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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

COMMENT

November 23, 1998

Steven Manaster
Director
Division of Economic Analysis
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Application of the Chicago Mercantile Exchange for Contract Market Designation in the Standard and Poor's REIT Composite Index Futures Contract and Options on that Futures Contract

Dear Mr. Manaster:

Pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act ("CEA"),[1] the Division of Market Regulation ("Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission") is responding to the request of the Commodity Futures Trading Commission ("CFTC") for the Commission's views on the application of the Chicago Mercantile Exchange ("CME" or "Exchange") for contract market designation to trade futures and futures options on the Standard and Poor's REIT Composite Index ("S&P REIT Index" or "Index").[2] Based on the

1 Section 2(a)(1) of the CEA implements the terms of the 1982 jurisdictional accord ("Accord") between the SEC and the CFTC. Futures Trading Act of 1982, § 101, Pub. Law No. 97-444, 96 Stat. 2294 [codified at 7 U.S.C. § 2(a) (1983)].

2 See Letter (with attachments) from Thomas M. Leahy, Financial Instruments Unit Chief, Division of Economic Analysis ("DEA"), CFTC, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), SEC, dated September 1, 1998 ("CFTC Letter"); see also letter (with attachments) from Michael A. Penick, Economist, Financial Instruments Unit, DEA, CFTC, to Michael Walinskas, Deputy Associate Director, Division, SEC, dated September 25, 1998 ("CME Supplementary Letter"); letter from Richard J. McDonald, Senior Vice President, Research and Chief Economist, CME, to Ms. Jean A. Webb, Office of the Secretariat, CFTC, dated October 26, 1998 ("CME Supplement Two"); letter from Richard J. McDonald, Senior Vice President, Research and Chief Economist, CME, to Jean A. Webb, Office of the Secretariat, CFTC, dated November 12, 1998 ("CME

information provided to the Division, and for the reasons noted below, the Division, on behalf of the Commission, believes that the proposed contracts satisfy the statutory criteria. Consequently, the Division does not object to the designation of the CME as a contract market to trade the S&P REIT Index futures and futures options, including the trading of such products through GLOBEX.

I. Applicable Statutory Criteria

Section 2(a)(1)(B)(v) of the CEA prohibits any person from offering or selling a futures contract based on "any group or index of securities or any interest therein or based on the value thereof" except as permitted under Section 2(a)(1)(B)(ii). Section 2(a)(1)(B)(ii) of the CEA, in turn, permits the designation of a contract market for futures trading on an index or group of securities only if: (1) settlement of the futures contract (or options on such contract) is limited to the delivery of cash or exempted securities (other than municipal securities); (2) trading in the futures contract (or options on such contract) is not readily susceptible to manipulation, nor to causing or being used in the manipulation of the price of an underlying security, an option on such security, or an option on a group or index including such securities, and, in the case of futures options, the index-based futures contract underlying the options contract; and (3) the index or group of securities is a widely-published measure of, and reflects, the market for all publicly-traded equity or debt securities, or a substantial segment thereof, or is comparable to such measure.[3] Pursuant to Section 2(a)(1)(B)(iv)(II) of the CEA, the SEC must determine that the

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Supplement Three"); and letter from Richard J. McDonald, Senior Vice President, Research and Chief Economist, CME, to Jean A. Webb, Office of the Secretariat, CFTC, dated November 17, 1998 ("CME Supplement Four").

3 As the SEC has noted in the past, this third criterion is intended, in part, to ensure that a securities index futures contract (or an option thereon) is not susceptible to manipulation and will not function as a surrogate for trading in individual securities or options on those securities. By helping to ensure that index futures (or options thereon) will not be used as a substitute for related options or stock trading, this requirement also mitigates competitive and investor protection concerns raised by the regulatory differences between the futures and securities markets or possible insider trading concerns regarding a security underlying an index through transactions in the futures market (or the options market thereon). See, e.g., Securities Exchange Act Release No. 40216 (July 16, 1998) (regarding the application of the Chicago Board of Trade for designation as a contract market to trade futures and futures options contracts on the Dow Jones Utilities Average Index and the Dow Jones Transportation Average Index) ("Commission Decision"); and Letter from William H. Heyman, Director, Division, SEC, to Joanne T. Medero, General Counsel, Office of the General Counsel, CFTC, dated August 23, 1991 (regarding the application of the Sydney Futures Exchange to permit the offer and sale to U.S. persons of futures contracts overlying the All Ordinaries Share Price Index) ("All Ordinaries Index Futures Letter");

futures contract (or options thereon) meets the eligibility standards described above in order for the CFTC to approve the proposed contract for trading.

II Description of the CME's Proposal

The CME proposes to trade futures and futures options based on the S&P REIT Index.[4] According to the CME, the REIT industry has grown from 119 REITs with a market capitalization of $9 billion in 1990 to 210 REITs with a market capitalization of $144 billion as of September 30, 1998. Equity REITs own and/or operate income-producing real estate; mortgage REITs finance real estate; and hybrid REITs both own and finance properties. The REIT industry is a diverse industry with numerous firms holding investments in a variety of property categories, including health care, industrial/office, lodging/resorts, residential, retail, self-storage, specialty, and diversified use properties. Approximately 8 to 9 percent of the institutionally controlled commercial real estate market is under REIT management. REITs are held by private investors and a variety of pension funds and mutual funds.

According to the proposal, the S&P REIT Index is a capitalization-weighted index comprised of 105 REIT stocks traded on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), and the National Association of Securities Dealers Automated Quotation ("Nasdaq") system. The Index includes equity, mortgage, and hybrid REITs covering various property sectors. As of September 30, 1998, these 105 component stocks represented approximately $120.5 billion in market capitalization, which incorporates approximately 83% of the entire REIT industry measured by capitalization. The average daily trading volume for the component stocks over the six month period from February through July 1998 ranged from a low of 23,748 shares to a high of 1,131,624 shares.

The CME asserts that in constructing the Index, the Standard & Poor's Corporation ("S&P") subjects candidate REIT issues to a screening process. REIT stocks that fall below the 70th percentile in market capitalization amongst all REIT issues are eliminated from consideration; the share price must be at least $1.00; REITs which did not pay dividends the previous fiscal year are eliminated; and REITs with more than three "no-trade" days during the previous twelve months are eliminated. Only REITs traded on the NYSE, Amex, or Nasdaq are included and a minimum two-month trading history is prerequisite. REITs are ranked according

4 REITs are real estate investment trusts. The CME states that REITs were originally created in 1960 by the U.S. Congress in an attempt to facilitate small investor participation in real estate investment on a wholesale scale. Thus, a REIT pools capital from multiple investors like a mutual fund. While interest in REITs was rather limited during the first three decades of their existence, the 1990s have witnessed dramatic growth in the REIT concept.

to liquidity, and S&P subjects each stock to a strict fundamental analysis, demanding a strong level of earnings performance, and eliminating REITs with liquidation features. Subsequent to the screening process, S&P selects REITs for representation of the industry, including equity, mortgage, and hybrid REITs. S&P also includes equity REITs across the following broad property types: diversified, health care, industrial/office, residential, retail, self-storage, specialty, and specialty/hotels. Hybrid REITs include health care and industrial/office types. Mortgage REITs include mortgage backed and residential types.

As a general rule, S&P will put new companies in the Index only when there is a vacancy; however, S&P may react to dynamic market conditions by altering the number of stocks to reflect such conditions. The S&P Index Committee makes its selections autonomously using public information; companies may not apply for inclusion in the Index and their agents may not nominate them. The S&P Index Committee employs the same steps and analyses for selecting replacement stocks as for the initial selection process, and the Committee votes on the companies that meet the selection criteria. Companies that receive unanimous approval for inclusion in the Index are added to the Index Replacement Pool. Not all companies in the Pool will eventually be included in the Index. The companies' qualifications for inclusion in the Index are monitored on an ongoing basis, and if a company no longer meets the criteria, it is dropped from the Replacement Pool.

Companies are removed from the Index for four main reasons: merger with (or acquisition by) another firm, restructuring, financial operating failure, or lack of representation. The S&P Index Products/Services Group continually monitors the capitalization activities of the companies in the Index. Upcoming mergers, acquisitions, and restructurings are analyzed and considered by the Index Committee, which determines the most appropriate action to take for each event. With rare exception, bankrupt companies are removed from the Index and a company in the Index Replacement Pool is added. Removal of a company from the Index for lack of representation is less clear-cut. Lack of representation often involves cases where a corporation has declined in size to the point where it no longer contributes much to the performance of the Index. Some restructurings may leave a stock so closely held that the security becomes illiquid, or the company can become controlled by another company ineligible for inclusion in the Index. A decline in capitalization is not by itself a reason for removing a stock from the Index, as long as the stock continues to generally meet the other criteria for inclusion. Finally, S&P monitors the market for events including share changes, stock dividends, and stock price adjustments due to restructurings or spin-offs. Some corporate actions, such as stock splits and dividends, require simple changes in the shares outstanding and stock prices of the Index constituents. Corporate actions such as share issuances, however, require an adjustment to the Index divisor.

The Index is calculated using a base-weighted aggregate methodology to represent the total market value of all 105 components relative to a base date of December 31, 1996. The index base value was initially established at 100.00 as of that date. The Index is calculated by dividing the summed market value of the Index constituents by the Index Divisor. The market value of any particular stock is calculated as its price multiplied by the number of shares outstanding. The Index has been calculated "live" since January 2, 1997. Although S&P calculates the total return of the Index (inclusive of price fluctuation plus dividend income), the Index is a price-only index and does not explicitly account for dividend income (similar to existing domestic stock index futures markets). CME represents that real-time calculation and dissemination of the S&P REIT Index will be made available by S&P through the Bridge quotation network prior to the commencement of trading in the S&P REIT Index futures and options.

Each futures contract will be valued at $1,250 times the value of the S&P REIT Index. Prices for S&P REIT Index futures will be quoted in terms of points of the index, with a minimum fluctuation of 0.02 points, equivalent to $25, per contract. The contract months will be on the March Quarterly Cycle. The last trading day is the business day preceding the Final Settlement Date. The Final Settlement Date is the third Friday of the contract month. The Final Settlement Price will be determined on the third Friday of the contract month or, if the S&P REIT Index is not published for that day, on the first preceding day for which the Index is scheduled to be published. If the NYSE, Amex, or Nasdaq are not open on the day scheduled for the determination of the Final Settlement Price, then the NYSE-stock, Amex-stock, or Nasdaq-stock component(s) of the Final Settlement Price will be based on the next opening prices for NYSE, Amex, and Nasdaq stocks. The Final Settlement Price will be a special quotation of the S&P REIT Index based on the opening prices of the component stocks in the Index, or on the last sale price of a stock that does not open for trading on the regularly scheduled day of final settlement. Delivery under the S&P REIT Index futures contract will be by cash settlement. Position limits for the S&P REIT Index futures contract are 5,000 contract net long or short in all contract months combined.

For options on the S&P REIT Index futures ("options"), the exercise prices shall be stated in terms of the S&P REIT Index futures contract that is deliverable upon exercise of the option. For options that expire in the March quarterly cycle, options trading will terminate at the same date and time as the underlying futures contract. For options that expire in months other than those in the March quarterly cycle, options trading will terminate on the third Friday of the contract month. If that day is not an Exchange business day, options trading shall terminate on the first preceding business day. An option may be exercised by the buyer on any business day that the option is traded. An option in the March quarterly cycle that is in the money and has not been liquidated or exercised prior to the termination of trading will, in the absence of contrary instructions delivered to the Clearing House by 7:00 p.m. on the business day following the termination of trading by the clearing member representing the option buyer, be automatically exercised. In the money options that expire in months other than those in the March quarterly cycle and have not been liquidated or exercised prior to the termination of trading will, in the absence of contrary instructions delivered to the Clearing House by 7:00 p.m. on the day of the termination of trading by the clearing member representing the option buyer, be exercised automatically.

The price of options will be quoted in index points, except as provided in Rule 584 (GLOBEX Volatility Quotes). Each 0.01 index point (1 basis point) will represent $12.50. The minimum fluctuation will be 0.02 index points or $25. Trades may also occur at a price of 0.01 index points or $12.50 whether or not such trades result in the liquidation of positions for both parties to the trade. The last trading day for the options is the same as for the futures. The CME's contract specifications for the options also provide special provisions for flexible options on the S&P REIT Index futures. Position limits for options on the S&P REIT Index futures prohibit a person from owning or controlling a combination of options and underlying futures contracts that exceeds 5,000 futures-equivalent contracts net on the same side of the market in all contract months combined.

III. Discussion of Statutory Criteria

A. Settlement in Cash

The settlement of the S&P REIT Index futures contract is limited to the delivery of cash. In addition, options on the S&P REIT Index futures contract will be settled, if exercised, through delivery of the underlying futures contract. Accordingly, because there is no delivery or transfer of securities in the settlement of either the S&P REIT Index futures or futures options, the first statutory standard is satisfied.

B. Not Readily Susceptible to Manipulation

The Division typically has considered several factors in evaluating whether trading in a futures contract (or options on such contract) on a securities index is not readily susceptible to manipulation, nor to causing or being used in the manipulation of the price of an underlying security, an option on such security, or an option on a group or index including such securities, and, in the case of futures options, the index-based futures contract underlying the options contracts. These factors include: (1) the number of securities comprising the index or group; (2) the capitalization of those securities; (3) the depth and liquidity of the secondary markets for those securities; (4) the diversification of the group or index; (5) the manner in which the index group is weighted; and (6) the ability to conduct surveillance of the futures contract and the underlying securities.[5] These criteria, along with the requirement that the group or index of securities be

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5 See, e.g., All Ordinaries Index Futures Letter, supra note 3; Letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, DEA, CFTC, dated August 24, 1987 (regarding the application of the CBOT to offer and sell futures contracts based on the Long-Term Corporate Bond Index) ("Long-Term Corporate Bond Letter"); Letter from William H. Heyman, Director, Division, SEC, to Joanne T. Medero, General Counsel, CFTC, dated

broad-based, are designed to ensure that the underlying securities are sufficiently capitalized, liquid, and diverse so as to make the futures and related markets not readily susceptible to manipulation. In addition, these criteria help to ensure that the index calculation method accurately represents the value of the component securities and that there is a mechanism in place to detect and deter trading abuses.

The Division concludes that the S&P REIT Index futures contract and options on futures contract are not readily susceptible to manipulation nor to causing or being used in the manipulation of any related market, given the large number of components and the diversification of the Index within the REIT segment, the capitalization of the Index, the weighting methodology of the Index, and the deep and liquid markets of the securities comprising the Index.

The Division observes that the S&P REIT Index is composed of 105 securities which represent a broad cross-section of the REIT segment of the U.S. market. The Division notes that the Index is a capitalization-weighted index whose value is more difficult to affect than that of a price-weighted index. As of September 30, 1998, the Index has a low concentration of weighting, with no single security representing more than 5.14% of the weight of the Index and the top three stocks only representing 13.90% of the weight of the Index.

Numerous sectors of the REIT industry are represented by the S&P REIT Index, which contains a broad range of REITs representing diversified, health care, industrial/office, residential, retail, self storage, specialty, and specialty/hotels equity REITs; health care and industrial/office hybrid REITs; and mortgage-backed and residential mortgage REITs. As of August 31, 1998, no REIT property type category consists of more than 27.12% of the weight of the Index.[6]

As of September 30, 1998, the total capitalization of the Index was approximately $120.5 billion. This represents approximately 1.23 percent of the total capitalization of the NYSE. The highest capitalized component security has a capitalization of approximately $6.19 billion, while the lowest capitalized security is approximately $142.72 million. In addition, all of the Index's

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September 24, 1991 (regarding the application of the CBOT for designation as a contract market to trade options on the CBOT Major Market Index futures contracts); and Letter from William H. Heyman, Director, Division, SEC, to Joanne T. Medero, General Counsel, CFTC, dated January 16, 1992 (regarding the applications of the Osaka Stock Exchange and the Tokyo Stock Exchange to permit the offer and sale to U.S. persons of futures contracts overlying the Nikkei Stock Index and the Tokyo Stock Price Index, respectively).

6 These property type categories include diversified, health care, industrial/office, residential, retail, self storage, specialty, lodging/resorts, and specialty/hotels equity REITs; health care and industrial/office hybrid REITs; and mortgage backed and residential mortgage REITs.

component stocks are actively traded, with the average daily trading volume for the individual component stocks over the six months period from February through July, 1998, ranging from 23,748 shares to 1,131,624 shares. Based upon its review of these factors, the Division believes that it is unlikely that attempted manipulations of the prices of a small number of issues would significantly affect the value of the S&P REIT Index.[7]

Another significant factor the Division considers in evaluating the potential for manipulation of proposed index futures contracts and futures options is the existence of comprehensive surveillance sharing arrangements between the futures and the underlying securities markets. The Commission notes that the CME belongs to the Intermarket Surveillance Group ("ISG").[8] The members of the ISG have agreed to share information relating to any financial instrument traded through the facilities of any party, upon request and subject to certain restrictions, including but not limited to, market trading activity, clearing activity, and the identity, trading activity and positions of the self-regulatory organization's ("SROs") members or customers of the SRO members.[9] The CME participates in a bilateral information sharing agreement with the NYSE and the Chicago Board Options Exchange ("CBOE") under which daily electronic information transfers are conducted between the exchanges. Such surveillance sharing agreements are an important mechanism for surveillance and a way to ensure the availability of information among markets in order to detect and deter potential manipulations and other trading abuses, thereby making the stock index derivative product less readily susceptible to manipulation.

For all of the above reasons, the Division believes that the S&P REIT Index futures contracts and options thereon are not readily susceptible to manipulation.

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7 The Division recognizes that the S&P REIT Index has a relatively low capitalization when measured in relation to the total NYSE capitalization. However, for the same reasons set forth in Section III.C. of this letter, the Division believes that potential manipulation concerns have been adequately addressed by the CME proposal.

8 See CFTC Letter.

9 The NYSE, Amex, and the NASD, along with other national securities exchanges are members of ISG, and the futures exchanges are affiliate members of ISG. ISG was formed to coordinate more effectively surveillance and investigative information sharing agreements in the stock and options markets. Because of the potential opportunities for trading abuses involving stock index futures, stock options and the underlying stocks, and the need for greater sharing of surveillance information to detect these potential intermarket trading abuses, the major U.S. futures exchanges that trade stock index futures are affiliate members of ISG.

C. Substantial Segment of the Market

The CEA requires that the Index is a measure of and reflects the market for all publicly traded equity or debt securities or a substantial segment thereof. This standard reduces the likelihood that trading in an index could act as a surrogate for trading the individual securities, in addition to minimizing the potential for manipulation, among other things.

The SEC has previously applied a totality of the circumstances approach to determining whether a stock index measures and reflects the overall equities market or a substantial segment of that market. The factors generally considered include the number of component securities, the diversity of the index, the design and structure of the index, and the overall capitalization of the index.[10] This is a flexible approach where no one factor is necessarily dispositive.

As an initial matter, the Division concludes that the REIT segment of the U.S. equities market constitutes a "substantial" segment of the overall public U.S. equities market for purposes of the statute.[11] The REIT segment is recognized as a discernible, unique segment of the overall market that operates, in part, as a vehicle for equity market participants to hold indirect interests in real estate, particularly commercial real estate. In fact, CME represented that approximately 8-9% of the $1.5 trillion institutionally controlled commercial real estate market is under REIT management.

During this decade, the REIT segment of the U.S. equities market has experienced tremendous growth, evolving from 142 REITs with a market capitalization of $9 billion to 210 REITs with a market capitalization of approximately $144 billion. Several academic studies have attributed the growth of the REIT segment as part of a growing trend toward asset securitization.[12] The REIT

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10 The Commission also looks at the weighting of the largest stock and largest group of stocks in an index, the depth and liquidity of the trading in the component securities and the public float of the securities. See Commission Decision, supra note 3, at note 43.

11 The Commission, in reviewing prior proposals, has determined that a discrete debt market, such as the long-term corporate bond market or the municipal bond market, could represent a substantial segment of the overall bond market. See Long-Term Corporate Bond Letter, supra note 5; letter from George A. Fitzsimmons, Secretary, SEC to Dr. Paula Tosini, Director, Division of Economics & Education, CFTC, dated July 23, 1984.

12 Various academic studies have sought to determine whether REITs represent a reasonable proxy for unsecuritized, private real estate investments. See, e.g., Ghosh, C., M. Miles, and C.F. Sirmans, "Are REITs Stocks?" Real Estate Finance, Volume 13, No. 3 (Fall, 1996); Miles, M. and N. Tolleson, "Real Estate Securitization: It is Only a Question of How Much and How Soon" Real Estate Finance, Volume 13, No. 2 (Summer 1996); and McIntosh, Willard & Youguo Liang, "REITs: What Are They?" The Institutional Real Estate Letter, Volume 10, No. 3 (March 1998).

segment has also evolved into a diverse segment, with numerous REITs holding a variety of investments including health care, industrial/office, residential, retail, self-storage, specialty, lodging/resorts, hotel, and diversified use properties. The CME represents that REITs are held by private investors, a variety of pension funds, and mutual funds. CME has identified sixty-three mutual funds whose primary investment focus is REITs.

The Division also believes that the S&P REIT Index "reflects" the REIT market. The S&P REIT Index consists of 105 components out of the approximately 210 REIT securities, and incorporates approximately 83% of the REIT industry measured by capitalization. These 105 securities are diverse, representing a broad cross-section of the REIT segment of the U.S. market.

As of September 30, 1998, the total capitalization of the Index was approximately $120.5 billion. This represents approximately 1.23 percent of the total capitalization of the NYSE. The highest capitalized component security has a capitalization of approximately $6.19 billion, while the lowest capitalized security is approximately $142.72 million. In addition, all of the Index's component stocks are actively-traded, with the average daily trading volume for the component stocks over the six months period from February through July, 1998, ranging from 23,748 shares to 1,131,624 shares. As of August 31, 1998, no REIT property type category consists of more than 27.12% of the weight of the Index. In addition, the Division notes that S&P has procedures for actively maintaining the Index to ensure that the components continue to meet the initial criteria for inclusion in the Index.[13]

The Index weighting methodology, capitalization of the Index, and component trading history also strengthen the proposal. The Index has a low concentration of weighting, with no single security representing more than 5.14% of the weight of the Index and the top three stocks only representing 13.90% of the weight of the Index (as of September 30, 1998). The Index is a capitalization-weighted index, whose value is more difficult to affect than that of a price-weighted index.

The Division also notes that the Index will be a widely published index. Specifically, according to the CME, the Index value, calculated at the conclusion of each trading day, is widely disseminated by S&P. Currently, Bloomberg transmits an unofficial quote every five minutes during the trading session. Real-time quotations will be made available by S&P through the Bridge quotation network prior to the commencement of trading in the S&P REIT Index futures and options.

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13 See supra Section II for maintenance details.

The Division recognizes that the Index, a "non-diversified index"[14] as that term is defined under the 1984 SEC/CFTC Joint Policy Statement, has a relatively low capitalization when measured in relation to the total NYSE capitalization. The Division does not believe that the weakness of this factor is fatal to the CME proposal satisfying the statutory requirements. Rather, the Division believes that several other factors, including the large number of stocks in the Index, the design and structure of the Index (low concentration of weighting and capitalization-weighted), the liquidity of the underlying stocks, and the existence of adequate surveillance measures, overcome the potential risk of manipulation that would ordinarily cause the Division to object to an index with such relatively low capitalization. Based on this analysis, the Division has concluded that the REIT Index meets the requirements of Section 2(a)(1)(B)(ii) of the CEA.

IV. Conclusion

For the reasons set forth above and based on the information and representations presented, the Division does not object to the designation of the CME as a contract market to trade S&P REIT Index futures contracts or options on those futures contracts, including the trading of such products through GLOBEX. This conclusion is based solely on the facts and representations contained in this letter. If any of the representations were untrue or if any fact or any term of either of the contracts were to change in any material respect,[15] the Division would

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14 The Division notes that the S&P REIT Index also meets the minimum criteria set out in the SEC/CFTC Joint Policy Statement for non-diversified stock indexes of domestic issuers. See Commodity Futures Trading Commission and Securities and Exchange Commission Release No. 20578 (January 18, 1984), 49 FR 2884 (January 24, 1984). Specifically, the Index consists of more than 25 components, its capitalization is greater than $75 billion, no single component has a capitalization exceeding 25% of the aggregate capitalization, and the aggregate capitalization of the three components having the highest capitalization does not exceed 45% of the aggregate capitalization. The criteria stated in the Joint Policy Statement are only guidelines for the Commission's review of applications for contract market designation.

15 If the terms of the CME's futures or futures options contracts are changed in a material way, or if the composition of the S&P REIT Index were to change in any material way, the Commission believes that it would be necessary to publish notice of that change as an amendment to the contract in order to afford the public an opportunity to review the proposed contract and for the SEC to review its prior determination. Compare Letter from George A. Fitzsimmons, Secretary, SEC, to Paula A. Tosini, Director, DEA, CFTC, dated July 23, 1984; and Letters from Jonathan G. Katz, Secretary, SEC, to Paula A. Tosini, Director, DEA, CFTC, dated August 24, 1987, and April 18, 1988, with Letter from Jean A. Webb, Secretary, CFTC, to John Wheeler, Secretary, SEC, dated May 31, 1985; Letter from Jean A. Webb, Secretary, CFTC, to Jonathan G. Katz, Secretary, SEC, dated October 1, 1987; and Letter

have to reevaluate the conclusions reached herein in light of those changes. The Division expresses no view with respect to any other question that the proposed contracts may raise, including, but not limited to, the applicability of other federal or state laws.

Pursuant to delegated authority,[16]

Richard R. Lindsey
Director

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from Marshall E. Hanbury, General Counsel, CFTC, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1988.

16 17 CFR 200.30-3(e).