriate regulatory oversight by the SEC and CFTC in the U.S.

**PART V OTHER MATTERS**

**1. Enclosures**

1.1 In support of this application, we are enclosing the following:

(a) a verification statement from CME confirming our authority to prepare and file this application and confirming the truth of the facts contained herein at Appendix “A”; and

(b) a draft form of order.

1.2 We note that we previously delivered a cheque to the OSC on March 25, 2013 in the amount of CDN\$5,250.00 in respect of fees payable for this application.

**2. Consent to Publication**

2.1 CME consents to the publication of this application for public comment in the OSC Bulletin.

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,

Terence W. Doherty

TWD/mm

cc: *Christopher Bowen, CME Group Inc.*

*Sean Downey, CME Group Inc.*

*Kenneth Ottenbreit, Stikeman Elliott*

**Appendix "A"**

**Verification Certificate**

**To: Ontario Securities Commission**

Dear Sirs/Mesdames:

**Re: Application by Chicago Mercantile Exchange Inc. ("CME")**

CME hereby authorizes the making and filing of the attached application by Stikeman Elliott and confirms the truth of the facts contained therein as they relate to CME.

DATED May 6, 2013.

**Chicago Mercantile Exchange Inc.**

By: \_\_\_\_\_

Name: Christopher Bowen

Title: Managing Director, Chief Regulatory Counsel



APPENDIX A

[DRAFT ONLY]

IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S. 5, AS AMENDED  
(the Act)

AND

IN THE MATTER OF  
CHICAGO MERCANTILE EXCHANGE INC. (CME)

ORDER  
(Section 147 of the Act)

**WHEREAS** CME has filed an application dated May 6, 2013 (**Application**) with the Ontario Securities Commission (**Commission**) pursuant to section 147 of the Act requesting an order exempting CME from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act (**Order**);

**AND WHEREAS** the Commission issued an interim order with effective date June 19, 2012 (**Interim Order**) exempting CME from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act, until the earlier of (i) June 30, 2013 and (ii) the effective date of a subsequent order exempting CME from the requirement to be recognized as a clearing agency under section 147 of the Act;

**AND WHEREAS** the Commission issued an order (**Variation Order**) dated August 31, 2012 varying the Interim Order by extending the deadline for CME to file a full application for the subsequent order from August 31, 2012 to September 10, 2012;

**AND WHEREAS** the Interim Order, as varied and restated by the Variation Order, will be replaced by this order and therefore be automatically revoked upon issuance of this order;

**AND WHEREAS** CME has represented to the Commission that:

- 1.1 CME is a corporation organized under the laws of the State of Delaware in the United States (**U.S.**) and is a wholly owned subsidiary of CME Group Inc. (**CMEG**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. CMEG is the ultimate parent company of: (i) CME; (ii) Board of Trade of the City of Chicago, Inc.; (iii) Commodity Exchange, Inc. (**COMEX**); (iv) New York Mercantile Exchange, Inc.; and (v) Board of Trade of Kansas City, Missouri, Inc. (collectively, the **CMEG Exchanges**).
- 1.2 CMEG receives a majority of its revenue from clearing and transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through CMEG's trading venues.
- 1.3 CME is a designated contract market (**DCM**) and a derivatives clearing organization (**DCO**) within the meanings of those terms under the U.S. Commodity Exchange Act (**CEA**). CME is subject to regulatory supervision by the U.S. Commodity Futures Trading Commission (**CFTC**), a U.S. federal regulatory agency, and is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces a DCO's adherence to the CEA and the regulations thereunder on an ongoing basis, including but not limited to, the DCM and DCO core principles relating to compliance with the core principles, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards.
- 1.4 CME is deemed to be registered with the U.S. Securities and Exchange Commission (**SEC**) as a securities clearing agency, effective July 16, 2011, in accordance with certain provisions under Subsection 763(b) of the *Dodd Frank Wall Street Reform and Consumer Protection Act* (**Dodd Frank Act**), and is therefore also subject to limited regulatory supervision by the SEC in connection with its offering of clearing services for single stock and narrow-based security index products.

- 1.5 On July 18, 2012, CME was designated by the Financial Stability Oversight Council as a systemically important financial market utility under Title VIII of the Dodd Frank Act.
- 1.6 On November 21, 2012, CME became registered with the CFTC as a swap data repository (**SDR**) to provide SDR services supporting credit default swaps (**CDS**), interest rate swaps (**IRS**), commodities and foreign exchange (**FX**) asset classes through its CME Repository Service.
- 1.7 CME provides clearing and settlement services for exchange-traded futures and options on futures, as well as for over-the-counter (**OTC**) derivatives transactions. CME clears OTC derivatives in the following asset classes: agricultural commodities; credit; energy; environmental commodities; equities; FX; interest rates; and metals. The exchange-traded futures and options on futures products cleared by CME include, but are not limited to, the following: short-term interest rates (Eurodollar, Euribor, U.S. Treasury Bills); government bonds (U.S. Treasury Bonds and Notes); medium and long-term swap rates (U.S. Dollar), narrow-based equity indices (U.S.-related S&P, NASDAQ and DJIA indices and Nikkei indices); commodity index swaps (gold, crude oil, UBS commodity index); and a broad range of commodities (e.g., gold, silver, platinum, palladium, copper, steel and uranium, cocoa, coffee, corn, sugar, wheat, oats, soybeans, live cattle and butter). In addition, CME clears freight futures, forwards and options, iron futures, options and swap futures, fertilizer swaps and electricity swap futures. The full list of products cleared by CME is available on its website at [www.cmegroup.com](http://www.cmegroup.com).
- 1.8 CME is the DCO for, and provides clearing services to, each of the CMEG Exchanges. CME also serves as the central counterparty for all trades executed on the CMEG Exchanges and all OTC trades submitted for clearing.
- 1.9 CME's clearing members consist of banks, securities houses/investment banks, commodity brokers and traders and, to a very limited extent, industrial companies.
- 1.10 CME does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory, except for a CMEG marketing office in Calgary, Alberta whose activities are limited to marketing and development of energy products.
- 1.11 CME currently has three clearing members that have a head office or principal place of business in Ontario and that are OTC derivatives clearing members, with privileges to clear IRS OTC derivatives products on their own behalf, and on behalf of their branches and affiliated companies. In addition, one of such clearing members is a COMEX clearing member (**COMEX Exchange Clearing Member**) that currently has privileges to clear COMEX exchange-listed futures and options on futures on its own behalf, and on behalf of its branches and affiliated companies. It became a COMEX Exchange Clearing Member on December 1, 1997.
- 1.12 CME Clearport is a web-based graphical user interface owned, maintained and operated by CME to view and submit bilaterally negotiated transactions (e.g., block trades, OTC swap futures substituted for exchange-traded futures and OTC derivatives) into CME for clearing and settlement services by clearing firms and their customers in the U.S. CME ClearPort is not a clearing system as it does not clear trades or serve as a central counterparty for trades submitted via CME ClearPort to CME in the U.S.
- 1.13 CME proposes to offer direct clearing access in Ontario to certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) that have a head office or principal place of business in Ontario as clearing members with privileges to clear OTC derivative products (**OTC Derivatives Clearing Members**) and exchange-traded futures and options on futures products (described in paragraph 1.7 above) on one or more of the CMEG Exchanges (**CMEG Exchange Clearing Members**) (together with the clearing members referred to in paragraph 1.11 above, the **Ontario Clearing Members**).
- 1.14 CME currently carries on business in Ontario pursuant to the Interim Order, as varied and restated by the Variation Order.
- 1.15 CME submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.
- 1.16 CME maintains clearing member criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, financial standards, operational standards, appropriate registration qualifications with applicable statutory regulatory authorities, and CME applies a due diligence process to ensure that all applicants meet the required criteria.

- 1.17 CME utilizes processes to minimize systemic risk, which processes include operational and financial criteria for all clearing members, margining and financial protections, the maintenance of a clearing/guarantee fund, sound information systems, comprehensive internal controls, ongoing monitoring of clearing members, and appropriate oversight by the Board of Directors.

**AND WHEREAS** CME has agreed to the respective terms and conditions as set out in Schedule "B" to this order;

**AND WHEREAS** based on the Application and the representations CME has made to the Commission, the Commission has determined that CME satisfies the criteria set out in Schedule "A" and that the granting of the order exempting CME from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act would not be prejudicial to the public interest;

**AND WHEREAS** the Commission will monitor developments in international and domestic capital markets and CME's activities on an ongoing basis to determine whether it is appropriate that CME continue to be exempted from the requirement to be recognized as a clearing agency and, if so, whether it is appropriate that it continue to be exempted subject to the terms and conditions in this order;

**IT IS HEREBY ORDERED** by the Commission that, pursuant to section 147 of the Act, CME is exempt from recognition as a clearing agency under subsection 21.2(0.1) of the Act;

**PROVIDED THAT** CME complies with the terms and conditions attached hereto as Schedule "B", as applicable.

**DATED** ●, 2013.

**SCHEDULE "A"**

**Criteria for Exemption from Recognition by the Ontario Securities Commission  
as a Clearing Agency pursuant to section 21.1(0.1) of the *Securities Act* (Ontario)**

**PART 1. Governance**

- 1.1 The governance structure and governance arrangements of the clearing agency ensures:
- (a) effective oversight of the clearing agency;
  - (b) the clearing agency's activities are in keeping with its public interest mandate;
  - (c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;
  - (d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;
  - (e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;
  - (f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and
  - (g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

**PART 2. Fees**

- 2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.
- 2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

**PART 3. Access**

- 3.1 The clearing agency has appropriate written standards for access to its services.
- 3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of
- (a) each grant of access including, for each participant, the reasons for granting such access, and
  - (b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

**PART 4. Rules and Rulemaking**

- 4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and
- (a) are not inconsistent with securities legislation,
  - (b) do not permit unreasonable discrimination among participants, and
  - (c) do not impose any burden on competition that is not necessary or appropriate.
- 4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.
- 4.3 The clearing agency monitors participant activities to ensure compliance with the rules.
- 4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

## **PART 5. Due Process**

- 5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:
- (a) an applicant or a participant is given an opportunity to be heard or make representations; and
  - (b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

## **PART 6. Risk Management**

- 6.1 The clearing agency's settlement services are designed to minimize systemic risk.
- 6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.
- 6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:
- 1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.
  - 2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.
  - 3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.
  - 4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.
  - 5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.
  - 6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.
- 6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

## **PART 7. Systems and Technology**

- 7.1 For its settlement services systems, the clearing agency:
- (a) develops and maintains,
    - (i) reasonable business continuity and disaster recovery plans,
    - (ii) an adequate system of internal control,
    - (iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;
  - (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,
    - (i) makes reasonable current and future capacity estimates,
    - (ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

**PART 8. Financial Viability and Reporting**

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

**PART 9. Operational Reliability**

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

**PART 10. Protection of Assets**

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

**PART 11. Outsourcing**

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

**PART 12. Information Sharing and Regulatory Cooperation**

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

## SCHEDULE "B"

### Terms and Conditions

#### DEFINITIONS

For the purposes of this Schedule "B":

"Clearing Member" means a clearing member as defined under CME's rules;

"client clearing" means the ability of a Clearing Member to clear transactions at CME for and on behalf of a client who is not a Clearing Member;

"rule" means any provision or other requirement in CME's rulebook, operating procedures or manuals, user guides, or similar documents governing rights and obligations between CME and the Clearing Members or among the Clearing Members;

"U.S. Authorities" means the CFTC, SEC and any other authority in the United States that has or may have jurisdiction over CME.

Unless the context otherwise requires, other terms used in this Schedule "B" have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this exemption order).

#### REGULATION OF CME

1. CME will maintain its registration as a DCO and as a deemed-registered securities clearing agency in the United States and will continue to be subject to the regulatory oversight of the U.S. Authorities.
2. CME will continue to comply with its ongoing regulatory requirements as a DCO and as a deemed-registered securities clearing agency in the United States.
3. CME will continue to meet the criteria for exemption from recognition as a clearing agency as set out in Schedule "A".

#### GOVERNANCE

4. CME will continue to promote a corporate governance structure that minimizes the potential for any conflicts of interest between CMEG (and its affiliates) and CME that could adversely affect the clearance and settlement of trades in contracts or the effectiveness of CME's risk management policies, controls, and standards.

#### FILING REQUIREMENTS

##### Filings with U.S. Authorities

5. CME will promptly provide staff of the Commission the following information to the extent that it is required to file such information with the U.S. Authorities:
  - (a) the annual audited financial statements of CME;
  - (b) details of any material legal proceeding instituted against it;
  - (c) notification that CME has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days after receiving notice from the Clearing Member of CME's past due obligation;
  - (d) notification that CME has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate CME or has a proceeding for any such petition instituted against it;
  - (e) the appointment of a receiver or the making of any voluntary arrangement with creditors; and
  - (f) material changes to its bylaws and rules.

**Prompt Notice**

6. CME will promptly notify staff of the Commission of any of the following:
- (a) any material change to its business or operations or the information as provided in the Application;
  - (b) any material problem with the clearance and settlement of transactions in contracts cleared by CME that could materially affect the financial viability of CME;
  - (c) any event of default by an Ontario Clearing Member;
  - (d) any material system failure of a clearing service utilized by an Ontario Clearing Member;
  - (e) any material change or proposed material change in CME's status as a DCO or deemed securities clearing agency or to the regulatory oversight by the U.S. Authorities; and
  - (f) the admission of any new Ontario Clearing Member or any other Ontario resident that has entered into a direct connection arrangement with CME for facilitating the Ontario resident's direct access to one or more CME systems.

**Quarterly Reporting**

7. CME will maintain the following updated information and submit such information to the Commission in a manner and form acceptable to the Commission on a quarterly basis (by the end of the month following the end of the calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Clearing Members;
  - (b) a list of all Ontario Clearing Members against whom disciplinary action has been taken in the quarter by CME or, to the best of CME's knowledge, by the U.S. Authorities with respect to such Ontario Clearing Members' clearing activities on CME;
  - (c) a list of all referrals for disciplinary action by CME relating to Ontario Clearing Members;
  - (d) a list of all Ontario applicants who have been denied clearing member status in CME in the quarter;
  - (e) the average daily volume of exchange-traded products and the notional value of trades of OTC derivatives cleared by asset class during the quarter, for each Ontario Clearing Member;
  - (f) the percentage of total volume of exchange-traded products along with the notional value of trades of OTC derivatives cleared by asset class during the quarter for all Clearing Members that represents the total volume and value of trades cleared during the quarter for each Ontario Clearing Member;
  - (g) the aggregate total margin amount required by CME ending on the last trading day during the quarter for each Ontario Clearing Member;
  - (h) the portion of the total margin required by CME ending on the last trading day of the quarter for all Clearing Members that represents the total margin required during the quarter for each Ontario Clearing Member;
  - (i) the Guaranty Fund contribution for each Ontario Clearing Member on the last trading day during the quarter for each Ontario Clearing Member and the proportion of the total Guaranty Fund contributions;
  - (j) a list of Ontario Clearing Members who have received permission or approval by CME during the quarter to:
    - 1) perform client clearing at CME; or
    - 2) clear at CME new classes of products that the Ontario Clearing Member was not otherwise permitted or approved to clear under the terms of its CME membership;
  - (k) a summary of risk management analysis related to the adequacy of required margin and the level of the guaranty funds, including but not limited to stress testing and back testing results;



- (l) based on information available to CME, the aggregate notional value and volume of transactions cleared during the quarter by Clearing Members for and on behalf of clients that are Ontario residents; and, where CME has subsequently verified the accuracy of such aggregate client clearing information for any previous quarters, any summary that describes the results of such verification including any reconciliation of the information previously reported to the Commission;
- (m) to the extent CME becomes aware of the offering of client clearing to Ontario residents by a Clearing Member, the identity of such Clearing Member and its jurisdiction of incorporation (including that of its ultimate parent) that provides such client clearing services to Ontario residents including, where known,
  - 1) the name of each of the Ontario residents receiving such services; and
  - 2) the value and volume of transactions cleared by asset class during the quarter for and on behalf of each Ontario resident;
- (n) any other information in relation to an OTC derivative cleared by CME for Ontario Clearing Members as may be required by the Commission from time to time in order to carry out the Commission's mandate; and
- (o) a copy of the bylaws and rules showing all cumulative changes to the bylaws and rules made during the quarter.

**INFORMATION SHARING**

- 8. CME will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.
- 9. Unless otherwise prohibited under applicable law, CME will share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

**SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE**

- 10. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of CME's activities in Ontario, CME shall submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
- 11. For greater certainty, CME shall file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of CME's activities in Ontario.