

November 18, 2010

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Proposed Rules on Orderly Liquidation Authority, 75 Fed. Reg. 64173 (Oct. 19, 2010)

Dear Mr. Feldman:

The Chicago Mercantile Exchange Inc. ("CME Inc.") submits this public comment letter in the above referenced rule making to confirm that it is not a "financial company" under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). CME Inc. respectfully requests that the FDIC confirm that CME Inc. is not subject to the FDIC's Title II orderly liquidation authority and the proposed rules implementing such authority. For the record, CME Inc. sets forth below a description of its activities, the statutory definition of "financial company," and a brief account of why its activities do not qualify it as a "financial company" within the meaning of Title II.

Under the Commodity Exchange Act ("CEA"), CME Inc. is a designated contract market ("DCM") for trading futures and options on futures in a wide range of product areas, including interest rates, stock indices, foreign exchange currency, and commodities. CME Inc.'s futures and options are traded through its CME Globex® electronic trading platform, open outcry trading facilities in New York and Chicago, and privately negotiated transactions. CME Clearing, a division of CME Inc., provides clearing and settlement services for exchange-traded and over-the-counter ("OTC") contracts. CME Clearing is a regulated derivatives clearing organization ("DCO") under the CEA, subject to the jurisdiction of the Commodity Futures Trading Commission. In sum, CME Inc.'s activities involve both operating a DCM and a DCO.

Under Title II of the Dodd-Frank Act, a company is a "financial company"¹ if it is: (i) a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 ("BHC Act"); (ii) a nonbank financial company supervised by the Board of Governors, or (iii) "any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the [BHC Act]" other than a company described in i) or ii). Dodd-Frank Act § 201(a)(11). Section 204 of Title II vests the FDIC with the authority to liquidate failing "financial companies" that pose a significant risk to the financial stability of the United States.

¹ To qualify as a "financial company," a company must also be incorporated or organized under Federal or State law. See Dodd-Frank Act § 201(a)(11). CME Inc. is incorporated in Delaware, but does not otherwise meet the "financial company" definition as explained in this letter.

CME Inc. does not fall into any of the three categories of “financial company” and is therefore not subject to the FDIC’s orderly liquidation authority. The first category – bank holding company – is clearly inapplicable to CME Inc. The second category – nonbank financial company supervised by the Board of Governors – also does not apply to CME Inc. because, as a DCM and DCO, CME Inc. is excluded from the definition of “nonbank financial company” under Title I. See Dodd-Frank Act § 102(a)(1)(B). Finally, with respect to the third category, CME Inc. is not a company that is “predominantly engaged” in activities that are “financial in nature.” To be considered “predominantly engaged” in financial activities, a company must derive at least 85 percent of its total consolidated revenues from the revenue generated by such financial activities. See Dodd-Frank Act § 201(b).

CME Inc.’s only activities that could possibly qualify as financial in nature, and hence count toward the specific numerical threshold, are its clearing and settlement services.² Such services could be construed to entail the “safeguarding of money” – a recognized type of financial activity under section 4(k) of the Bank Holding Company Act (“BHC Act”). See 12 U.S.C. § 1843k(A). Because these clearing and settlement activities do not constitute 85 percent or more of CME Inc.’s total revenues, however, CME Inc. cannot be deemed “predominantly engaged” in financial activities. Thus, CME Inc. is not covered by the definition of “financial company” set forth in § 201(a)(11) of Title II.

CME Inc. appreciates the FDIC’s consideration of this letter seeking to confirm that CME Inc. will not be considered a “financial company” under Title II of the Dodd-Frank Act and, consequently, is not subject to the FDIC’s orderly liquidation authority and proposal for implementing such authority. We remain available to answer any questions the FDIC may have and engage in a further dialogue if necessary.

Sincerely,



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General Counsel and Corporate Secretary
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² CME Inc. is unaware of any precedent finding that operating a futures exchange or DCM constitutes a financial activity within the meaning of section 4(k) of BHC Act. CME Inc.’s exchange-related activities have therefore been excluded from the 85% “predominantly engaged in” revenue calculation.