CME Group

02/07/2022

VIA ELECTRONIC SUBMISSION

Re: Discussion paper on *Client clearing: access and portability*

To Whom It May Concern:

CME Group Inc. ("CME Group")[1] appreciates the opportunity to comment on the Committee on Payments and Market Infrastructures ("CPMI") and Board of the International Organization of Securities Commissions ("IOSCO") discussion paper on *Client clearing: access and portability* (the "Paper").[2]

Chicago Mercantile Exchange Inc. ("CME") is a wholly-owned subsidiary of CME Group. CME is registered with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization ("DCO"). "CME Clearing", a division of CME, offers clearing and settlement services for listed futures and options on futures contracts, as well as over-the-counter derivatives transactions, including interest rate swaps products. On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As a SIFMU, CME is also a systemically important DCO.

CME Group appreciates CPMI-IOSCO's ongoing focus on client access and porting. With respect to the Paper, CPMI-IOSCO's intentions to promote a common understanding of these areas, but not provide additional guidance to the *Principles for financial market infrastructures* ("PFMIs")[3] are appropriate.[4] Clients form a key part of the central clearing ecosystem and porting, in particular, has long been a priority of CME Clearing. The PFMIs successfully set out key considerations that prioritize client porting and allow for each central counterparty ("CCP") to design its porting practices in a manner that is appropriate for its legal framework, products, and clients and thus, additional international work, particularly guidance for the PFMIs, is not necessary. That being said, the Paper has identified some practices that could increase the likelihood of porting and, in many cases, are already employed by some CCPs.

CME Group elaborates on its views in responses to the Paper's questions below. CME Group's responses are primarily to the questions that cover porting (i.e., Section 3 of the Paper). The more technical questions with respect to client access (i.e., Section 2 of the Paper) are not applicable to CME Clearing, since clients access CME Clearing through the traditional relationship with a

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[1] As a leading and diverse derivatives marketplace, CME Group enables clients to trade in futures, cash and over-the-counter markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME Group's exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products, and metals. CME Group offers futures trading through the CME Globex platform, fixed income trading via BrokerTec, foreign exchange trading on the EBS platform. In addition, it operates one of the world's leading central counterparty clearing providers, CME Clearing.

[2] Committee on Payments and Market Infrastructures and Board of the International Organization of Securities Commissions, Discussion paper, *Client clearing: access and portability* [hereafter, "*Paper*"] (Nov. 2021).

[3] Committee on Payment and Settlement Systems (later renamed the Committee on Payments and Market Infrastructures) and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* [hereafter, "*PFMI*"] (Apr. 2012).

[4] *Paper* at pg. 2.

client clearing service provider ("CCSP") (i.e., for CME Clearing, a CFTC-registered futures commission merchant ("FCM")).

Responses to Questions

Access (Section 2)

2. ***Could there be any other solutions that would facilitate access, either through greater use of such access models by small and medium-sized clients, or through some other solution?***

It is common for a CCP to provide clearing services to market participants (i.e., CCSPs and clients of CCSPs) domiciled in jurisdictions where the CCP is not primarily regulated (hereafter, "foreign CCP"). Similarly, it is common for a CCSP to facilitate clients' access to clearing at a CCP in a jurisdiction where the CCSP is not primarily regulated (hereafter, "foreign CCSP"), either directly as a clearing member or through a local clearing member. Regulators globally have taken a variety of approaches to the cross-border oversight of exchange-traded and cleared swaps derivatives markets. CME Group is a strong proponent of the benefits of mutual regulatory deference with respect to the cross-border operations of centrally cleared derivatives markets, including for CCPs and intermediaries. Mutual regulatory deference removes barriers to the ability of clients, including small- and medium-sized ones, to access centrally cleared derivatives markets, while also reducing the likelihood of market fragmentation.

Mutual regulatory deference allows for local regulators to recognize comparable regulatory regimes in other jurisdictions, while continuing to allow local regulators to tailor their regulatory requirements to the unique characteristics of the markets they oversee. For example, the CFTC has long permitted foreign CCPs (i.e., CCPs domiciled outside of the United States ("U.S.")) to clear foreign (i.e., non-U.S.) futures[5] for U.S. persons without being subject to CFTC registration. Pursuant to Part 30 of CFTC Regulations, there are multiple routes by which U.S. clients can access foreign futures markets cleared by foreign CCPs, including directly through a broker domiciled in the relevant foreign jurisdiction or through an FCM. In case of the former, the CFTC has for decades relied on already issued outcomes-based comparability determinations for non-U.S. regulators or exchanges and the firms they oversee.[6] An outcomes-based approach is designed to ensure that a CCP is subject to an appropriate regulatory framework, while acknowledging specific requirements may differ in different jurisdictions to accommodate differences in regulation and market structure.

Other approaches inappropriately require a foreign CCP to meet additional local requirements, which can result in duplicative and sometimes incompatible regulatory regimes, while subjecting the CCP to an overly cumbersome level of additional regulation and supervision. These approaches may ultimately result in an unnecessary barrier to entry for CCSPs wanting to provide client clearing services at a foreign CCP, which may result in market fragmentation.[7] The failure to embrace mutual regulatory deference also contradicts the established objectives of the G-20 Leaders from the 2009 Pittsburgh and subsequent summits.[8] These objectives ultimately led to

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[5] "Foreign futures" has meaning under CFTC Regulation 1.3.

[6] *See* https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ForeignPart30Exemptions.

[7] The consequences of a lack of mutual regulatory deference can also be exacerbated where a foreign CCP's regulatory status in a jurisdiction other than its own is a prerequisite to being treated as a qualifying CCP ("QCCP"), which is required to permit certain market participants to achieve optimal capital treatment for their centrally cleared derivatives exposures. Tying QCCP treatment to a CCP's regulatory status in a foreign jurisdiction creates significant barriers to entry to central clearing by making it uneconomical for firms in that jurisdiction to participate in markets served by a foreign CCP, whether directly for their own proprietary positions or for their customers, where it does not have the required regulatory status.

[8] *See* Group of 20, Leaders' Statement, Pittsburgh Summit, pg. 7 (Sept. 2009) (noting, "[w]e are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory

the adoption of the PFMIs, which emphasizes that regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes.

Barriers to entry for prospective CCSPs are not created solely via failures to embrace regulatory deference for the oversight of foreign CCPs. Barriers also arise where jurisdictions require full registration and supervision for foreign CCSPs that are providing client clearing services to clients that are local to them at CCPs regulated in a jurisdiction other than their own, even where these foreign CCSPs are subject to comparable regulations and supervision by their local regulators. Full registration and supervision for foreign CCSPs inevitably create regulatory and legal conflicts, while unnecessarily increasing costs. This structure can be cost prohibitive from a capital and fee perspective for clients where they cannot find or do not want to face a CCSP that is domiciled in a different jurisdiction than their own. In some cases, these clients simply cannot access derivatives markets cleared by a foreign CCP because no direct CCSP of that CCP will offer them and/or their local clearing broker clearing intermediation. This result increases concentration risk and reduces market liquidity. These negative consequences could be alleviated where the primary derivatives markets regulator follows the principles of regulatory deference by relying on the oversight of the foreign CCSP's primary regulator where it is providing clearing services to clients domiciled in a different jurisdiction than the CCP. This would increase the availability of client clearing services, enhance market liquidity, and improve the ability of clients to utilize the risk mitigation benefits of central clearing to hedge their business risks, while also increasing the geographic diversity of the CCP's membership.

Challenges related to direct and sponsored access models

4. ***Do you agree that direct and sponsored access models have the potential to diversify the risk profile of the direct clearing participant basis of a CCP by introducing new types of direct participants? Why/why not?***

Please refer to CME Group's response to Question 2.

Additional considerations

11. ***Please describe any additional factors that may be impacting the activity and uptake of direct and sponsored models that are not considered in this paper.***

Please refer to CME Group's response to Question 2.

Porting (Section 3)

Risks from not porting

14. ***Are there any additional risks or potential harm associated with not porting following a clearing participant default, which were not described in the discussion paper? If so, please describe such additional risks and/or harm.***

CME Group agrees with the Paper that forced liquidation is an undesirable outcome for not only the client liquidated, but the broader market.[9]

15. ***Potentially effective practices. Do you agree with the two tools identified in the discussion paper as potentially successful porting practices? Are there any other tools that should be identified as potentially effective practices?***

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arbitrage."), *available at* https://www.fsb.org/wp-content/uploads/g20_leaders_declaration_pittsburgh_2009.pdf; Group of 20, Leaders' Declaration, Saint Petersburg Summit, pg. 17 (Sept. 2013) (noting, "[w]e agree that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes."), *available at* https://www.fsb.org/wp-content/uploads/ g20_leaders_declaration_saint_petersburg_2013.pdf.

[9] *Paper* at pgs. 8-9.

CME Group agrees with the Paper's identification that the following practices support porting: i) pre-emptively identifying potential alternate CCSPs (i.e., an alternative Clearing Member pursuant to CME Group Exchange Rules); and ii) segregated account structures that facilitate fully margined client positions. Regarding i) and ii), CME Clearing employs the "game plan" approach described in the Paper (i.e., Section 3.1.1.(ii) of the Paper) and requires that all client accounts are segregated from their CCSP's own account and margined on a gross basis at the CME Clearing-level. Additionally, while CME Group does not require clients to formally designate alternate CCSPs—nor does it believe this is possible or even necessary given, in part, the legal basis under which CME Clearing operates, as described in CME Group's response to Question 22—clients may have relationships with multiple CCSPs as a part of the normal course of business.

CME Group agrees with the Paper's identification of the benefits of these practices (i.e., game plan approach and gross margining) and believes they, as well as broader risk monitoring, are some of the most important practices for supporting the successful porting of clients.[10] They support a CCP's ability to quickly port clients and avoid their liquidation. In particular, the game plan approach allows a CCP to pre-emptively identify potential receiving CCSPs with similar and/or complimentary risk and business profiles that may accept clients for porting[11] and gross margining ensures that each client's exposures are individually margined. As described further in CME Group's response to Question 18, the practice of gross margining also gives the CCP the flexibility to potentially port clients' exposures to one or multiple CCSP(s).

CME Clearing's daily risk monitoring practices also support the game plan approach. Its monitoring practices are foundational to CME Clearing's strong understanding of the risk profile of its CCSPs, including their clients. CME Clearing actively monitors the risk exposures of client accounts and, in particular, those clients that are considered "Large Traders" pursuant to Part 15 of the CFTC Regulations and CME Group Exchanges Rules. Daily risk monitoring, coupled with the open line of communication with CCSPs, establishes a strong understanding of the types of clients for which a CCSP provides clearing, which is critical in a porting scenario.

In addition to the risk monitoring and gross margining practices, the likelihood of successful porting is underpinned by a strong legal basis. By way of example, CME Group Exchange Rules provide CME Clearing with the immediate right to port clients positions and associated performance bond (typically referred to as initial margin in the PFMIs) value to a receiving CCSP.[12] The U.S. Bankruptcy Code and Part 190 of the CFTC Regulations are also supportive of porting. This is further described in CME Group's response to Question 22. Furthermore, the legal framework under which CME Clearing operates is designed to support prospective receiving CCSPs' due diligence processes and allow them to evaluate clients fairly and quickly for porting. In particular, CME Clearing has pre-existing NDAs and rule-based protections in place that it would rely upon to share details of these clients with these CCSPs on a confidential basis.

16. ***What additional approaches do CCPs use to pre-emptively identify a backup CCSP? What incentives can be provided to assist the development of alternative/backup CCSP relationships?***

Please refer to CME Group's response to Question 15 with respect to its comments on its daily risk monitoring practices.

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[10] *See* Paper at pgs. 10-11.

[11] To support this process, CME Clearing examines CCSPs' client profiles, exchange memberships, financial resources, capital requirements, and other factors, as needed.

[12] *See* CME Group Exchange Rules 802.G and 8G802.G.

With regard to incentives to increase the likelihood of CCSPs potentially acting as receivers for ported clients, CME Group recommends that *ex ante* appropriate relief be provided by regulators with respect to know-your-customer ("KYC") and anti-money laundering ("AML") requirements. CME Group appreciates that the Paper recognized this as a regulatory impediment to porting.[13] In this regard, CCSPs accepting clients for porting could receive a temporary waiver from such requirements or could be permitted to "rely" upon the KYC and AML protocols conducted by the defaulted CCSP for its clients. Additionally, in line with the Paper's recognition of the impediment, it may also be appropriate and beneficial for regulators to provide temporary capital relief to a CCSP accepting clients for porting, including with respect to bank capital requirements (e.g., leverage ratio) for which a CCSP and/or its parent may be subject.[14]

17. ***Are there any other considerations for alternate/backup CCSPs not set forth in the report? Are there other considerations for having a game plan that were not described in the discussion paper?***

For the reasons outlined in CME Group's response to Question 15, CME Group appreciates the Paper's recognition that the game plan approach may be an area for further consideration of CCPs with respect to enhancing the likelihood of porting.[15]

Additionally, while CME Clearing does not employ the designated alternate CCSP approach outlined in Section 3.1.1(i), as the Paper recognizes, such approach appears to inordinately penalize small- and medium-sized clients, which are not likely able to maintain multiple CCSP relationships.[16] It is not uncommon for these types of clients to maintain a single relationship and even if they were able to maintain additional relationships these are most likely to be highly costly. This is because it is generally most efficient for a client to clear its exposures through a single CCSP to receive optimal risk offsets for its portfolio, so maintaining additional relationships would be of minimal benefit in business-as-usual, as such arrangements would likely remain dormant. Ultimately, even if a client does maintain multiple relationships, under the alternate CCSP approach, the client is still not guaranteed porting. The shortcomings of this approach are further exacerbated where the explicit affirmative consent of all clients is required for porting, as gaining such consent, particularly in periods of stress, elongates the period of time it would take to port, which increases the likelihood of liquidation.

18. ***In addition to those outlined in the paper, what attributes of account structures facilitate or impede porting client accounts?***

Consistent with CME Group's response to Question 15, gross margining for clients at the CCP-level greatly improves the likelihood of successful porting, regardless of margin being held in a segregated gross omnibus account or individually segregated account. This is because the exposures of unaffiliated clients are independently collateralized and margin is collected and passed on to the CCP, so a defaulted CCSP's client portfolio could be ported fully margined to one or multiple CCSP(s). This is further supported by collateral acceptance models that provide the CCP a first-priority, unencumbered security interest in the collateral CCSPs post to it, including on behalf of their clients. These practices collectively allow for the efficient porting of both clients' positions and collateral.

In comparison, a CCP that uses net margining for clients would find it difficult to port, as there is insufficient margin at the CCP to cover each individual client position in its own right and receiving CCSPs would likely be reluctant to take on individual client portfolios that are under margined, particularly in a market stress event. In particular, the Paper rightfully notes that net margined

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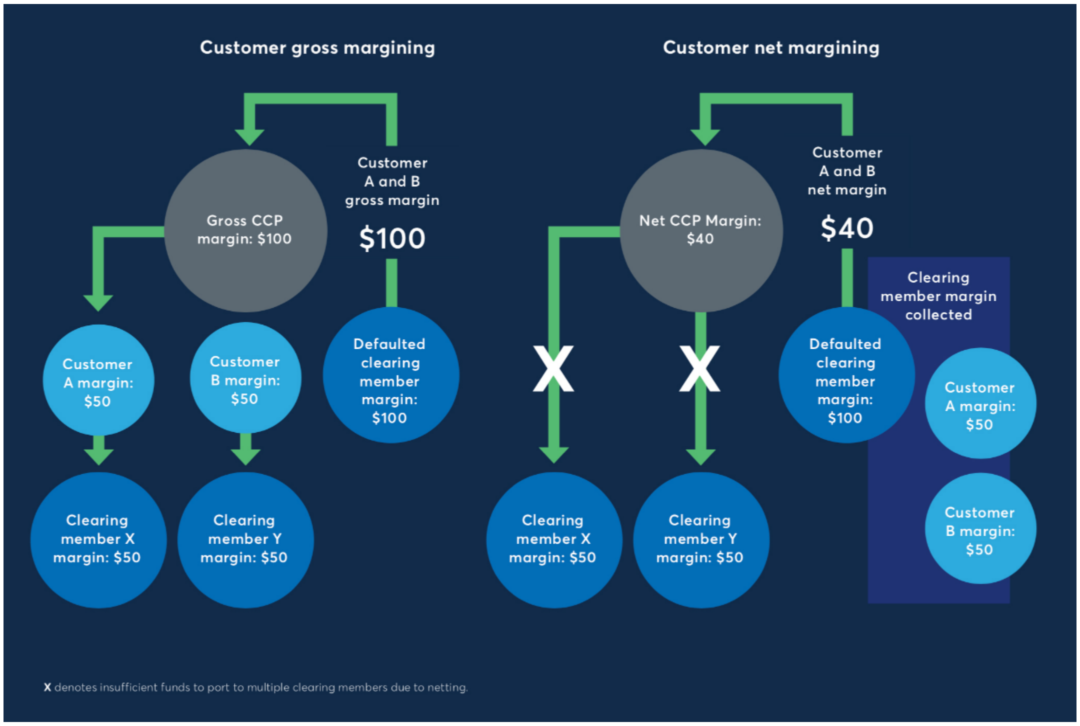
13 *Paper* at pg. 13.
14 *Id*.
15 *Paper* at pg. 15.
16 *Paper* at pg. 9.

client accounts "may be more challenging to port because the positions may require more capital from the receiving CCSP due to foregone margin offsets, particularly if the positions are not ported to the same CCSP."[17] As an example, below is a simplistic diagram that outlines the enhanced flexibility gross margining provides compared to net margining when porting clients:



Additionally, consistent with the Paper, CME Group recognizes that the splitting of a single client's positions between multiple CCSPs, even under a gross margin account structure, can result in the loss of margin offsets and thus, a single client is more likely to be ported to a single CCSP. However, it is clear that gross margining still results in an increased likelihood of porting. This is because gross margining facilitates and promotes the outcome that a single client can be ported to one CCSP while other clients may be ported to a different CCSP, which is dramatically less likely under a net margining account structure. The Paper fails to recognize this feature, and the associated clear advantage of gross margining, in stating that "[g]iven the risks of increased margin that are associated with splitting client positions to multiple CCSPs under both the gross and net account structures, the highest probability of porting is associated with transfer to a single CCSP."[18]

20. Does holding excess collateral and the ability to make direct payments improve the probability that a client will be ported successfully or are there impediments to using this collateral?

While the practices of holding excess collateral at, and the ability of clients to make direct payments to, the CCP, may improve the likelihood of porting, CME Group does not believe these practices are the deciding factors on whether clients will successfully be ported. As described in CME Group's response to Question 18, margining client accounts on a gross basis at the CCP-level, where such collateral is appropriately segregated from the collateral of the CCSP, provides for a strong basis for the CCP to be able to successfully port clients.

[17] *Paper* at pg. 11.
[18] *Id*.

21. What is your view of a client consent mechanism that could be used to facilitate porting, if permitted under applicable law?

CME Group appreciates the Paper's recognition that client consent may be an area for further consideration of CCPs with respect to enhancing the likelihood of porting, "particularly exploring when consent can be given contractually in advance."[19] As noted in CME Group's response to Question 15, CME Group Exchange Rules provide CME Clearing the immediate right to port clients of a defaulted CCSP to another CCSP that has agreed to accept these clients.[20] Under these rules, CME Clearing has the right to port these clients' positions and collateral, which is supported by CME Group Exchange Rules that require each CCSP to grant a first-priority, unencumbered security interest in all collateral posted to CME Clearing.[21] This "negative consent" approach has successfully allowed CME Clearing to manage past CCSPs' failures by executing a bulk transfer of clients to either one or multiple CCSP(s) efficiently and quickly.[22] In contrast, it would be highly challenging to receive the explicit affirmative consent of all clients for porting in a timely manner, particularly where net margining is applied, and thus, as stated in the Paper, "a CCP would most certainly liquidate omnibus client accounts due to the difficulty of achieving consensus consent in the requisite time frame."[23]

Additionally, in the event of an FCM's insolvency that is a CCSP, the U.S. Bankruptcy Code and Part 190 of the CFTC Regulations generally provide that the bankruptcy trustee of such FCM may not challenge a transfer of client accounts that occurred prior to the entry for relief under the U.S. Bankruptcy Code and for seven-days after an entry for relief, provided that the CFTC has not disapproved such transfer. While CME Clearing would endeavor to port clients of a defaulted FCM prior to the appointed trustee stepping-in, CFTC Regulation 190.02 implements additional requirements that are supportive of porting and require the trustee to immediately use its best effort to transfer open client contracts within seven-days of the FCM filing for bankruptcy.

22. Are the potentially effective practices described in the discussion paper consistent with prior porting experiences?

CME Clearing has successfully ported clients following the failure of more than one CCSP. In all cases where a CCSP has failed, CME Clearing was able to successfully port the failed CCSP's clients to one or more other CCSP(s), as well as successfully transfer full value margin. CME Clearing has never had to liquidate the clients of a failed CCSP.

While porting cannot be guaranteed, CME Clearing would endeavor to port clients as soon as practicable. We agree with the Paper's recognition that the game plan approach and gross margining of clients greatly enhance the likelihood of successful porting, as well as the other practices CME Group outlined in its response to Question 15. As explained in CME Group's responses to Questions 17 and 21, CME Group questions the likelihood of successful porting where the designated alternate CCSP approach is employed, particularly where it requires the explicit affirmative consent of all relevant clients.

Please note CME Group addresses its comments on communication and harmonization in its responses to the questions that follow.

23. Are there any barriers to implementing potentially effective porting practices that are not described in the discussion paper?

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[19] *Paper* at pg. 15.

[20] *See* CME Group Exchange Rules 802.G and 8G802.G.

[21] *Id*, *see also*, CME Group Exchange Rules 819 and 8F008.

[22] CME Group notes that clients who have been ported to a CCSP at the direction of CME Clearing have the right to transfer their accounts to a new CCSP.

[23] *Paper* at pg. 11.

CME Group recognizes that the Paper highlights that KYC and AML requirements were identified in the survey responses as potential barriers to porting. While CME Group supports regulatory authorities providing appropriate relief in this area, as described in CME Group's response to Question 16, CME Group does not believe that porting will be unsuccessful if such relief is not provided, as demonstrated by CME Clearing's successful track record in porting.

Communication and coordination

24. Are there any additional communications by the CCP or the defaulting CCSP that may increase the probability of porting client accounts?

CME Group appreciates the Paper's recognition that CCPs may consider communicating with each other in the event of a CCSP default, in accordance with applicable law.[24] This is a practice that already occurs today. CME Group is supportive of CCPs maintaining an open line of communication with each other to support the porting of a defaulted CCSP's clients to the extent it is legally permissible. For example, CCP12[25] has established a process for CCPs (which includes CME Clearing) to notify each other if they are managing the default of a CCSP. This process has operated successfully in past defaults.

Additionally, communication between the CCP and distressed CCSP is important to support the porting of clients. Maintaining an open line of communication with its CCSPs is part of CME Clearing's business-as-usual risk management practices. Where a CCSP exhibits signs of distress, CME Clearing would directly engage with that CCSP. However, this communication should and does not go one way, a CCSP should engage directly with a CCP where it is distressed. For example, pursuant to CME Group Exchange Rules, CCSPs are subject to requirements to notify CME Clearing of certain events.[26] Early communication between a CCP and CCSP can allow the CCP and CCSP to attempt to port the clients prior to the CCSP being declared in default under the relevant CCP's rules, as CME Clearing has successfully demonstrated in the past.

It is also critical that authorities of CCSPs engage directly with CCPs where a CCSP is in distress, particularly if it is, or likely to become, insolvent or in resolution. Providing a CCP with as much information as practicable in a timely manner, so that it can more fully understand the existing facts and circumstances surrounding the CCSP's distress would enhance the likelihood of successful porting. In particular, *ex ante* communication procedures should establish a "push message" mechanism whereby CCPs would directly receive a "push notification" of the insolvency or resolution of a CCSP (or its affiliate), at the latest upon public disclosure of the event through existing means, but preferably in advance of the event occurring. In addition, it would be beneficial for authorities (and in some cases, CCSPs) to provide the following information to CCPs, which includes, but is not limited to:

- In advance of insolvency or resolution, identification of:
    - i. The primary points of contact at the CCSP – e.g., identify whether the CCP would have the same contact with senior leaders of the CCSP that it engages with during business-as-usual and appointment of back-up contacts; and
    - ii. Key tenets of the CCSP's (or its parent's) resolution plan, including which entities of a CCSP (or its parent) are considered material legal entities and which services of a CCSP (or its parent) are considered critical functions.
- Intended timing of release of critical information – e.g., if predefined items for release are determined and timing of such release;

[24] *Paper* at pg. 15.
[25] CCP12 is a global association for CCPs, representing 41 members who operate more than 60 individual CCPs globally across the glove, *see also* https://ccp12.org/.
[26] *See* Chapter of the CME Group Exchange Rulebooks.

- "Resolution tools" that, if utilized, could impede the CCSP's continued participation in the CCP or would result in systemic risk;
- If certain services, particularly those provided to a CCP and/or market participants, will be delayed or cease to be provided where a CCSP (or its parent) enters into resolution (e.g., client clearing, settlement and custodial services);
- Updated financial and organizational information, as it becomes available, on a CCSP (or its parent) that is subject to insolvency or resolution;
- Expectations as to if and when (as well as how long) liquidity will flow to or from CCSP (or its parent), particularly relative to satisfying obligations to the CCP, including obligations in multiple currencies;
- Expectations as to the treatment of assets of a CCSP with a foreign parent subject to insolvency or resolution; and
- Implications of using differing resolution strategies (e.g., bail-in versus bridge bank).

25. Are there additional actions CCPs can take following a clearing participant default to coordinate that are not set forth in the discussion paper? Are there any limitations on coordination that are not included in the paper?

CME Group appreciates the Paper's recognition that CCPs may consider coordinating with each other in the event of a CCSP default, in accordance with applicable law.[27] This coordination is also a practice that already occurs today. For example, work has been done by the CFTC's "CCP Risk Management Subcommittee" of the Market Risk Advisory Committee ("MRAC") to make recommendations to enhance the likelihood of successful porting and coordination and harmonization for CCP default management.[28]

CCPs may be able to coordinate the porting of clients where the same CCSP has defaulted at multiple CCPs, but there are limitations to the ability to do this and thus, CME Group does not believe further coordination of the porting process is necessary. By way of example, CCPs' ability to coordinate porting would be impacted by their inherent differences, which includes with respect to CCSP membership, products cleared, and primary market hours, among other factors. There could also be legal and confidentiality limitations that impact the ability of a given CCP to coordinate porting. Failure to recognize these limitations in a manner that results in requiring CCPs to coordinate with each other could actually hinder the porting process, since this could put an inordinate focus on coordination, opposed to the CCP attempting to port its own clients. Notwithstanding this, as described further in CME Group's response to Question 30, CME Group agrees with the Paper's statement that "the defaulting CCSP may be in a good position to contribute, and should be prepared to help coordinate the porting between the multiple CCPs (when possible, subject to applicable law), given that it has all the client information, and the CCPs do not share a CCSP's position information."[29]

Harmonisation

26. Are there additional items CCPs can harmonise or standardise during business as usual that are not outlined in the discussion paper? Are there any factors that may impede harmonisation or standardisation that are not provided in the paper?

For many of the same reasons outlined in CME Group's response to Question 25, CME Group does not believe further harmonization of the porting process is necessary. CCPs' porting processes are designed to accommodate their unique characteristics, including legal frameworks, products cleared, and market participants, among others. Employing overly standardized porting

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[27] *Paper* at pg. 15.
[28] *See* https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac111716_ccpdrecommendations.pdf.
[29] *Paper* at pg. 12.

processes could result in the unintended outcome of undermining porting, since such standardized processes are highly unlikely to account for these unique characteristics.

CCPs have also already taken appropriate actions to harmonize their porting practices where possible. In particular, the work of MRAC's "CCP Risk Management Subcommittee" on default management and the "Default Risk Management Working Group's"[30] publication of the "Uniform CCP Terminology for Default Management Auctions"[31], which was similarly recommended for adoption in a joint paper published by CCP12, EACH, FIA, and ISDA.[32] In line with this, CCPs (including CME Clearing) also conduct coordinated default management testing exercises.

Notwithstanding this, CME Group recognizes the benefits that developing user friendly default management systems can have in supporting porting, particularly where the same systems are used in default management testing exercises and actual defaults. For example, CME Clearing's proprietary default management systems are designed to manage the default of any CCSP, regardless of the portfolio composition, complexity, and magnitude of exposures. In particular, the CME Auction Platform is an online tool developed by CME Clearing to conduct auctions and facilitate client porting. For porting, the CME Auction Platform acts as a centralized location of all default management related information, while also being used to disseminate pertinent client information, such as positions and collateral data, to prospective receiving CCSPs. These systems are familiar to CME Clearing's CCSPs and other participants from CME Clearing's regular default management testing exercises.

Notable issues to consider when developing a porting protocol

27. Are there additional regulatory requirements that could impede porting? Can such impediments be addressed or mitigated through action prior to the CCSP's default?

Please refer to CME Group's response to: i) Question 16 with respect to *ex ante* relief that could be provided by regulators to CCSPs accepting clients for porting with respect to KYC and AML requirements; and ii) Question 21 with respect to CME Clearing's ability to transfer collateral and the CFTC's insolvency framework.

28. Are there any additional factors that should be addressed in testing exercises?

CME Group appreciates the Paper's recognition of the benefits of conducting porting testing exercises with respect to enhancing the potential likelihood of porting, but it is important to note that there are also potential limitations to these exercises.[33] CME Clearing has observed the benefits of conducting these exercises firsthand, as part of its default management testing exercises. The success of these exercises is in large part based on the participation of a CCP's CCSPs. Thus, it is of the utmost importance that CCSPs actively participate in any default management testing exercise. The design of these exercises should account for the risk profile of a given CCP's clients, as well as the products it clears and the legal framework under which it operates. Therefore, CME Group supports reasonable policy proposals with respect to porting testing exercises, but does not believe that granular recommendations on the contents for a given CCP's porting testing exercise should be prescribed, due, in part, to differences across CCPs (e.g., products cleared and market participants) and potential operational challenges.

29. Please provide examples of good disclosure practices from your perspective.

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[30] The DMRG is a voluntary group of eight CCP organizations, representing a total of 15 CCPs, whose goal is to improve the CCPs coordination around default management. Members include: CME Group, Eurex Clearing, ICE, DTCC, Minneapolis Grain Exchange Clearing House, the OCC, NASDAQ and the LME.

[31] *See* https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac111716_ccpdrecommendations.pdf and https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac062716_uniformccp.pdf.

[32] *See* https://www.isda.org/a/1uDgE/CCP-Default-Auction-Best-Practices-Paper-Category-1.pdf.

[33] *Paper* at pg. 14.

Consistent with CFTC regulations, CME Clearing would post notice of a default declaration on CME Group's public website, as quickly as possible, considering the potential negative impact that it might have on CME Clearing's ability to manage the default. As an affiliate of a publicly traded company (i.e., CME Group), public notifications would also be made pursuant to SEC 8-K requirements. In addition to this transparency, broadly it should be recognized that CCPs are highly transparent parties, including with respect to their client porting practices. For example, CCPs' (including CME Clearing's) public rulebooks and qualitative disclosures in line with PFMIs both cover porting.[34]

30. Are there other arrangements a CCSP can make to ensure that, post default, the CCSP can help coordinate porting at multiple CCPs if the CCSP is a non-defaulter? If the CCSP defaults, what arrangements can the CCSP make to facilitate the porting of its clients?

As noted in CME Group's response to Question 25, the defaulting CCSP may be well positioned to help coordinate the porting of its clients. In particular, since CCSPs have direct relationships with their clients, CCSPs should maintain up-to-date and accurate information on their clients, including identities of clients with legal entity identifiers (where applicable), contact information, and any internally generated classifications for types of clients, among other identifying characteristics, where applicable, in order to facilitate porting and the sharing of information with CCPs. Consistent with CFTC regulations, CCSPs of CME Clearing are required to submit daily reports to CME Clearing that include legal entity identifiers (where available) and end-of-day gross positions of each individual client account within the segregated client account classes.

Suggested next steps

31. Please provide feedback on the suggested next steps for consideration. Do you agree that these issues warrant further consideration by CCPs, CCSPs and/or clients? Are there additional issues that may warrant further consideration?

Regarding CME Group's feedback on the specific topics enumerated in Section 3.4 please refer to the CME Group's responses to the following questions:

- Alternate CCSPs & Game Plans: Questions 15 and 17;
- Client Consent: Question 21;
- Communication & Coordination: Questions 24 and 25;
- Harmonization: Question 26;
- Testing: Question 28; and
- Transparency for Clients: Question 29.

CME Group appreciates that the Paper "does not intend to provide guidance on the [PFMI] but only to increase the common understanding on new access models and effective porting practices and identify potential issues for possible follow-up work from the industry."[35] As detailed in the Paper and CME Group's responses to these questions, it is clear that CCPs are already employing practices that are designed to promote successful porting. As such, the PFMIs' key considerations that promote a CCP's prioritization of porting are operating as intended and, importantly, currently allow each CCP to design its porting practices in a manner that is appropriate for its legal framework, products, and clients, among other characteristics that are unique to that CCP. Thus, additional international work, particularly guidance supplementing the PFMIs, is not necessary at this point in time. However, CME Group recognizes that the Paper has identified some items that could increase the likelihood of porting, although, in many cases, these practices are already employed by CCPs. CME Group also supports the Paper's statement that

[34] *PFMI* at Principle 14.
[35] *Paper* at pg. 2.

“[t]here is significant heterogeneity in the business models of CCPs and CCSPs, as well as in regulations across jurisdictions, so not all of the suggestions are equally applicable.”[36]

We would be happy to further discuss our comments with CPMI-IOSCO. If you have any comments or questions regarding this submission, please feel free to contact me at +1 312 634-1592 or Sunil.Cutinho@cmegroup.com. Alternatively, you may contact Sean Downey at +1 312 930-8167 or Sean.Downey@cmegroup.com.

Sincerely,

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[36] *Paper* at pg. 3.