

2 September 2016

**VIA ON-LINE SUBMISSION**

Re: Consultation Paper: On the clearing obligation for financial counterparties with a limited volume of activity

Chicago Mercantile Exchange Inc. ("CME") and CME Clearing Europe Limited ("CME Clearing Europe"), wholly owned subsidiaries of CME Group Inc. (together "CME Group"), appreciate the opportunity to comment on ESMA's Discussion Paper of 13 July 2016 in relation to clearing obligation for financial counterparties with a limited volume of activity, as both entities are authorised to offer clearing services to European firms subject to the clearing mandate.

CME Group Inc. is the parent company of four Designated Contract Markets ("DCMs"): CME, the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX"), and the Commodity Exchange, Inc. ("COMEX"). These DCMs offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. CME's clearing house division ("CME Clearing") and CME Clearing Europe offer clearing and settlement services for exchange-traded futures contracts and over-the-counter derivatives.

CME Clearing Europe is regulated and supervised by the Bank of England as an authorised central counterparty under the European Market Infrastructure Regulation ("EMIR"). CME Clearing is registered with the CFTC as a Derivatives Clearing Organization ("DCO"), has been deemed a systemically important financial market utility by the Financial Stability Oversight Council and has been recognised by ESMA as a third country central counterparty ("CCP") under EMIR.

**Question 1: To which category of counterparties does your organisation belong: (1) in the context of the 1st Commission Delegated Regulation on the clearing obligation, and (2) in the context of the 2nd Commission Delegated Regulation on the clearing obligation?**

*Please indicate the likely category of counterparties if the determination has not been done yet. For respondents that are in none of the four categories, please indicate the nature of the activity performed in relation to the clearing obligation (e.g. CCP). For associations, please indicate the category of counterparties that you mainly represent.*

CME Clearing Europe is a CCP authorised under EMIR. CME is a DCO registered with the CFTC and has been recognised as a third country CCP under EMIR.

**Question 2: If you offer clearing services, please provide evidence on the constraints that would prevent you from offering clearing services to a wider range of clients.**

One option to access CME Group cleared markets is through direct clearing membership. Firms who are able to establish direct memberships must maintain prudent risk management and operational standards to ensure the safety and security of our markets. Direct clearing members must agree to

meet necessarily demanding standards of the CCP, requiring maintenance of substantial operational capabilities and liquidity and banking relationships in order to ensure firms can meet strict settlement schedules and capital requirements. These requirements are key to CCP risk management and are generally too onerous for smaller firms that may not have the necessary operational resources or cannot participate in mutualized financial resources. CME Group is committed to ensuring access to cleared markets whenever possible, but it cannot be done at the expense of risk management standards.

For those firms that cannot meet the standards of direct clearing membership, or do not wish to become direct clearing members, CME Group supports a broad selection of accounts for clients, including omnibus as well as individual client and fully segregated accounts. All of these accounts, however, require the support of a clearing member, which creates additional costs for clients. The continuing decline in the number of clearing brokers has put pressure on clients who may have a difficult time finding a clearing member through which they can access cleared markets, making it more challenging for these firms to meet their forthcoming clearing obligations.

**Question 6: Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?**

CME Group appreciates ESMA's consideration of the impact of clearing regulations on smaller firms, particularly those which bring only a small amount of risk to the market. Where ESMA has found evidence that regulatory requirements, such as capital regulations, have created obstacles to smaller clients' ability to access cleared markets, we encourage ESMA to accommodate these difficulties with appropriate adjustments to the regulatory framework. As these firms represent a small portion of the overall market risk, we believe that a reasonable delay in implementing obligations will not have a material impact on the overall risk reduction benefits of central clearing. Additionally, we would welcome any efforts from ESMA to work with prudential regulators to provide a more conducive framework to ensure market participants can access central clearing without excessive burden.

We would ask that ESMA further consider the impact of the indirect clearing requirements currently under consideration. As they are currently envisioned, these requirements would oblige those clearing clients and clearing members with indirect clients to create and support additional account structures for indirect clients. These accounts will create additional difficulties for clearing members and clients offering indirect clearing services while the additional protection offered to clients remains unclear. As noted in the latest consultation on indirect clearing, insolvency law differs by country, limiting the protections for indirect clients under certain scenarios (i.e. the inability to provide "leapfrog" payments). Additionally, it is important to note that the account structures envisioned in indirect clearing are incompatible with many foreign bankruptcy laws, creating further complexity for chains involving Non-EU parties.

By creating additional regulatory obligations for the clearing members and direct clearing clients in relation to their indirect client relationships, these account structures may make it difficult for firms to offer clearing services to smaller clients and may further reduce the number of options available for smaller financial counterparties to access cleared markets. Based on these concerns, it seems reasonable to adjust the timing of the mandate to allow for necessary adjustments to the regulatory landscape to ensure smaller financial counterparties covered by the category 3 clearing mandate will be able to access to clearing services without undue burden or cost.

Sincerely,



Sunil Cutinho  
Senior Managing Director, President CME Clearing