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Via Electronic Transmission

Commodity Futures Trading Commission
Attn: Office of the Secretariat
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

OFFICE OF THE SECRETARIAT

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**Re: Hearing on What Constitutes a Board of Trade Located Outside of the
United States**

To Whom it May Concern:

The Chicago Mercantile Exchange, by Kathleen Cronin, Managing Director, General Counsel and Corporate Secretary, requests the opportunity to appear at the Commission's June 27, 2006, public hearing on the issue of what constitutes a "board of trade, exchange, or market located outside the United States" as that phrase is used in Section 4(a) of the Commodity Exchange Act. We understand that the broader, underlying question is how to allocate and/or manage regulatory jurisdiction in an era in which exchanges and clearing houses can manage their choice of domicile and in which cross-border trading and clearing proliferates.

CME has been the industry innovator, both in developing new products, new systems and new trading opportunities. In 1984, after more than a year of planning and negotiation, the CFTC approved CME's mutual offset system for clearing with the Singapore International Monetary Exchange. In order to overcome the temporal limits of pit based trading systems, CME invented a system that permitted trading to move to the logical time zone as the clock ticked while preserving the ability to offset positions regardless of which exchange was the site of the trade. The CME/SIMEX linkage is still in place. CME also developed cross access trading to permit its members and the members of MATIF access to each others products trading on CME's Globex system.

CME has invested very substantial time, money and effort to offer its products to foreign customers. It has invested millions of dollars to secure permission to place and operate its trading screens in other jurisdictions. It has been subjected to long delays and/or exclusions at the behest of local markets that feared competition.

CME has long been active in the public discussion regarding the appropriate role of Congress and the Commission in an age of international electronic exchanges that are essentially portable and able to choose their regulator. Twelve years ago, when exchanges were real-estate-bound aggregations of market makers, the coincidence of the natural business day with the logical trading day for local products created a strong home court advantage. U.S. Treasury

Bonds were going to be traded on a U.S. time zone exchange. Competition might come from the over-the-counter market, but foreign exchanges had no chance at the U.S. product base. Cheap communications, dispersal of market makers and replacement of skilled brokers with simple algorithms ended the local monopoly and inspired international competition.

The dominance of U.S. futures exchanges has ended. A great deal of ground was lost before the Commodity Futures Modernization Act. While the playing field has been significantly leveled, the ability of U.S. based exchanges to compete with markets governed by other regulators is still strongly influenced by discrepancies between the U.S. regulatory policy applied to U.S. exchanges and the policy of the local regulator of the foreign exchange, to the extent that it is not tempered to accommodate more rigorous U.S. policy considerations.

Then Acting CFTC Chairman, James E. Newsome, anticipated the question that will be considered at this public hearing in his remarks, "The Challenge of Cross-Border Markets: Strengthening Regulatory Cooperation," Before the European Financial Markets Convention Panel Discussion on Transatlantic Relations, on June 15, 2001, in Paris, France. Chairman Newsome described "the evolution of the CFTC's regulatory response to the increase in cross-border business" and the agency's understanding that Congress established the CFTC in 1974 "as an independent regulator for futures markets and related intermediaries, at least partly in response to perceived global developments in the grain futures and gold options markets and to the emergence of futures markets in world commodities, such as cocoa, coffee, and foreign currency. From the outset, therefore, the CFTC's powers reflected that futures trading was a global business."

Chairman Newsome clearly explained the CFTC's position: "The CFTC, while ceding no jurisdiction over cross-border transactions and arrangements, has concluded, therefore, that to be effective, oversight arrangements must be founded on cooperation with other regulatory authorities." He recognized that: "In adopting the CFMA, Congress explicitly recognized the importance of global cooperation by adopting a sense of Congress provision that made clear that the CFTC was to continue its cooperative efforts with foreign authorities and its participation in international organizations to encourage, among other things, the facilitation of cross-border transactions through the removal or lessening of any unnecessary legal or practical obstacles, the development of internationally accepted standards of best practice, and the enhancement of international supervisory cooperation."

On January 17, 2006, Chairman Reuben Jeffery, III, delivered an address, "Global Derivatives Markets: Challenges for Regulators and Exchanges," to the Futures Industry Association, Japan Chapter in Tokyo, Japan. He shared the "CFTC's perspectives on expansion of global markets and some of the Agency's thinking behind its policies towards cross-border initiatives." He first reemphasized that: "From its earliest years, the CFTC has advocated a measured and innovative approach to cross-border initiatives. This forward-leaning policy is based on the notion that globalization is inevitable and has great potential to enhance market depth and competition." He went on to describe the elements that shape CFTC policies with "respect to cross-border initiatives" the regulatory complexities added by cross-border activities and the implications for disturbing the level playing field. He sounded the theme that: "Globalization demands that international regulators take a cooperative and creative approach to achieving market integrity and customer protection. Cross-border competition and innovation are

unnecessarily stifled and the global market cannot grow if jurisdictions impose redundant or inconsistent regulatory burdens.”

Some foreign regulators have quickly and accurately balanced legitimate business needs against the obligation to provide customer and market protection. Clever foreign regulators crafted their tax and regulatory policies to capture business. In London, recognition of the realities of international business flows combined with a "benign political attitude permits an accommodating tax and regulatory framework and a relatively predictable and sensible legal system." Some regulators may have moved the balance slightly in favor of business needs to the detriment of market integrity. There would be no issue here if world-wide regulation was equivalent in all material respects. It is not.

CME disfavors policies that merely protect local exchanges from foreign competition. CME generally favors a market based solution that permits market users to find the right market with the appropriate mix of protection and freedom. It is not yet clear, however, that unfettered application of this principle is consistent with the CFTC's obligations under the CEA.

There are enough legitimate competing interests around this issue to defeat a simple solution. CME's principal focus is on opening foreign markets and it is opposed to any action that would provoke even greater levels of protectionism abroad. We understand and share the Commission's concern that futures exchanges, with a substantial U.S. customer based, may register in regulatory havens to gain an advantage over their competitors and minimize or eliminate CFTC oversight. If a flight to regulatory havens is unchecked, many of the market protections (anti-manipulation and customer protection) and market benefits (price discovery) that the CFTC is supposed to provide may be negated.

CME believes, based on its experience and interest, that it can play a useful role at the public hearing.

Very truly yours,



Kathleen M. Cronin
Managing Director, General Counsel and
Corporate Secretary