



# Chicago Board of Trade

Thomas R. Donovan  
President and  
Chief Executive Officer

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## COMMENT

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

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COMMERCIAL PRINT

Re: Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act, 64 Fed. Reg. 46356 (Aug. 25, 1999) (the "Joint Petition")

Dear Ms. Webb:

The Chicago Board of Trade ("CBOT") is pleased to offer these comments in support of the above-referenced Joint Petition, which was submitted by the CBOT, Chicago Mercantile Exchange and New York Mercantile Exchange by letter dated June 25, 1999. The Joint Petition is a direct response to the Commission's June 2, 1999 order instructing Commission staff to begin processing immediately requests from foreign exchanges for no-action relief to allow them to place their trading terminals within the U.S. free from the contract designation requirements that apply to domestic futures exchanges. The Commission also promised in that order to "simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage."

The Joint Petition is designed to move towards the Commission's stated objective of regulatory parity between domestic and foreign exchanges. Specifically, the exchanges are seeking exemptive relief from Commodity Exchange Act ("CEA") and CFTC requirements in three areas: (1) to permit contract markets to list new contracts without Commission approval, (2) to permit contract markets to implement new rules and rule changes ten days after submitting them to the Commission and (3) to permit contract markets to implement trading rules and procedures comparable to those offered by a foreign exchange for competing products. These changes, at a minimum, are needed to allow U.S. contract markets to act quickly and decisively to respond to competitive challenges of foreign futures exchanges that are allowed to access customers within the U.S. electronically.

The Commission has raised eleven issues (two with multiple parts) with respect to the Joint Petition. The Chicago Mercantile Exchange and New York Mercantile Exchange have each responded to these specific issues in their respective October 5 and October 12, 1999 comment letters on the Joint Petition. We concur with those comments. Thus, in lieu of repeating the CME and NYMEX's well-articulated points, we wish to voice our strong opposition to the implication in the Commission's questions that the markets and market participants are somehow better served if the Commission preserves the ability to second-guess and micromanage exchange decision-making. We fundamentally disagree with that view. The exchanges do not exist in a competitive vacuum. We have every

incentive to seek active input from our market users to ensure that the contracts we design and rules we develop meet their needs and provide them with the assurances they demand that our markets meet high standards of integrity, efficiency and reliability.

If we turn a deaf ear to what our market users want, they will not remain our market users for long. Technological improvements combined with the continual globalization of the markets have allowed a variety of alternative trading venues to develop which can quickly respond to unsatisfied market needs of exchange customers. In addition, almost all of the exchange customers are institutional entities with broad access to regulatory authorities as well as the media. As a result, any objections regarding product offerings or rule changes could easily be made public in a way which would be highly damaging to an exchange's reputation.

The CFTC's bias towards continuing its past behavior of attempting to substitute its business judgement for that of the exchanges is perhaps most evident in the Commission's questions as to whether it is appropriate, as the Joint Petition proposes, to limit the grounds for staying implementation of exchange rules to situations in which the Commission determines that the rule is likely to cause fraud, render trading readily susceptible to manipulation or threaten the market's financial integrity. (See questions 3(a) and 3(b) in the Commission's release. 64 Fed. Reg. 46357.) Without using standards that focus the Commission on measuring objections against core responsibilities of the CFTC, the exchanges face the ongoing risk that Commission staff could seek to delay implementation of exchange rules citing the oft-invoked and highly subjective standard that the rules at issue are "inconsistent with the public interest," divorced from citing any specific CEA or Commission requirements that are violated.

Because current requirements of the CEA provide the Commission with the capability of ensuring that fraud, manipulation or financial integrity issues do not result from the activities of its regulated entities, the Commission would have the clear ability to disapprove rules which conflict with or ignore express CEA requirements or could use its authority under Section 8a(7) to supplement exchange rules. It would, however, be necessary for the Commission to establish what the negative effect of a rule change would be. Again, an exchange would have no incentive to adopt rules that the CFTC would then change. It would be harmful to trading and severely damage the reputation or "brand name" of an exchange operating in today's highly competitive marketplace.

Regulatory parity is a crucial issue in that competitive marketplace. Globalization should also have effects on regulators, allowing them to observe the impacts and learn from trading practices accepted in the laboratories of other regulatory venues. In effect, the Division of Trading and Markets has accepted the appropriateness of several regulatory regimes by allowing U.S. customers to trade under the alternate systems allowed under the recently-issued "no-action" relief granted to various foreign exchanges or under Parts 30, 34 or 35.

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For all of the reasons stated in the Joint Petition and in this letter, we encourage the Commission to act promptly to grant the exemptive relief requested in the Joint Petition.

Sincerely,

A handwritten signature in black ink that reads "Thomas R. Donovan". The signature is written in a cursive style with a prominent horizontal line at the top.

Thomas R. Donovan

cc: Chairman William J. Rainer  
Commissioner Thomas J. Erickson  
Commissioner Barbara P. Holum  
Commissioner James E. Newsome  
Commissioner David D. Spears.