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October 30, 2007

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20581

COMMENT

OFFICE OF THE SECRETARIAN

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Re: **CME Petition for Exemption from Registration as an FCM on behalf of CFETS, 72 Fed.Reg. 48262 (August 23, 2007)**

Dear Mr. Stawick:

The Futures Industry Association ("FIA") has reviewed the response the Chicago Mercantile Exchange ("CME") submitted to our October 9, 2007 comment letter, in which we expressed the view that, based upon the record available to us, the CME had not made the showing required under the provisions of section 4(c) of the Commodity Exchange Act ("Act") to support its request, filed on behalf of the China Foreign Exchange Trading System ("CFETS") and its members, for an exemption from registration as a futures commission merchant ("FCM"). We regret that the CME did not respond to the essential issues that we raised and that we believe should inform the Commission's decision.

The CME's burden under section 4(c) of the Act is significantly different from its burden under section 5c(c)(1), which simply requires the CME to certify that a proposed action complies with the Act. The CME's responsibility under section 4(c) is to provide the Commission with the information that it needs to make the affirmative determinations set forth in that section. Rather than addressing the statutory requirements, however, the CME attempts to shift to FIA the burden of establishing why the Commission should not grant the requested exemption.

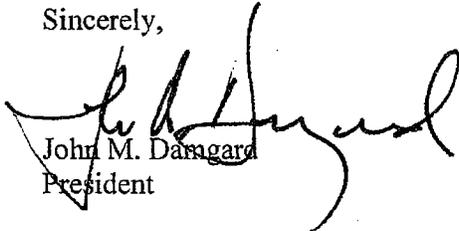
Nothing in the CME response would allow the Commission to find that the requested exemption would (i) promote fair competition, (ii) be consistent with the public interest and the purposes of the Act, or (iii) not have a material adverse effect on the Commission's ability to discharge its obligations under the Act. To the contrary, although the CME states that granting the exemption to CFETS and its members will promote fair competition, we learn for the first time that, for an undetermined period of time, CFETS member firms will be prohibited from trading regulated foreign currency and interest rate products in the United States, except through CFETS. The CME's assurance that nothing in the CME's arrangement with CFETS would prevent CFETS member firms from clearing through other entities "*once the Chinese government relaxes its existing regulations regarding foreign investments*" provides no comfort to firms that may want

to compete for the opportunity to serve CFETS member banks and other institutions that may trade on US contract markets. The competitive advantage to CFETS is undeniable.<sup>1</sup>

Further, the CME has confirmed that, "as a sub-institution of a central bank of a sovereign nation [CFETS] is not able to directly subject itself to the [Commission's] jurisdiction."<sup>2</sup> Nor would CFETS be subject to the jurisdiction of the Department of Justice or the U.S. Courts.<sup>3</sup> Therefore, notwithstanding that CFETS initially will be the sole clearing member through which Chinese banks and other institutions will be permitted to trade futures on foreign currency and interest rates listed on CME markets, the Commission will have no jurisdiction over CFETS or its principals. We reiterate that, given the critical role that clearing members play in assuring (1) the efficient operation of the exchange markets, (2) compliance with applicable Commission and exchange trade practice requirements and, in particular, (3) the financial integrity of exchange transactions, it is essential that the Commission's jurisdiction and authority over clearing members be unimpaired.

It is not sufficient that the CME, which is effectively a joint venturer with CFETS and has agreed to be jointly and severally liable with CFETS "in any Commission enforcement action relating to compliance with any order issued by the Commission," has agreed to exercise jurisdiction over CFETS. Clearly, the CME would be faced with an inherent conflict of interest; just as clearly, the Commission's ability to discharge its responsibilities under the Act would be affected, materially and adversely.

Sincerely,



John M. Damgard  
President

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<sup>1</sup> The CME's attempt to downplay this advantage by noting repeatedly that the arrangement is "limited to certain foreign currency and interest rate products" ignores the fact the such contracts constitute approximately 50 percent of the volume on U.S. markets and would likely constitute an overwhelming majority of the contracts that would be traded by CFETS member banks and their customers.

<sup>2</sup> In footnote 4, the CME seems to contradict this statement, asserting that "CFETS has agreed to be subject to U.S. law." However, as clarified in the text to which the footnote relates, there is no contradiction. CFETS has simply agreed that "the Agreement and the legal relationships of the CME and CFETS are governed by and construed in accordance with the laws of the United States."

Separately in footnote 4, the CME implies that the People's Bank of China ("PBC") has guaranteed CFETS' obligations to the CME and to CFETS' member banks. The Commission should confirm the extent to which the PBC has guaranteed CFETS' obligations, if at all, in any order the Commission may issue. Similarly, notwithstanding the CME's summary of its analysis of the application of the Bankruptcy Code in the event of CFETS's default, the Commission should make an independent determination of the likely treatment of CFETS and, in particular, its customers under the Code.

<sup>3</sup> In contrast, foreign firms that receive an exemption from registration under Commission rule 30.10 must consent to the jurisdiction of the U.S. under the Act.

cc: Honorable Walter Lukken, Acting Chairman  
Honorable Michael Dunn, Commissioner  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner

Division of Clearing and Intermediary Oversight  
Ananda Radhakrishnan, Director  
Robert B. Wasserman, Associate Director

Office of International Affairs  
Jacqueline Hamra Mesa, Director  
Robert H. Rosenfeld, Deputy Director