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European Securities and Markets Authority
103 Rue de Grenelle
Paris, France 75007

Re: Public Comment on Consultation Paper: Guidelines on Systems and Controls in a Highly Automated Trading Environment for Trading Platforms, Investment Firms and Competent Authorities

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the European Securities and Markets Authority's ("ESMA") Consultation Paper: Guidelines on Systems and Controls in a Highly Automated Trading Environment for Trading Platforms, Investment Firms and Competent Authorities (the "Consultation Paper").

CME Group is one of the world's largest and most diverse derivatives marketplaces. We operate four separate exchanges, including the Chicago Mercantile Exchange Inc. ("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"). The CME Group exchanges 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.

As a pioneer in the globalization of the futures markets, CME Group has also helped to expand the customer base for futures products. To satisfy the increasing demands of the international marketplace, our CME Globex platform is accessible more than 23 hours a day by customers in more than 150 countries and foreign territories around the world. Telecommunications hubs in Singapore, London, Amsterdam, Milan, Paris, Seoul, São Paolo, Kuala Lumpur and Mexico City reduce our customers' connectivity costs, increase accessibility, and deliver faster, more efficient trading. Additionally, CME Group has established international offices in London, Singapore, Tokyo, Hong Kong, São Paolo and Calgary. CME Group believes that its significant global expertise and experience will provide ESMA with a unique and valuable perspective on the matters discussed herein.

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CME Group has been a leader in promoting the integrity, efficiency and transparency of global financial markets and we appreciate the importance of ensuring that risk management and regulatory frameworks keep pace with the rapid technological advancements that have characterized the evolution of markets in recent years. That technological change has been the catalyst for the development of more competitive, more efficient and more transparent markets, as well as substantial improvements and innovation in risk management and regulatory capabilities.

The Consultation Paper was published to consult on draft ESMA guidelines in accordance with Article 16(2) of the ESMA Regulation. It provides draft guidelines on systems and controls of trading platforms and investment firms in a highly automated trading environment, including in relation to the provision of direct market access ("DMA") or sponsored access ("SA") services.

With respect to CME Group markets, we note that highly automated traders play an important role in the diverse mix of market participants who trade CME Group products. Their strategies have evolved in tandem with the rise of electronic trading in the markets. Advancements in technology have created opportunities to optimize trade execution in terms of quality, speed and operational efficiency. Given these drivers, the volume attributable to highly automated trading is likely to continue to increase.

There is considerable evidence that the growth of highly automated trading has yielded important benefits to the market in that it has contributed to increased liquidity and narrower spreads, thereby enhancing market quality for all participants by reducing their transaction costs. Highly automated trading additionally enhances price discovery and market efficiency by trading away temporary market inefficiencies more quickly.

In our view, highly automated traders are simply traders who employ specialized tools, albeit from a very diverse toolkit. Adopting appropriate safety features to apply to the use of these tools is important and will significantly diminish the potential for harm to market integrity. If appropriate risk and regulatory frameworks are sensibly and responsibly applied, and if continued innovation is not forestalled by overly prescriptive regulation, we believe the demonstrated benefits of automated trading will continue to contribute to the liquidity, efficiency and growth of global financial markets, while simultaneously strengthening market integrity, stability and investor confidence.

The Consultative Paper calls for comment on number of questions which we respond to below.

Q1: Do you agree with ESMA that it is appropriate to introduce guidelines already before the review of MiFID covering organisational arrangements for trading platforms and investment firms in relation to highly automated trading, including the provision of DMA/SA?

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We support responsible efforts to promote the integrity, efficiency and transparency of global financial markets, provided that such efforts include solicitation and careful consideration of industry input, a balanced consideration of costs and benefits, and appropriate coordination with other regulators in the context of related regulatory initiatives.

Q2: Do you think that the draft guidelines adequately capture all the relevant points relating to the operation of trading platforms' electronic trading systems?

Q3: Are there areas where it would be helpful to have more detail on the organizational requirements applying to trading platforms' electronic trading systems?

Q4: Do you have additional comments on the draft guidelines on organisational requirements for trading platforms' electronic trading systems?

We believe that principles-based rules, as opposed to prescriptive rules, are generally the most effective means for achieving regulatory objectives, particularly when such rules will apply to a dynamic, diverse and evolving area such as electronic trading. With respect to ESMA's draft guidelines relating to trading platforms' electronic trading systems, we generally agree with the approach taken. In our view, national regulators should focus on adopting principles-based standards in this area that require effective supervision and risk management programs that are flexible enough to account for differences in the nature of the business being conducted by market participants. We encourage all jurisdictions to establish consistent, principles-based regulatory frameworks that effectively support sound supervisory and risk management protocols without creating unnecessarily onerous bureaucratic burdens or discouraging continued innovation.

Clearly, market centers have an important role to play in protecting the integrity and orderliness of their markets and have strong incentives to mitigate the potential for market disruptions. Because market centers are the last line of defense before orders interact with the trading engine, they should ensure that robust conformance testing, clear trade adjustment or cancellation protocols and automated risk controls reasonably designed to protect the broader market from disruptive activity are in place.

CME Group features a number of risk mitigation techniques that we believe exemplify appropriate market center controls. For example, beyond the granular pre-trade and post-trade risk controls that CME Group clearing firms and execution firms employ at the account/trader level to reduce the potential for disruptive trading, we employ a variety of risk management and volatility mitigation functionalities on the Globex platform that apply to all orders entered into our electronic markets. CME Group's price banding, maximum order quantities, market and stop order protection points, stop logic functionality, firm-level credit controls, messaging controls, cancel-on disconnect functionality and market maker sweep protections all serve to substantially

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reduce the likelihood and/or impact of disruptive trading (these functionalities are described in greater detail below). The specific parameters of each of these risk management tools are routinely evaluated by exchange personnel who have the expertise necessary to establish parameters that effectively protect market integrity without inappropriately interfering in the efficient and reliable functioning of the market.

Of course, while an exchange implements such functionality in the context of protecting against broader market vulnerabilities to disruptive activity, this functionality cannot replace the more granular risk management controls that firms should have in place and execute at the client level. As noted above, we think any well conceived regulatory system should feature principles-based requirements for effective risk management protocols at every level of the supply chain, that is, at the trading firm, clearing firm and exchange levels. Each of these entities has strong, independent pecuniary and reputational incentives to protect against market disruptions. Clearly, robust, multi-pronged risk management controls and supervisory procedures are critical elements in the collective effort to protect against such disruptions. This holistic approach offers the most robust protection to markets by engaging all levels of the supply chain in the commitment to preserving market integrity and eliminating the possibility that a single point of failure will cause significant harm to the market.

Q5: Do you think that the draft guidelines adequately capture all the relevant points related to the operation of trading algorithms?

Q6: Are there areas where it would be helpful to have more detail in the guidelines applying to the organisational requirements for investment firms' electronic trading systems?

Q7: Do you have additional comments on the draft guidelines relating to organizational requirements for investment firms' electronic trading systems?

As noted above, CME Group cautions against adopting overly prescriptive and inflexible "one-size fits all" regulation. Such regulation tends to be inappropriately targeted, ineffective and have unintended adverse consequences given the variability of participant and market circumstances. Prescriptive rules also often become quickly outdated in areas where markets and technology rapidly evolve, and there is little room for continuing innovation within the confines of inflexible and highly rules-based systems. Given the exceptional breadth of automated trading systems and strategies and the dynamic evolution of markets and technology, any effort to promulgate prescriptive rules in this regard is likely to be counterproductive.

Further, given the breadth of risk profiles across the spectrum of clients, it would be inappropriate for regulatory bodies to mandate specific risk management parameters applicable

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to all firms when each firm is much better positioned, given its particular relationship to its client and its knowledge of each client's trading, to determine the specific parameters of appropriate risk management. Most firms have already implemented numerous automated pre-trade and post-trade risk controls though adoption of proprietary or vendor-provided order entry systems, and the objective should be to ensure that each firm has established risk controls that are appropriate to its business.[1]

As mentioned above, CME Group believes that effective risk management protocols are necessary at each level of the supply chain. Investment firms should be subject to flexible, principles-based risk management and supervisory obligations. Effective programs at the firm level should feature robust pre- and post-trade risk management protocols and supervisory procedures that are reasonably designed to control access, effectively monitor trading, and prevent errors as well as other inappropriate activity that poses a material risk of causing a significant market disruption. As one example, CME Group markets have regulatory requirements that mandate all clearing members to have written risk management policies and procedures in place that are commensurate with the firm's size, clientele and product mix. CME Group's Clearing House Risk Management Group conducts regular risk reviews of clearing members to assess compliance with these standards. In addition, CME Group also requires all clearing firms to employ CME Globex Credit Control functionality. The credit control functionality provides automated pre-trade credit controls at the trading firm level without introducing additional order processing latency. The credit limits for each trading firm are established by the clearing firm, subject to review by the Clearing House, and the functionality provides for automated early warning notifications as well as automated real-time actions that prevent the limits from being breached. We think it is appropriate that trading firms be required to certify to their clearing firm that they have implemented appropriate pre-trade controls such as order quantity limits, price sanity checks, messaging throttles and execution throttles, with parameter ranges of such controls agreed to by the clearing firm.

[1] CME Group provides firms with a number of tools to assist them in managing risk, including, for example, its Drop Copy Risk Management Service and FirmSoft Order Management Tool. CME Group's Drop Copy service allows customers to receive, via a FIX messaging interface, real-time copies of Globex execution reports, acknowledgement and reject messages. This enables firms to feed the data to their internal risk systems and monitor trading activity and risk on a real time basis. The Drop Copy service also allows for the monitoring of aggregate activity guaranteed by one or more clearing firms upon approval of the clearing firms. FirmSoft is a browser-based order management tool which provides real-time access to information on working and filled Globex orders, as well as order modification history. Access to FirmSoft can be granted at various levels such as at the trader or account level. FirmSoft also allows users to cancel an individual order, a group of orders or all working orders and mass quotes, thereby providing important risk mitigation functionality at all times including during system failures.

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CME Group also believes that algorithms should be properly tested prior to being deployed in production in order to mitigate potential risks both to the trading entity and to the broader market. Market participants should be responsible for conducting appropriate testing of their trading algorithms, as participants routinely do today in their own, often sophisticated, testing environments using historical data to test the performance of particular strategies against a wide range of market conditions. Participants may capture and store data in-house for these purposes or rely on vendors who compile and can replay data feeds from exchanges around the world, thereby allowing market participants to back test their algorithms across multiple venues or against a variety of particular market conditions, including, for example, high volatility environments or sudden liquidity crises. Exchanges also commonly make their own historical data available. Other elements of appropriate testing typically include initially implementing properly pre-production tested algorithms on a highly controlled and limited basis to ensure that any differences in the simulated and production environments are identified before the algorithm is deployed on a full-scale basis.

Market operators should be responsible for providing conformance testing functionality to users of their markets to ensure that the trading systems connecting to the trading host will not adversely impact the connecting client or the market. CME Group currently offers two such testing environments to its users - the "certification" and "new release" environments. Customers use the CME Group certification environment, which mirrors the production environment, to perform certification testing for CME Globex core functionality, maintenance testing and development testing for new customer system features. Customers use the new release environment to test new CME Globex products and releases prior to production. Both the certification and new release environments are connected to their own clearing testing environments. This allows customers, who have clearing setup in the production environment, to perform end-to-end testing by submitting and executing orders from their front-end systems and receiving the corresponding clearing trade reports on their back-end systems in conditions similar to production.

With respect to whether regulators should attempt to promulgate rules that regulate the *design* of algorithmic or automated trading systems specifically, CME Group would argue that regulators are neither equipped to do so, nor would it be an efficient or effective use of regulatory resources to attempt to do so. Regulators should instead focus on regulating conduct that is shown to be harmful to the market and, as discussed above, consider promulgation of principles-based supervisory and internal control standards that include appropriate testing before automated systems are deployed in the production environment.

Q8: Do the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading offer a sufficiently comprehensive list of the necessary controls on order entry?

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Q9: Are there any areas of the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading where you believe it would be helpful to have more detail?

Q10: Do you have additional comments on the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading?

Our view is that market centers should adopt sensible risk mitigation mechanisms to buttress controls at the firm level in order to help minimize the potential for errors to occur in the order entry process. Implementing appropriate risk mitigation technologies is an effective measure that a market center can take to ensure it has implemented sound and effective supervisory and risk management programs.

As noted above, CME Group features a number of risk mitigation techniques developed over many years of experience with electronic trading that we believe can be held out as examples of appropriate market center controls relating to order entry. These risk management and volatility mitigation functionalities apply to all orders entered into CME Group's Globex platform. These functionalities include price banding, maximum order quantities, market and stop order protection points, stop logic functionality, firm-level credit controls, messaging controls, cancel-on disconnect functionality and market maker sweep protections. The specific parameters of each of these risk management tools are routinely evaluated by exchange personnel to assess their continued effectiveness in light of changing conditions, without inappropriately interfering in the efficient and reliable functioning of the market. The CME Group price banding, protection points, order quantity protections and stop logic functionalities are described in more detail below:

Price Banding: CME Globex subjects orders to price verification upon entry using a process referred to as price banding. Price banding is designed to prevent the entry of orders at clearly erroneous prices, such as a bid at a limit price substantially above the market, thereby mitigating the potential for a market disruption. For each futures product, CME Group establishes a Price Band Variation parameter which is a static value that is symmetrically applied to the upside for bids and the downside for offers relative to a reference price. In the E-mini S&P 500 futures, for example, this parameter is currently set at 12 index points (approximately 1% of the current index value). The reference price, referred to as the Banding Start Price, is a dynamically calculated value based on market information such as last trade price, best bid and offer price or the indicative opening price. Orders entered at prices beyond the Price Band Variation parameter relative to the reference price are rejected by the Globex engine. Price banding functionality for options on futures is similar to futures price banding except that the Banding Start Price may reference theoretical option prices based on established option pricing models in addition to last trade price. Additionally the width of the option price bands may be either a static value for a particular option series or a dynamic value

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that adjusts based on the option's delta or a delta-adjusted percentage of the option's theoretical price.

Protection Points: CME Group employs functionality that applies a limit price (protection point) to each market order entered on the CME Globex platform and to each stop order entered without a limit price. This functionality prevents orders from being filled at significantly aberrant price levels because of the absence of sufficient liquidity to satisfy the order at the time the market order is entered or the stop order is triggered. The protection points for each product are generally defined as one half of the product's "Non-Reviewable Range," a value that is established in connection with the exchanges' Trade Cancellations and Price Adjustments rule. The protection point is measured from the best bid price for sell market orders, the best offer price for buy market orders, and the stop trigger price for stop orders. Any quantity on the order that is unfilled at the protection point level becomes a resting limit order at that price and creates the opportunity to source liquidity. In the E-mini S&P 500 futures contract, for example, this parameter is set at 3 index points (approximately ¼ of 1% of the current index value.)

Order Quantity Protections: Maximum order size protection is embedded Globex functionality that precludes the entry of an order into the trading engine if the order's quantity exceeds a pre-defined maximum quantity. Orders entered for a quantity greater than the prescribed maximum quantity are rejected by the Globex engine. This functionality helps to avoid market disruptions by preventing the entry of erroneous orders for quantities above the designated threshold. In the E-mini S&P 500 futures contract, this parameter is set at 2,000 contracts.

Stop Logic Functionality: CME Group's proprietary Stop Logic functionality serves to mitigate artificial and disruptive market spikes which can occur because of the continuous triggering, election and trading of stop orders in an illiquid market condition. On CME Globex, if elected stop orders would result in execution prices that exceed pre-defined thresholds, the market automatically enters a reserve period for a prescribed number of seconds; the length of the pause ranges from 5 to 20 seconds and varies based on the characteristics of the product and time of day at which the stop logic event is triggered. During the reserve period, new orders are accepted and an indicative price is published, but trades do not occur until the reserve period expires, thereby providing an opportunity for participants to respond to the demand for liquidity. If contra-side liquidity is not sourced during the initial reserve period, the price band will increase by another increment and a second iteration of the stop logic will commence. This process will continue until liquidity is sourced or for up to a maximum of twelve iterations. In the E-mini S&P futures, for example, the stop logic price parameter is 6 index points (approximately ½ of 1% of the current index value) and the time parameter is 5 seconds during regular trading hours and 10 seconds outside of regular trading hours. This functionality proved highly effective in allowing the futures market an opportunity to recover during the dramatic market drop in the U.S. markets on May 6, 2010.

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With respect to policing market abuse and disorderly trading specifically, we believe the most effective regulatory approach is to employ a combination of principles-based standards of conduct, rules and regulatory guidance that collectively provide sufficient enforcement flexibility to address market abuses and disruptive activity, while simultaneously providing sufficient clarity to market participants regarding prohibited practices. Overreliance on prescriptive regulatory standards can be counterproductive and provide opportunities for traders to engage in questionable practices that may not be in technical violation of detailed rules-based standards, and certain types of misconduct, such as that related to disorderly or disruptive trading, necessarily involves a case-by-case evaluation of the context, including, for example, the market conditions and participant circumstances involved. Regulatory bodies that are responsible for establishing and enforcing market integrity rules must strike the appropriate balance in this regard.

Although a certain level of flexibility is necessary, it is also true that market participants require clarity with respect to their obligations and fairness and consistency with regard to the enforcement of rules. Vague rules that lack sufficient clarity to enable market participants to understand what conduct is prohibited obviously are problematic and create the risk that legitimate trading practices could be arbitrarily construed, post-hoc, to be unlawful. Therefore, to the extent that specific practices have been identified to violate existing standards, these practices should be clearly defined and communicated via appropriate regulatory guidance.

Q11: Do the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading offer a sufficiently comprehensive list of the necessary controls on order entry?

Q12: Are there any areas of the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading where you believe it would be helpful to have more detail?

Q13: Do you have additional comments on the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading?

As mentioned above, CME Group believes that effective risk management protocols are necessary at each level of the supply chain. We believe that, with respect to the trading firm and clearing firm level, these market participants should be subject to flexible, principles-based supervisory obligations that include, at a minimum, the establishment of documented internal control procedures, including appropriate testing before automated systems are deployed in the production environment, as well as the implementation of risk management controls that are appropriate to the entity's business and reasonably designed to protect against activity that could disrupt the market. Trading firms, for example, should be required to certify to their clearing firm the implementation of appropriate pre-trade controls such as order quantity limits,

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price sanity checks, messaging throttles and execution throttles, with the parameter ranges of these controls agreed to by the clearing firm. Effective programs at the firm level should also feature robust pre- and post-trade risk management protocols and supervisory procedures that are reasonably designed to control access, effectively monitor trading, and prevent errors as well as other inappropriate activity that poses a material risk of causing a significant market disruption.

With respect to the issue of order messaging traffic in particular, CME Group believes that market centers should have appropriate policies and mechanisms in place to manage messaging in a manner that ensures the operational efficiency of its markets. However, we do not believe the issue needs to be addressed by adopting new laws or regulations. We do not find anything inherently disruptive about high order to trade ratios or high messaging or cancellation rates provided that the messaging contributes to market quality and does not impair the operational efficiency of the market. The state of technology today allows sophisticated computer models to evaluate market conditions and diverse inputs in milliseconds or microseconds and consequently orders will be legitimately added, amended and cancelled with similar speed in response to changing conditions and inputs. Additionally, given the number and diversity of participants and strategies, markets have become extremely dynamic and efficient.

That said, excessive messaging obviously does have the potential to impair market efficiency by causing disruptive latencies that negatively impact other market participants. For this reason, we believe that market centers should address the issue on that basis. For example, CME Group employs automated messaging controls at the connection level to the trading engine to mitigate those risks, as well as the risk of a malfunctioning algorithm. If a connection exceeds the CME Group established message per second threshold over a rolling three-second window, subsequent messaging is rejected by the trading engine until the average message per second rate falls below the threshold. CME Group additionally employs a CME Globex Messaging Policy that is broadly designed to encourage responsible messaging practices and ensure that the trading system maintains the responsiveness and reliability that supports efficient trading. Under this policy, CME Group establishes messaging benchmarks based on a per-product volume ratio which measures the number of messages submitted to the volume executed in a given product. These benchmarks are tailored to the liquidity profile of the contract to ensure that contract liquidity is not compromised. CME Group works with firms who exceed the benchmarks to refine their messaging practices and failure to correct excessive messaging results in a surcharge billed to the clearing firm.

Inappropriately taxing order cancellations or modifications would prove counterproductive and harm liquidity and market stability. Every order entered into the market represents liquidity, albeit of varying quality depending on where in the book it is entered, because all orders are available to be executed against for as long as they remain in the order book. If order

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cancellations and modifications are taxed, participants will most likely reduce their quoting away from the best bid or offer as those bids and offers are less marketable at the time they are entered and will also reduce their quoting in less actively traded contracts or contract months; the impact will be less liquidity and less depth deeper in the order book. When there is significant market volatility, liquidity deeper in the book is important to maintaining stability because in an electronic environment liquidity can be consumed exceptionally rapidly and deeper bids can quickly become the best bids. If those bids are not present as a result of artificial disincentives to quoting, volatility will be exacerbated.

As noted above, CME Group believes that the most effective regulatory approach for addressing market abuse and disorderly trading involves a combination of flexible, principles-based standards of conduct along with issuance of sufficient regulatory guidance that provides additional clarity to market participants regarding specific practices that have been identified as being prohibited. CME Group again cautions against adopting overly prescriptive and inflexible "one-size fits all" regulation in this area. All market participants have a shared interest in having market and regulatory infrastructures that promote fair, transparent and efficient markets and that mitigate exposure to risks that threaten the integrity and stability of markets. To the extent that any participant, whether using automated methods or trading or not, violates appropriately constructed regulations governing disruptive practices or manipulation, the responsible parties should be accountable and sanctioned appropriate to the egregiousness of the offense. We do not, however, find any compelling justification for establishing unique standards in this regard for automated traders, as manipulative or disruptive practices can occur irrespective of the means of order entry.

Q14. Are there any areas of the draft guidelines for trading platforms on organizational requirements for regulated markets and MTFs to prevent market manipulation where it would be useful to have extra detail?

Q15. Do you have additional comments on the draft guidelines on organisational requirements for RMs and MTFs to prevent market manipulation?

It is critical that marketplaces possess sufficient regulatory surveillance capabilities to monitor their markets. The rapid pace of change in today's markets requires trading platforms to keep pace with sophisticated monitoring systems. One of the many benefits of electronic trading is the ability it affords regulators to capture audit trail data on a real-time basis at a very granular level. Comprehensive audit trail data, as well as robust technology infrastructures and tools, are essential if regulators are to perform their responsibilities effectively and efficiently in the highly data intensive markets that operate today.

At CME Group, the Market Regulation Department employs sophisticated systems to profile markets and participants, to review and analyze participants' order activity, trading and

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positions, generate live position and volume alerts based on absolute levels or on anomalous activity relative to historical profiles, and to identify transaction patterns and anomalies that may be indicative of misconduct.[2] These systems are used to monitor the activity of algorithmic and high frequency traders, as well as all other market participants. The systems contain detailed order and transaction data, quotation data, profile statistics of markets and market participants, analytical tools and a full suite of pattern detection capabilities, integrated with the market and participant profiles that allow analysts to set variable parameters and establish differential priority rankings for specific pattern elements. This collection of data and regulatory systems provides analysts with tremendous flexibility in analyzing market activity, including the activity of automated traders, at the most granular level in order to identify activity that may be indicative of market misconduct or otherwise threaten the integrity of the markets.

CME Group believes that strong regulatory capabilities are essential to promoting fair and orderly markets, free from manipulative, fraudulent or disruptive activity and it is imperative that regulators have the granular audit trail and reference data, as well as the technological tools and expertise, to effectively monitor trading in the type of high speed and high messaging trading environment that exists today. Additionally, it is increasingly important that there be appropriate information sharing among regulators to ensure effective cross-venue surveillance.

Q16: Are there any areas of the draft guidelines on organisational requirements to deal with market manipulation for investment firms where you believe it would be helpful to have more detail?

Q17: Do you have additional comments on the draft guidelines relating to organizational requirements to deal with market manipulation for investment firms?

Market participants should never intentionally disrupt the market. Where activity can be shown to have been undertaken for the purpose of upsetting the equilibrium of the market or for the purpose of creating a condition in which prices do not reflect fair market values, such activity undermines market integrity and should be actionable. These principles are generally

[2] Continuous market surveillance and administration is also performed by CME Group's Globex Control Center ("GCC") and Globex Support Administration ("GSA"). The GCC provides 24-hour electronic market operations and customer service support for all trading on CME Globex. In addition to its responsibilities for the administration of the markets, dedicated GCC staff are also assigned to proactively monitor the markets on a real time basis, examining the origin and/or market impact of various anomalies such as volume or price spikes, stop logic events, unusual messaging, technical issues, and orders that are rejected by the engine for exceeding price banding or maximum order size parameters. The objective of this monitoring is to mitigate risks to the proper functioning of the market. The GCC refers potential regulatory issues to the regulatory team for investigation of potential rule violations.

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applicable and any market participant that runs afoul of them should be appropriately sanctioned to clearly deter manipulative conduct. Automated trading firms employ a variety of trading strategies, few of which are unique to automated trading, and abusive practices that automated trading firms might engage in can also broadly be engaged in by non-automated traders. Therefore, regulators should focus on addressing the conduct that undermines market integrity rather than singling out the activities of a class of participants that employs a particular method of order entry.

Conduct commonly referred to as "spoofing" or "quote stuffing" are examples of "strategies" that should be prohibited, although, again, neither of these issues is strictly limited to high frequency traders. It is important that regulators carefully distinguish legitimate from prohibited practices, and, for example, do not simply conflate high order cancellation rates with "spoofing" or high messaging rates with "quote stuffing." In CME Group's view, spoofing involves a practice of entering non-bona fide orders with intent to cancel before execution for the purpose of misleading other market participants and exploiting that deception for the spoofing entity's benefit. The distinguishing characteristic between "spoofing" and legitimate order entry and cancellation is the intent to enter non-bona fide orders for the purpose of deceiving other market participants. In our view, "quote stuffing" involves the intentional entry of an excessive number of order messages for the purpose of effecting quote processing inefficiencies of a marketplace or other market participants. In both of these examples, CME Group believes that regulators should have the burden of demonstrating scienter in order to find a violation and that threshold also helps market participants to differentiate acceptable conduct from prohibited conduct.

Q18: Do the draft guidelines on organisational requirements for trading platforms whose members/participants or users offer DMA/SA deal adequately with the differences between DMA and SA?

Q19: Are there any areas of the draft guidelines on organisational requirements for trading platforms whose members/participants or users offer DMA/SA where you believe it would be helpful to have more detail?

Q20: Do you have additional comments on the draft guidelines relating to organizational requirements for trading platforms whose members/participants or users provide DMA/SA?

CME Group supports allowing exchange clearing members to provide direct market access to their customers, provided that the clearing member has appropriately vetted the client and implemented appropriate risk management controls, including mandatory pre-trade credit control functionality provided by the exchange, and the client has satisfied the system conformance testing requirements of the exchange. We note that any client with direct market

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access to a CME exchange must explicitly consent to the jurisdiction such exchange and agree to abide by applicable rules.

CME Group notes that the U.S. futures industry has invested, and continues to invest, considerable time in developing best practices with respect to direct market access, and we encourage ESMA to consider the body of work already completed, including the Futures Industry Association's "Market Access Risk Management Recommendations" and the Professional Traders Group's "Risk Controls for Trading Firms," published in April and November 2010, respectively, as well as the soon to be published "Electronic Order Handling Risk Management Recommendations for Executing Brokers."

Q21: Do the draft guidelines on organisational requirements for investment firms providing DMA/SA deal adequately with the differences between DMA and SA?

Q22: Are there any areas of the draft guidelines on organisational requirements for investment firms providing DMA/SA where you believe it would be helpful to have more detail?

Q23: Do you believe that there is sufficient consistency between the draft guidelines on organisational requirements for investment firms providing DMA/SA and the SEC's Rule 15c3-5 to provide an effective framework for tackling relevant risks in crossborder activity and without imposing excessive costs on groups active in both the EEA and the US?

Q24: Do you have additional comments on the draft guidelines on organisational requirements for investment firms providing DMA/SA?

As stated above, CME Group generally supports allowing exchange clearing members to provide direct market access to their customers, provided that the clearing member has appropriately vetted the client and implemented appropriate risk management controls, including mandatory pre-trade credit control functionality provided by the exchange, and the client has satisfied the system conformance testing requirements of the exchange.

Q25: Does the explanatory text provided in addition to the guidelines (see Annex VII to this CP) help market participants to better understand the purpose and meaning of the guidelines? Should it therefore be retained in the final set of guidelines?

As stated above, CME Group generally supports the adoption of principles-based standards such as those provided in the explanatory text in Annex VI of the CP, as opposed to prescriptive rules-based requirements. We encourage ESMA to continue to focus on adopting principles-based standards that require effective supervision and risk management programs that are

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flexible enough to account for the ever-changing nature of the marketplace and do not unnecessarily create onerous bureaucratic burdens or discourage continued innovation.

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We appreciate the opportunity to comment and urge ESMA to take into account our comments and those provided by other market participants. We are happy to discuss any questions concerning the comments contained in this letter and are otherwise available to assist ESMA in its efforts to enhance the stability and integrity of the markets.

Please feel free to contact me at (312) 930-3488, or via email at Kathleen.Cronin@cmegroup.com, or Dean Payton, Deputy Chief Regulatory Officer, at (312) 435-3658 or Dean.Payton@cmegroup.com.

Sincerely,

Kathleen Cronin
Managing Director, General Counsel