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Confidential

December 14, 2012

Dan M. Berkovitz, Esq.
General Counsel
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Dan:

Thanks for your attention to our concerns regarding the use of Section 8 data by certain CFTC employees and third parties. We became concerned when we reviewed an article that was co-authored by Andrei Kirilenko and that specifically disclaimed status as a Commission publication. Thank you for pointing out that Dr. Kirilenko had also co-authored an article in 2010, regarding the flash crash, that also used CME Section 8 data and that also disclaimed being a Commission publication. We believe that the use of Section 8 data – including trade secrets -- for the preparation of non-Commission sponsored publications violates Section 8.

Our concern was magnified when we learned of the circulation of another article, authored by Adam Clarke-Joseph, which claimed to be based on "account-labeled, millisecond-timestamped records at the Commodity Futures Trading Commission of the so-called 'business messages' entered into the Globex system between September 17, 2010 and November 1, 2010 for all E-mini S&P 500 futures contracts. This message data captures not only transactions, but also events that do not directly result in a trade, such as the entry, cancellation, or modification of a resting limit order. Essentially, business messages include any action by a market participant that could potentially result in or affect a transaction immediately, or at any point in the future." (14) Mr. Joseph thanks Dr. Kirilenko, among others, for help with the empirical component of his paper.¹

¹ "I thank Celso Brunetti, Richard Haynes, Andrei Kirilenko, Todd Prono, Tugkan Tuzun, Brian Weller and Steve Yang for their assistance with the empirical component of this paper, and I thank John Campbell, Brock Mendel, Andrei Shleifer, Alp Simsek and Jeremy Stein for their invaluable advice and comments."

It appears that the Commission's Chief Economist has both used Section 8 data and provided access to Section 8 data to non-CFTC economists and their assistants for purposes of published academic research in violation of Section 8. We appreciate that your Office is looking into this situation.

In order to avoid any doubt, we have listed below the issues that we believe are raised by this conduct.

1. Has the Commission authorized its Chief Economist to use Section 8 data for purposes of his academic research? Is the choice of research topic reviewed in advance by any officer of the Commission? If so, which officer? Are the Commissioners given any advance notice that the research is being conducted? Are the Commissioners required to give formal approval before the research is published?
2. If the Commission has authorized its Chief Economist to use Section 8 data for purposes of his academic research, what is the statutory or other legal basis for that authorization?
3. What system of supervision is in place to review any such research before publication, and what was done in the cases referenced above? Who approved the publication of Dr. Kirilenko's research? Who approved the selection of individuals to whom the data was provided? In what form was the data provided? What specific data elements were provided? What safeguards were employed to protect the data that was exposed to non-Commission employees? Did Dr. Kirilenko or anyone else at the CFTC utilize data aliasing mechanisms to protect identifying data elements? What data is allowed to leave CFTC premises? If so, what was done to protect that data after it leaves the premises? Is the data provided to third parties reviewing the research as part of a peer review process? What processes are in place to provide assurance that all data provided to third parties is returned to the CFTC and is not used by third parties for any reason not authorized by the CFTC?
4. Absent specific Commission authorization, does the Chief Economist have authority to use Section 8 data for purposes of his academic research?
5. Has the Commission or the Chief Economist authorized non-Commission employees, including "academics" or their assistants, to have access to Section 8 data for any purpose?
6. If so, for what purpose, subject to what limitations and protections and under what legal authority?
7. If the Commission or its Chief Economist provides Section 8 data to non-Commission employee "academics," how does the Commission select which non-Commission employee "academics" to favor with Section 8 data for their private research?

As you might expect, a number of customers of our client CME Group, Inc. have expressed their concern that Section 8 data has been shared with non-Commission employees engaged in academic research. CME provides that data to the Commission and its staff

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routinely because the Commission requires the CME to do so for the Commission's regulatory purposes. Market participants world-wide expect the integrity and confidentiality of all Section 8 data to be maintained. Any misuse of Section 8 data, we know, would be considered a serious violation of law by the CME and its customers and, we believe, the Commission itself.

We look forward to discussing these matters further with you upon the completion of your inquiry.

Sincerely,



Mark D. Young



Jerrold E. Salzman