Phupinder S. Gill
Chief Executive Officer

June 13, 2012

VIA ELECTRONIC MAIL

Secretariat
Committee on Payment and Settlement Systems
Bank for International Settlements
cpss@bis.org

Secretariat
Technical Committee
International Organization of Securities Commissions
fmi@iosco.org

Re: Consultative Reports: *Assessment methodology for the principles for FMIs and the responsibilities of authorities* and *Disclosure framework for financial market infrastructures*

Ladies and Gentlemen:

CME Group Inc. (CME Group), on behalf of its subsidiaries Chicago Mercantile Exchange Inc. (CME) and CME Clearing Europe Ltd. (CMECE), would like to express appreciation to the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) for the opportunity to comment upon their consultative reports: *Assessment methodology for the principles for FMIs and the responsibilities of authorities* (the Assessment Methodology), and *Disclosure framework for financial market infrastructures* (the Disclosure Framework). CME's clearing house division (CME Clearing) offers clearing and settlement services for exchange-traded futures contracts, and for OTC derivatives through CME ClearPort. CME is registered with the U.S. Commodity Futures Trading Commission (CFTC) as a derivatives clearing organization and as a designated contract market. CMECE is authorized by the U.K. Financial Services Authority (FSA) as a recognised clearing house. At present, CMECE offers clearing and settlement services for OTC commodity derivatives.

CME Group previously commented on the March 2011 CPSS-IOSCO consultation report on *Principles for financial market infrastructures* (PFMIs), which preceded the final version of the PFMIs issued in April 2012. In submitting the present letter, we are mindful that CPSS and IOSCO do not seek further comments on the PFMIs but have requested comments on the relatively narrow subjects of whether the Assessment Methodology and Disclosure Framework are "appropriately comprehensive", "sufficiently clear", and "include an appropriate level of detail".[1]

I. Assessment Methodology

Section 4 of the PFMIs sets forth responsibilities of central banks, market regulators and other relevant authorities for effective oversight, supervision and regulation of FMIs. The Assessment Methodology is

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[1] *Cover note to final report and two consultative documents* (16 April 2012) (Cover Note), at 3, 4.

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designed for use by national authorities (*e.g.,* the CFTC and FSA) and external assessors at the international level (*e.g.,* the World Bank and the International Monetary Fund) as "a tool to promote the implementation and ongoing observance of the principles and responsibilities to help ensure objectivity and comparability across all relevant jurisdictions."[2] National authorities are expected to utilize the Assessment Methodology, or develop an equally effective methodology, for oversight of FMIs in their own countries.

CME Group supports this approach, which aligns with the statement in our previous letter that "the consistent adoption of high standards on an international plane is of increasing importance", but "assessment on a national basis is appropriate."[3] We do not believe it is necessary or appropriate to attempt to superimpose any sort of international supervisory or enforcement regime on what is envisioned in the PFMIs and Assessment Methodology.

II. Disclosure Framework

The overarching purpose of the Disclosure Framework is "to help promote a better understanding of [each] FMI's operations and its impact on participants and the market it serves."[4] Toward this end, each FMI must create and make available on its web site a *Principle-by-principle narrative disclosure* (Narrative Disclosure). Preparation of this document will be a significant undertaking:

> An FMI should provide a comprehensive narrative disclosure for each key consideration for each relevant principle, including the key elements listed in the assessment methodology under each key consideration. For the disclosure to be considered complete, the FMI's must cover at a minimum all of these key elements.[5]

For CCPs, the content of the Narrative Disclosure includes 22 principles, approximately 95 key considerations, and approximately 200 key elements.

FMIs that are CCPs must also create and make public the *Key metrics for CCPs* (Key Metrics). This document addresses 24 subjects in the categories of margin, default fund, capital, uncovered credit losses, investment risk, liquidity risk and segregation arrangements. It is designed "to enable stakeholders, including the general public, to evaluate and facilitate cross-comparison of the systemic importance of FMIs in the market(s) they serve as well a[s] the risks they might bring to these markets and the costs and risks associated with becoming a member."[6]

A. *Content of Key Metrics for CCPs*

We appreciate that the underlying purpose of the Key Metrics is to enable people to compare CCPs by reviewing a fairly short and straightforward document prepared by each CCP that lists certain disclosable quantitative information and closely related short descriptive items. With that purpose in mind, we are

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[2] *Id.* at 2.

[3] Letter from CME Group (Kim Taylor, President of CME Clearing, Andrew Lamb, CEO of CMECE) to CPSS and IOSCO (July 28, 2011), at 1, n. 2.

[4] Cover Note at 3.

[5] *Disclosure Framework for financial market infrastructures* (April 2012) (Disclosure Framework), at 2.

[6] Cover Note at 4.

concerned that, in its current form, the Key Metrics mixes metrics with descriptions and contains double-counting of items that have natural homes in the Narrative Disclosure. The most notable non-metric item on the list is segregation arrangements (whose location, unaccompanied, at the end of the list seems indicative of an after-thought). The longer descriptive items under initial margining and segregation should be left to the Narrative Disclosure, under appropriate principles.

B. *Timing Requirements*

CME Group supports the transparency goals underlying the Disclosure Framework and Key Metrics and realizes the critical importance of providing market participants, regulators and the general public with thorough, accurate and meaningful information regarding each CCP and the markets it serves. Given the significance and scope of the Narrative Disclosure and Key Metrics, it would be helpful to provide clarity on the time frame in which CCPs are expected to make these documents available.

We note that the final version of the Disclosure Framework will not be published until "later in 2012", after the CPSS and IOSCO have reviewed all comments.[7] Furthermore, as explained in the co-chairs' summary note for the PFMIs, national authorities must take steps to implement the PFMIs in their own countries:

> CPSS-IOSCO members will strive to adopt the new principles by the end of 2012 and put them into effect as soon as possible. FMIs are also expected to observe the principles as soon as possible. In the coming months, the CPSS and IOSCO will conduct outreach activities to inform FMIs, authorities and the general public about the principles.[8]

In addition, for many FMIs, the recovery and resolution plans referenced in Principle 15 are not a current regulatory requirement and further guidance from national authorities is necessary. The CPSS and IOSCO have also indicated they are doing further work in this area:[9]

> …the CPSS and IOSCO are engaged in additional work on the resolution of FMIs. This work will aim to provide guidance for designing recovery and resolution regimes. This work will aim to provide guidance for designing recovery and resolution regimes for FMIs consistent with [the Financial Stability Board's] *Key attributes of effective resolution regimes for financial institutions* while taking into account special characteristics of FMIs.[10]

We believe the PFMI's public policy objective of efficiency would be undermined if FMIs were required to prepare comprehensive narrative disclosures regarding their compliance with the principles before (i) the Disclosure Framework is finalized, and (ii) regulators have promulgated the necessary implementing

[7] Cover Note at 2.

[8] *Co-chairs' summary note for the CPSS-IOSCO Principles for financial market infrastructures* (16 April 2012) (Summary Note), at 8.

[9] We look forward to the opportunity to comment on forthcoming guidance from the CPSS and IOSCO concerning FMI resolution and recovery regimes. We are particularly concerned that the regulatory requirements of such regimes focus on the FMI itself, and not extend beyond the FMI to each of its corporate affiliates without considering the costs and benefits of such an approach.

[10] Summary Note at 8.

regulations.[11] We therefore ask for confirmation that, while FMIs are expected to observe the principles as soon as possible, they are not expected to make the Narrative Disclosure or the Key Metrics readily available until (i) the Disclosure Framework is finalized, and (ii) the requisite implementing regulations are put in place by the relevant national authorities.

C. *Frequency of Updates*

Given the depth and breadth of information required to be included in the Narrative Disclosure and Key Metrics, CCPs will need to update these documents to reflect changes in factual circumstances and applicable regulations. With regard to the Narrative Disclosure, the CPSS and IOSCO have advised that "[a] comprehensive review of the answer should be performed periodically (at least every two years) to ensure continued accuracy, expect in case of a material change in an FMI's design and risk management in which case the update should be conducted before."[12] We ask for confirmation that CCPs will be given reasonable discretion, subject to review by their national authorities, to determine which changes are "material" and, thus, necessitate an update of the Narrative Disclosure.

The CPSS and IOSCO have stated that the information contained in the Key Metrics "would need to be updated more frequently than that of the present disclosure framework to ensure it accurately reflects the situation of the FMIs."[13] We note that certain line items in the Key Metrics – such as total collateral held (cash and non-cash) and proportions of non-cash collateral held by collateral type – change daily. Others – such as size of the default fund – change regularly as clearing members join and/or withdraw and the fund is resized to reflect market activities. Some items – such as number of "non-routine" margin calls – are to be identified over the period of the past 12 months. We suggest that items relating to collateral held and default-fund sizing also be identified over the last 12 months. This would eliminate the need for CCPs to constantly update the Key Metrics document to reflect routine changes in collateral held and default-fund sizing, which would not be in keeping with the PFMI's public policy objective of efficiency.[14]

D. *Confidentiality*

The Disclosure Framework makes the important point that "[a]n FMI should be careful not to disclose confidential information" in the Narrative Disclosure.[15] We note, however, that certain items in the Narrative Disclosure could be interpreted to require FMIs to make public certain documents and information that may be considered confidential in the FMI's home country, either for regulatory or commercial purposes. As one example, key consideration 3 under Principle 19 (Tiered participation arrangements) requires a CCP to identify "key indirect participants" (*i.e.,* customers of its clearing members). While the identities of our clearing members are made public, we do not make public the identities of our clearing members' customers to the extent that we have such information. As another example, key consideration 5 under Principle 9 (Money settlements) requires each CCP to disclose provisions of its "legal agreements with its settlement banks." We consider such legal agreements to be confidential and non-public, subject to review by regulators who, in turn, are obligated to comply with various confidentiality provisions in national laws.

[11] See *Principles for financial market infrastructures* (April 2012) (PFMIs), p. 11-12, ¶ 1.18 ("Efficiency as public policy objective").

[12] Cover Note at 4.

[13] *Id*.

[14] See PFMIs, p. 11-12, ¶ 1.18 ("Efficiency as public policy objective").

[15] Disclosure Framework at 3.

We ask for confirmation that FMIs will be given reasonable discretion, subject to review by their national authorities, to determine how best to respond to items in the Narrative Disclosure without revealing information that the FMI reasonably deems to be confidential.

E. *Principle 2: Governance*

Certain key considerations and key elements under Principle 2 relate to "the FMI's board of directors (or equivalent)."[16] These include, among other things, "review of board's performance" and identification of "procedures for the functioning of the board", "the appropriate skill sets for board members" and "appropriate incentives for board members."[17] As observed in the PFMI's, "[n]o single set of governance arrangements is appropriate for all FMIs and all market jurisdictions. Arrangements may differ significantly because of national law, ownership structure, or organisational form."[18]

As noted above, CME Clearing is a division of CME which, in turn, is a subsidiary of CME Group. Because of that corporate structure, our "equivalent" to the board of an FMI that is a defined legal entity is our risk committees, and our Narrative Disclosures will follow CPSS-IOSCO's recognition of equivalence and differences in organizational form.

F. *Opportunity for Review by National Authorities*

Finally, given the importance of the Narrative Disclosure and Key Metrics and the fact that the requirement to create them is new, we suggest that CCPs be afforded the opportunity to submit these documents in draft form to their national regulators for review and comment before making them public. We believe this would encourage a higher degree of consistency in these documents across FMIs. We ask the CPSS and IOSCO to urge national authorities to make themselves available to review Disclosure Framework documents in draft form if requested to do so by FMIs within their jurisdiction.

Again, we appreciate this opportunity to provide the Committee members with our comments. If you have any comments or questions about our submission, please feel free to contact me by telephone at (312) 930-3088 or by e-mail at Phupinder.Gill@cmegroup.com; or Lisa Dunsky, Executive Director and Associate General Counsel, by telephone at (312) 338-2483 or by e-mail at Lisa.Dunsky@cmegroup.com.

Sincerely,

Phupinder S. Gill

Phupinder S. Gill
Chief Executive Officer

[16] *Id*. at 6.

[17] *Id.* at 6-7.

[18] PFMIs, p. 27, ¶ 3.2.4.