

June 15, 2018

CME Group's Recent Action Against Asset Manager Underscores the Importance of Prompt Responses to SRO Inquiries

Introduction

The recent summary denial by the CME Group, Inc., the financial market company comprised of four exchanges, including CME, CBOT, NYMEX, and COMEX ("CME Group"), of an asset manager's access to all CME Group markets, platforms, and trading floors highlights the severe consequences that asset managers can face if deemed not to have cooperated with self-regulatory organizations ("SROs"), including exchanges.

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Overview

On May 21, 2018, CME Group announced it would summarily deny Hana Financial Investment ("Hana"), the asset management arm of Hana Financial Group of Korea, access to all CME Group markets for 60 days due to its alleged failure to cooperate with multiple CME Group investigations since May 2017. Before the summary denial was recently narrowed, it prohibited Hana, and anyone through Hana accounts, from trading, placing orders, and controlling or directing the trading for any person, entity, or account in any CME Group exchange product.

Specifically, CME Group stated that in response to multiple investigations in the relevant period, Hana provided their Market Regulation department with "incomplete, inaccurate, false, and misleading information related to account ownership, authorized traders for accounts, audit trail data, and account statements." According to CME Group, the insufficiency of Hana's responses obstructed several Market Regulation investigations related to spoofing, disruptive trading, and money pass activity.

CME Group's Market Regulation department also found that Hana "improperly and inaccurately" netted positions between independent customer accounts and was reporting those improperly netted positions on a daily basis, which impacted open interest reporting.

Based on these findings, CME Group issued its summary access denial, effective May 21, 2018 through July 20, 2018.

On May 22, 2018, referring to CME Group's action, a Hana official stated, among other things, that Korean law requires Hana to obtain customer consent prior to providing customer information to CME Group, and, as a result, they "did not give the information of customers who did not agree to provide it."¹

On June 13, 2018, CME Group amended their summary access denial, allowing Hana to trade for its proprietary accounts because, since the issuance of the original denial, Hana had "demonstrated to Market Regulation an ability

¹ Yoon Young-sil, *CME Suspends Hana Financial Investment for Providing Inaccurate Information*, BUSINESS KOREA, May 24, 2018, available at <http://www.businesskorea.co.kr/news/articleView.html?idxno=22532>

to comply with exchange rules with respect to its proprietary trading activities.” However, the remainder of the access denial remains in effect through July 20, 2018.

CME Group Summary Access Denials

Hana’s access ban represents the first summary access denial issued by CME Group in 2018. To date, CME Group has issued this severe sanction only in limited circumstances, and generally only once or twice per year. CME Group most commonly issues access denials related to disruptive trading activity on its Globex electronic trading platform.² Consistent with its focus on market disruption, CME Group found that the failure by Hana to provide requested customer information and the inaccurate netting of customer positions likely impacted open interest reporting.

Authority of Self-Regulatory Organizations to Suspend Access

Rule 413.A gives authority to the Chief Regulatory Officer of CME Group to deny access to CME Group’s markets, platforms, and trading floors upon a “good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange.”

CME Group is not the only self-regulatory organization empowered with this authority. ICE Futures U.S., Inc. (“IFUS”) Rule 21.03(f) establishes a near-identical authority as CME Rule 413.A. Under Rule 21.03(f), the Vice President or his delegate “upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange” is able to deny access to IFUS’s markets, platforms, and trading floors for up to 60 days.

In addition, Cboe Futures Exchange, LLC (“CFE”) Rule 307 empowers the CFE to “impose a sanction or take other summary action” if “necessary to protect the best interest of the marketplace.” Rule 307 states that this sanction or summary action may include the revocation or suspension of exchange access.

Takeaways

CME Group’s summary access denial against Hana highlights the importance of developing a dialogue early on with an SRO or other regulator about challenges in responding fully and promptly to a regulatory request. Initial requests for information from regulators may be overbroad or request data that is either non-existent or extremely burdensome to extract or recreate from trading or customer account systems or platforms. If there is early dialogue with the regulator, requests can often be narrowed and extensions obtained to accommodate data that is difficult to retrieve or to deal with other obstacles.

The public explanation by Hana in this case that it was having difficulty responding to CME Group’s requests due to constraints imposed by domestic Korean law highlights the importance of communicating unique cross-border or jurisdictional issues to regulators as early as possible, including, for example, that a request seeks information that is in the possession of a foreign subsidiary or affiliate or that providing the requested information would violate local law. In these instances, identifying these issues as early as possible and opening a channel of communication with the regulator can go a long way to avoid the imposition of the harsh penalties available to SROs and other regulators.

² For example, on January 5, 2017, CME Group issued a limited summary access denial against a firm for engaging in disruptive trading activities when it submitted TAS orders with knowingly inaccurate and incomplete data. In addition, CME issued summary access denials related to alleged spoofing activity on Globex against two individuals in 2015, and against one individual in 2016.