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November 21, 2005

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

RE: Petition for an Order Pursuant to  
Section 1a(12)(C) of the Commodity Exchange Act.  
CME Submission #05-105.

Dear Ms. Webb:

Chicago Mercantile Exchange Inc. (“CME” or “the Exchange”) hereby petitions the Commission for an Order which would permit Exchange floor brokers and floor traders (collectively “floor traders”) who are registered with the Commission, when acting in a proprietary trading capacity, to be “eligible contract participants” (“ECPs”) per Section 1a(12)(C) of the Commodity Exchange Act (“the Act”).<sup>1</sup>

In particular, the Exchange requests the Commission to determine that, pursuant to certain terms and conditions, floor traders to be considered ECPs with respect to certain specified over-the-counter (“OTC”) transactions in excluded derivative items pursuant to Section 2(d)(1) of the Act. In order to participate, the trader must have its OTC trades guaranteed by, and cleared at, CME by an Exchange Clearing Member that is registered with the Commission as a Futures Commission Merchant (“FCM”).

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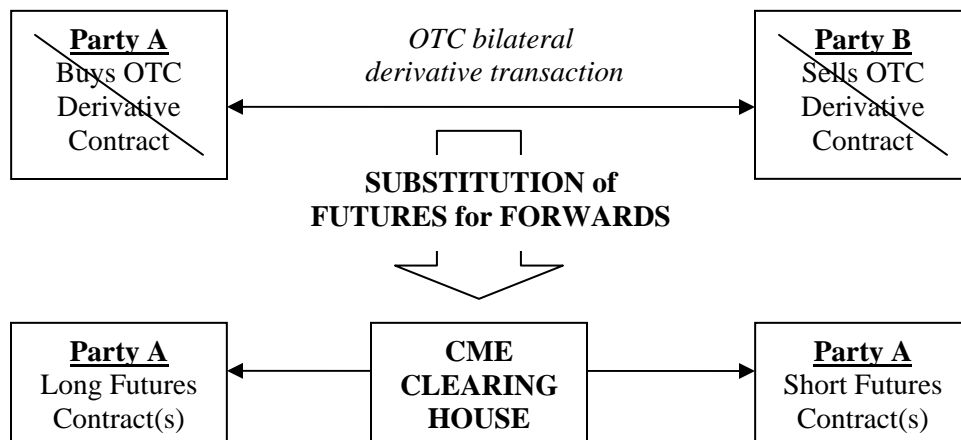
<sup>1</sup> Please make reference to CME Submission #05-103 dated November 21, 2005 which certified various Rule amendments enabling a “Substitution” facility and “futures-to-the-date” trading in Eurodollar and currency futures, as described in section 1 of this document. As a further reference, we cite CME Submission #05-104 dated November 21, 2005 per which the Exchange petitioned the Commission for relief per Section 4d of the CEA. These submissions may be considered precursors to the current petition. In particular, we understand that the Commission will not act on the current petition until such time that relief might be granted by the Commission with respect to the Exchange’s request for relief per Section 4d of the CEA.

## 1. Background Information

This section is intended to outline the concept that CME intends to initiate as discussed in its Rule Certification to the Commission.<sup>2</sup>

**Substitution Process** – CME intends to offer eligible contract participants (“ECPs”), as defined in Section 1a(12)(C) of the CEA, the opportunity to execute, transact or match certain contracts as OTC derivatives contracts on a bilateral basis between two ECPs, as that definition may be amended by the Commission per this Petition. Thus, only matched transactions, executed in a manner appropriate to any OTC transaction, may be presented to CME for purposes of clearing. Subsequently, CME CH will permit the assignment of such transactions to the CME CH.<sup>3</sup> In the process, the original bilateral contracts between the two counterparties will be extinguished by the counterparties to the OTC derivative transaction and replaced by futures contracts in a process we referred to as “Substitution of Futures for Forwards” (“SUB”).

### Substitution of Futures for Forwards (SUB) Process



Subsequent to the original SUB, the resulting futures contracts shall be subject to all normal financial, reporting and regulatory requirements associated with CME futures contracts created in any other manner. In particular, they may be offset by another futures transaction created with the use of the SUB process or by conventional means including an offsetting transaction in an open outcry environment, through the CME® Globex® electronic trading platform, ex-pit transaction or through the delivery/cash settlement process, as applicable to the specific contract in question.

<sup>2</sup> See CME Submission #05-103 dated November 21, 2005.

<sup>3</sup> Note that any and all CME clearing members will be permitted to carry transactions established through the Substitution process.

***Eligible Contracts*** - The Exchange intends to deploy this OTC clearing facility with respect to certain designated futures contracts listed for trading and clearing; and, listed for clearing only. The Exchange intends to offer this facility in the context of standard IMM-dated futures listed for *trading and clearing* including Eurodollar and various currency futures contracts (specifically, the British Pound, Canadian Dollar, Japanese Yen, Swiss Franc, Australian Dollar, EuroFX, EuroFX/British Pound CrossRate and EuroFX/Japanese Yen CrossRate). The Exchange further intends to offer this facility in the context of *cleared-only* “futures-to-the-date” settled on non-IMM dates in the same contract markets.

The Exchange will further determine the nature and character of the initiating OTC derivative transactions. In particular, the OTC instrument must parallel the futures contract in terms of the underlying instrument, term and transaction quantity.

For example, an OTC Forward Rate Agreement (FRA) with a 3-month term with a \$1 million face value may be deemed an acceptable substitutable for a CME Eurodollar futures contract. Or, an OTC interest rate swap may be deemed substitutable for a strip or bundle of CME Eurodollar futures of similar term. The Exchange will, from time to time, specify acceptable OTC derivative instruments.

***Cleared Only Futures*** – In addition, the Exchange intends to permit the creation of futures in specified futures markets with maturity dates that do not conform to current standard CME expirations (“futures to the date”). These contracts may be tradable only through the process of SUB. *I.e.*, they may be traded in an OTC environment and assigned to the CME CH for purposes of clearing at which point they achieve the status of futures contracts and may be held in segregated futures contracts. As such, we refer to these contracts as “cleared only” futures ... as opposed to standard futures contracts offered on a “traded and cleared” basis.

Cleared only futures contracts would, at least initially, be limited to Eurodollar and currency futures. Note, for example, that the Exchange lists as of this writing, Eurodollar futures that mature in September 2005 with a standard International Monetary Market (“IMM”) maturity date of 9/19/05; October 2005 on 10/17/05; November 2005 on 11/14/05; December 2005 on 12/19/05; March 2006 on 3/13/06; June 2006 on 6/19/06, etc. Using the SUB process, the Exchange may create a “to the date” Eurodollar contract that matures on an alternate date that is mutually agreed by the two counterparties to the bilateral transaction, *e.g.*, 9/28/05. In the case of Eurodollar futures, this date is restricted to normal Exchange and London bank business days.

***Margining Cleared-Only Contracts*** - Cleared only futures will be settled on a daily basis per CME Rule 813, which provides for settlement per observed spread relationships. This procedure is adequate and appropriate to the extent that CME offers “traded and cleared” contracts in the eligible contracts settled on standard IMM dates.

Note that arbitrage transactions may readily be executed through CME's standard execution facilities (open outcry in the pit or through the Globex electronic trading platform) which ensure that these contracts price pursuant to cost of carry considerations. Thus, settlement prices may readily be derived mathematically for "to the date" futures offered on a "cleared only" basis.<sup>4</sup> Further, CME intends to apply standard margining levels to cleared only futures despite the likelihood that liquidity in these contracts may be diminished relative to traded and cleared futures.<sup>5</sup>

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<sup>4</sup> Note that CME intends to offer cleared only futures in the context of its currency and interest rate futures products. These products typically trade closely in conformance with cost of carry considerations. In the context of currency futures, that mathematical relationship may generally be modeled as ... Futures Price = Spot Price + Financing (represented by domestic short-term rates) – Payouts (represented by foreign short-term rates). As such, the value of a futures expiring on a non-IMM date is linearly related to standard IMM dated currency contracts. Similarly, the value of an interest rate futures contract such as Eurodollars may be modeled mathematically by reference to the formulae for Implied Forward Rates (IFR). An IFR may be used to identify the value of a forward rate agreement (FRA) or interest rate futures contract based on a item delivered d1 days in the future with a term of d3 days provided one may reference the spot rate of an investment extending d1 days and the spot rate extending d2 days (where d2=d1+d3).

$$\text{IFR} = \frac{[1 + R_{d2} (d2/360)]}{(d3/360) [1 + R_{d1} (d1/360)]} - \frac{1}{(d3/360)}$$

For most practical purposes, the value of a non-IMM dated Eurodollar contract may generally be represented in a linear relationship between the next available shorter-term IMM dated contract and the next available longer-term IMM dated contract. CME Rule 813 provides for settlements by reference to observed spread relationships where timely pricing information may be unavailable. In particular ... "if no sale occurs in the closing range, the settlement price shall be set at a price which when compared to the settlement price of the next contract month reflects the same differential that existed between the two contract months on the previous day, unless there is a higher bid or lower offer in existence at the close. In such case, the higher bid or lower offer shall be the settlement price ... if such settlement price is not consistent with sales in other months during the closing range or with market information known to the designated Exchange official supervising the closing or to members of the Pit Committee, the designated Exchange official, with the advice of the Pit Committee, may establish a settlement price at a level consistent with such other sales or market information and shall prepare a written record setting forth the basis for any modification of such settlement price." Thus, there is ample information, and that CME has in place a workable and sound framework and procedures, per which to identify reasonable and representative settlement prices in cleared only futures where current transaction information may be unavailable.

<sup>5</sup> Performance bond requirements are designed to cover 95% to 99% of any close-to-close market movement based upon studies of price volatility on a daily basis. CME Clearing House applies advanced quantitative methodologies (including Extreme Value Theory, Exponentially Weighted Moving Average, Value at Risk and others) in the process. The combination of these methods provides information accurately to evaluate historical and projected market conditions using a minimum of four years of data. Performance bond levels are further evaluated routinely through back testing of coverage levels vs. actual portfolio fluctuations. Changes approaching current margins are identified in daily exception reporting and subject to review. The CME Clearing House conducts monthly risk meetings that include the evaluation of price changes which exceed current margin requirement. Changes to performance bond requirements are proposed, discussed, and approved by Clearing House senior management and risk staff. Performance bonds may be changed between meetings when necessary. *To illustrate*, note that as of November 2, 2005, the initial speculative performance bond requirement for Eurodollar futures in months 1-12 is established at \$945. Accordingly, the initial speculative performance bond requirement for a Eurodollar future-to-the-date that falls, for example, between months 4 and 5 would likewise be \$945. This is warranted to extent that a Eurodollar future-to-the-date between months 4 and 5 will price very similarly to standard Eurodollar futures in months 4 and 5 and in accordance with cost of carry relationships driven by the yield curve and amenable to well-known mathematical formulae. Note that CME may establish different margin requirements for standard Eurodollar futures in months 13-44 based upon our constant monitoring of market conditions and pricing relationships.

The Exchange intends to deploy cleared only futures in markets that enjoy tremendous liquidity and activity including Eurodollar and currency futures. Tight spread relationships exist between contracts maturing on different dates, enforced by a facile arbitrage. Thus, we reasonably believe that risks in cleared-only futures “to-the-date” may readily be offset in regularly listed IMM-dated Eurodollar and currency futures traded on CME.

Further, deep and liquid markets in “to the date” contracts are available on an OTC basis. This is supported by data published by the Bank for International Settlements (BIS) regarding the outstanding notional value and average daily turnover in OTC transacted currency derivatives and interest rate Forward Rate Agreements (FRAs).

Note that there is some \$29.6 trillion and \$187.3 trillion in outstanding currency and interest rate contracts, respectively in the OTC markets. By comparison, the outstanding notional value of all exchange traded derivatives was \$46.6 trillion with \$19.1 trillion domiciled at CME as of December 2004. Turnover in the OTC market is similarly impressive with an average daily volume of \$1.3 trillion in FX and \$1.0 trillion in interest rate related contracts.

**Outstanding Notional Value of Exchange Traded and OTC Derivatives  
(Billions USD)**

	<b>Dec-00</b>	<b>Dec-01</b>	<b>Dec-02</b>	<b>Dec-03</b>	<b>Jun-04</b>	<b>Dec-04</b>
<b>Exchange Traded Derivatives</b>	<b>14,270</b>	<b>23,760</b>	<b>23,816</b>	<b>36,740</b>	<b>52,802</b>	<b>46,592</b>
CME Contracts	6,692	13,672	10,705	14,289	21,733	19,135
<b>Total OTC Derivatives</b>	<b>95,199</b>	<b>111,178</b>	<b>141,679</b>	<b>197,167</b>	<b>220,058</b>	<b>248,288</b>
<b>Foreign exchange contracts</b>	<b>15,666</b>	<b>16,748</b>	<b>18,460</b>	<b>24,475</b>	<b>26,997</b>	<b>29,575</b>
Outright forwards, FX swaps	10,134	10,336	10,719	12,387	13,926	15,242
Currency Swaps	3,194	3,942	4,503	6,371	7,033	8,217
Options	2,338	2,470	3,238	5,717	6,038	6,115
<b>Interest rate contracts</b>	<b>64,668</b>	<b>77,568</b>	<b>101,658</b>	<b>141,991</b>	<b>164,626</b>	<b>187,340</b>
Forward rate agreements	6,423	7,737	8,792	10,769	13,144	12,805
Interest rate swaps	48,768	58,897	79,120	111,209	127,570	147,366
Options	9,476	10,933	13,746	20,012	23,912	27,169
<b>Equity-linked contracts</b>	<b>1,891</b>	<b>1,881</b>	<b>2,309</b>	<b>3,787</b>	<b>4,521</b>	<b>4,385</b>
<b>Commodity Contracts</b>	<b>662</b>	<b>598</b>	<b>923</b>	<b>1,406</b>	<b>1,270</b>	<b>1,439</b>

Source: Bank for International Settlements (BIS)

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(However, as of November 2, 2005, the initial speculative performance bond requirements for standard Eurodollar futures in months 13-44 was also \$945.) These same considerations apply with equal force in the context of currency futures-to-the-date which are likewise driven by cost of carry relationships and the differential between interest rates in the two currencies represented in the contract. These procedures make suitable allowance for the possibility of the lack of liquidity in futures-to-the-date to the extent that the close pricing relationships between futures-to-the-date and standard IMM dated futures contracts permit facile risk layoff and settlement pricing.

BIS further estimates that \$59,724 billion of outstanding OTC interest rate derivatives or 31.9% of the total outstanding value of \$187,340 billion as of December 2004 is denominated in U.S. Dollars (USD). While definitive data is unavailable, anecdotally, we may estimate that 10%-20% of that \$59,724 billion in outstanding USD denominated OTC interest rate derivatives are IMM-dated. Thus, perhaps 80%-90% of that \$59,724 or \$47.8-\$53.8 billion in outstanding OTC interest rate derivatives are non-IMM dated.

**Turnover in OTC Derivatives Market**  
(Average daily turnover in April, Notional Value in Billions)

	1995	1998	2001	2004
<b>Foreign Exchange Turnover</b>	<b>\$688</b>	<b>\$959</b>	<b>\$853</b>	<b>\$1,292</b>
<b>Outright forwards and FX swaps</b>	\$643	\$862	\$786	\$1,152
<b>Currency Swaps</b>	\$4	\$10	\$7	\$21
<b>Options</b>	\$41	\$87	\$60	\$117
<b>Other</b>	\$1	\$0	\$0	\$2
<b>Interest Rate Turnover</b>	<b>\$151</b>	<b>\$265</b>	<b>\$489</b>	<b>\$1,025</b>
<b>Forwards (FRAs)</b>	\$66	\$74	\$129	\$233
<b>Swaps</b>	\$63	\$155	\$331	\$621
<b>Options</b>	\$21	\$36	\$29	\$171
<b>Other</b>	\$2	\$0	\$0	\$0
<b>TOTAL Derivatives Turnover</b>	<b>\$880</b>	<b>\$1,265</b>	<b>\$1,385</b>	<b>\$2,410</b>
<b>Turnover at April 2004 exchange rates</b>	\$825	\$1,350	\$1,600	\$2,410
<b>Exchange Traded derivatives</b>	<b>\$1,221</b>	<b>\$1,382</b>	<b>\$2,180</b>	<b>\$4,657</b>
<b>Currency contracts</b>	\$17	\$11	\$10	\$23
<b>Interest rate contracts</b>	\$1,204	\$1,371	\$2,170	\$4,634

Source: Bank for International Settlements (BIS)

Similarly, BIS estimates that some \$25,998 billion of the \$29,575 billion in outstanding OTC currency derivatives include USD as one side of the transaction, or 87.9%. Anecdotally, we estimate that perhaps only 2-3% of all OTC currency derivatives are IMM-dated. Thus, some 97%-98% or \$25,218-\$25,478 billion in outstanding currency derivatives may be non-IMM dated.

Thus, and in the event of a default associated with cleared only futures-to-the-date contracts, CME's Clearing House is confident in its ability to lay off risk in these contracts in the relevant OTC markets. Or, CME may lay off risk in the cleared only contracts with offsetting positions in its own regularly listed currency and interest rate contracts. CME does not anticipate any particular operational problems associated with such risk-management activity to the extent that any such activity in the context of futures-to-the-date is completely analogous to risk management activities associated with standard IMM-dated contracts, for which the CME Clearing House is well prepared. Accordingly, these dynamically-listed futures "to the date" shall be subject to normal CME margin requirements and to applicable CME Rules and CFTC Regulations.

**Continued Compliance with Core Principles** – The Exchange submits that the initiative described herein is compliant with DCO Core Principles as enumerated in Section 5b(c)(2) of the CEA and Part 39 of Commission Regulations. In particular, Core Principle B requires a DCO to demonstrate “adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.” Core Principle D requires a DCO to maintain “ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.”

Note that CME Clearing House will deploy the same systems, procedures, people and processes to clear SUB transactions as currently utilized with other transactions cleared by CME. The Clearing House is staffed by over 90 employees, including IT and Audits staff. In the first six months of 2005, the CME Clearing House processed and cleared over 882.2 million transactions on behalf of CME and CBOT with an estimated notional value of \$272.3 trillion for CME products alone.

CME Clearing House maintains substantial financial and default resources with a financial safeguard package in excess of \$4 billion. This package includes the market value of CME securities pledged to the Clearing House, a \$750 million temporary liquidity facility with a consortium of domestic and international banks, \$60 million in CME capital contribution, \$1.07 billion in clearing member security deposits, and risk capital assessment powers estimated at \$2.94 billion.

An additional \$43.7 billion collateral is held in the form of performance bonds as of June 30, 2005. Performance bond requirements are established at levels designed to cover 95%-99% of all close-to-close market movements based upon study of market volatility. Periodic testing and simulations are conducted to ensure adequate coverage. The Clearing House further conducts variation analysis of positions on a real-time basis to monitor capital adequacy. Positions are settled twice and we maintain the ability to require more frequent mark-to-markets in the event of extreme volatility. Variation pays and collects of clearing members exceed \$1.5 billion on a daily basis.

In the event of the default of a clearing member, the Clearing House will apply performance bonds, security deposits and assets of the defaulting firm in satisfaction of the debt. Should additional assets be required, the CME Clearing House would apply additional elements of the financial safeguards package.

Risk management practices and procedures currently utilized to manage risks associated with standard CME futures transactions will likewise be employed to manage risks associated with contracts crated through the SUB facility. The Clearing Houses’s core risk management functions incorporate ... daily risk monitoring; performance bond review and maintenance; periodic risk monitoring and trend analysis; credit risk analysis; collateral and financial safeguards; and, the application of the CME SPAN® system. Note that the SPAN system was developed by CME in 1988 to assess risk on a comprehensive portfolio basis and has been accepted by regulators and deployed by exchanges as the world standard for risk management.

Daily market risk is managed through the real-time matching and posting of trades, real-time mark-to-market, and real-time stress testing. Market, operational, liquidity, and credit risks are continuously and effectively monitored on a daily basis. The Clearing Service Customer Support Group acts as the focal point of contact for back-office clearing member support and operational issue support.

The CME Clearing House performs periodic risk monitoring and trend analysis including hypothetical stress testing, liquidity analysis, open interest concentrations, new firm monitoring, audit risk monitoring, and clearing member risk reviews.

The Clearing House routinely reviews the credit risk and credit rating of clearing member firms and its settlement banks, as well as counterparty reviews. Lastly, the Clearing House reviews the acceptability of different collateral types and applicable haircuts.

**Market Benefits** – CME believes that this facility will benefit the marketplace by providing ECPs with the ability to meld the flexible negotiation and matching capabilities associated with OTC markets with the financial sureties and capital efficiencies offered by CME’s multi-lateral clearing facility. In particular, a centralized, multilateral clearing facility in the context of OTC derivative markets promises many benefits which may be summarized as follows ...

“Swaps carry credit risk since they are subject to the default of the counterparty ... the main drawback to swaps ... is ... non-fungibility ... and the absence of a centralized market. When an investor wants to unwind his/her position, he/she has to either enter another swap and be exposed to two default risks or reach an agreement with the original counterparty to close the swap [thus] investing in swaps requires significant logistics [and] price transparency may be diminished ... Going forward, we can expect the creation of a central clearing house that could alleviate these problems. Marking to market swaps will reduce the liquidity risk, and creating standardized products will improve the liquidity of the market.”<sup>6</sup>

Flexibility, or the capacity to tailor a contract to the risk-management needs of the moment, has long been an important benefit associated with OTC derivative markets. The deployment of the “futures-to-the-date” concept creates additional flexibility, extending the utility of CME contracts as ECPs may more precisely hedge their cash positions with offsetting futures positions that match closely in terms of date.

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<sup>6</sup> Lehman Bros. Research Report, September 2000.



## **2. Regulatory Authority**

Section 1a(12) of the Act defines the term “eligible contract participant” or “ECP” by listing those entities and individuals considered to be ECPs.<sup>7</sup> Per Sections 2(d)(1), 2(g) and 2(h)(1) of the Act, OTC transactions<sup>8</sup> entered into by ECPs in an “excluded” or “exempt” commodity, as defined in the Act,<sup>9</sup> are exempt from certain requirements of the Act.<sup>10</sup>

Floor brokers and floor traders are included in the definition of ECPs but only to the extent that they act “in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades” per Section 1a(12)(A)(x) of the Act.

As documented in the section above, CME intends to implement a substitution procedure whereby an OTC transaction in designated excluded commodities may be assigned for purposes of clearance to the CME Clearing House. As such, these transactions will not explicitly take place on or through the facilities of CME, as prescribed by Section 1a(12)(A)(x) of the Act, but rather will be executed off exchange in an OTC environment. Accordingly, floor traders do not explicitly appear to qualify as ECPs in the context of these transactions.

However, the Act provides the Commission with authority to expand the ECP definition as appropriate. Per Section 1a(12)(C), ECPs may include “any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.”

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<sup>7</sup> ECPs generally include financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets certain net worth requirements; government entities; brokers, dealers, and futures commission merchants (FCMs) subject to regulation and organized as other than natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets certain net worth requirements; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment advisor or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

<sup>8</sup> OTC transactions are transactions that are not executed on a trading facility. Per Section 1a(33)(A) of the Act, “trading facility” generally means “a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.”

<sup>9</sup> Section 1a(14) defines “exempt commodity” as a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines “excluded commodity” as, amongst other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. The term “agricultural commodity” is undefined in the Act although Section 1a(4) enumerates a non-exclusive list of several agricultural commodities.

<sup>10</sup> OTC transactions in excluded commodities entered into by ECPs per Section 2(d)(1) are generally not subject to the Act. OTC transactions in exempt or excluded commodities individually negotiated by ECPs per Section 2(g) are generally not subject to the Act. OTC transactions in exempt commodities entered into by ECPs per Section 2(h)(1) are generally not subject to the Act apart from anti-manipulation provisions and anti-fraud provisions in certain circumstances.

Thus, CME petitions the Commission to exercise its authority in this regard to designate Exchange floor brokers and floor traders as ECPs for purposes of executing certain OTC transactions that are subsequently assigned to the CME Clearing House for purposes of clearing as futures offered for “trading and clearing” and futures offered on a “cleared only” basis.

Inclusion of floor traders and floor brokers is intended to serve the public interest generally by enhancing liquidity and opportunity. CME floor brokers and floor traders who utilize the SUB process to create positions in either “traded and cleared” or “cleared-only” Exchange markets will be leveraging their trading skills, experience and market expertise in such a manner as to attract additional activity and open interest onto the Exchange. In the process, they will likewise be expanding the pool of potential counterparties for OTC market participants and generally facilitating liquidity in the OTC marketplace as well. Accordingly, this strengthens the ties between, and enhances the utility of both, the exchange-traded and OTC derivatives marketplaces.

Note that a precedent in this regard has been established by the CFTC with respect to activities on NYMEX’s Clearport platform.<sup>11</sup>

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<sup>11</sup> See Order of the Commodity Futures Trading Commission dated February 4, 2003 which “deems, subject to certain conditions, ... [NYMEX] ... floor brokers and floor traders, who are registered with the Commission, when acting in a proprietary trading capacity, to be ‘eligible contract participants’ ... [and] ... are permitted to enter into certain specified over-the-counter (OTC) transactions in exempt commodities pursuant to Section 2h(1) of the Act.” The Order of February 4, 2003 was granted for a two-year period. By subsequent Order dated February 8, 2005, the CFTC extended the original Order of February 4, 2003. We are aware that Section 2(h)(2) subjects the exempt commodities that are the subject of NYMEX’s initiative to anti-fraud and anti-manipulation strictures while the excluded commodities that are the subject of the current initiative are not so bound. Note that these excluded commodities, *i.e.*, Eurodollars and currencies, are both extraordinarily liquid and extremely transparent, in both exchange traded and over-the-counter derivative trading forums. As such, we submit that no extraordinary measures are necessary in this context despite this apparent disparity.

### **3. Terms and Conditions**

CME seeks an Order per the provisions of Section 1a(12)(A)(x) to designate Exchange floor brokers and floor traders as ECPs for purposes of executing OTC transactions, in excluded commodities, which are subsequently assigned to the CME Clearing House for purposes of clearing as futures offered for “trading and clearing” and futures offered on a “cleared only” basis subject to the following terms, conditions and representations.<sup>12</sup>

1. The contracts, agreements or transactions must be executed pursuant to Section 2(d)(1) of the Act.
2. Permissible contracts, agreements or transactions are limited to the following CME contracts ... (i) Eurodollar futures; (ii) British Pound futures, (iii) Canadian Dollar futures, (iv) Japanese Yen futures, (v) Swiss Franc futures, (vi) Australian Dollar futures, (vii) EuroFX futures, (viii) EuroFX/British Pound CrossRate futures, and (ix) EuroFX/Japanese Yen CrossRate futures. Said contracts, agreements or transactions must be submitted for clearance by the CME Clearing House per CME Rule 537, SUBSTITUTION OF FUTURES FOR FORWARDS (SUB).
3. The Exchange floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a CME clearing member that is ... (i) registered with the Commission as a Futures Commission Merchant (FCM); and (ii) that clears the OTC contracts, agreements or transactions thus guaranteed.
4. Exchange floor brokers or floor traders may not enter into OTC contracts, agreements or transactions where the counterparty is another Exchange floor broker or floor trader in contracts that are listed for trading and clearing.

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<sup>12</sup> We are aware that the Commission’s Order dated February 4, 2003 with respect to NYMEX’s Clearport initiative was granted for a two-year period. By Order dated February 8, 2005, the CFTC extended the original Order of February 4, 2003 for a subsequent one-year period. However, we respectfully request that the Commission grant this Order on a permanent basis. In particular, we note NYMEX submitted an analysis of its experience during the initial two-year period as part of its Petition to extend the original order and did not report any negative consequences. The Commission further undertook a detailed cost-benefit analysis of NYMEX’s petition for an extension and could not report any negative consequences. Finally, we submit that the Commission likely would have granted a permanent extension had NYMEX so petitioned but NYMEX choose to pursue a limited term extension in light of its stated intentions to alter the regulatory structure per which it conducted such business activities. Further, we submit that, to the extent that CME proposes to extend this service in the context of highly liquid and competitive markets as opposed to narrowly constructed or specialized contracts, the necessity to proceed on a temporary basis is mitigated.

**Ms. Jean A. Webb**  
**November 21, 2005**  
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5. CME agrees to maintain appropriate compliance systems to monitor OTC contracts, agreements or transactions of its floor brokers and floor traders.
6. This Order would permit registered floor brokers or floor traders to participate in the OTC markets, subject to a guarantee from an Exchange clearing member that is registered as an FCM and to Exchange oversight.

If you require any additional information regarding this matter, please do not hesitate to contact me at 312-466-7469 or via e-mail at [jlab@cme.com](mailto:jlab@cme.com). Please reference our CME Submission #05-105 on all future correspondence regarding this notification.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Labuszewski". The signature is fluid and cursive, with a large initial "J" and "L".

John W. Labuszewski, Managing Director  
Research & Product Development

CC: Mr. Duane Andresen, CFTC

## Appendix - Rule Amendments

*(Deletions are bracketed and overstruck, additions are underlined.)*

### 537. ~~[RESERVED]~~ SUBSTITUTION OF FUTURES FOR FORWARDS (SUB)

(Ex-Pit or Ex-CME<sup>®</sup> Globex<sup>®</sup> Transactions). A substitution of futures contracts for over-the-counter (OTC) forward instruments shall be permitted by arrangement between eligible contract participants and comprised of two discrete transactions, where, the buyer and seller of the futures contract must be, respectively, the buyer and seller of the forward instrument. The forward instrument component shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity). The quantity covered by the forward instrument must be approximately equivalent to the quantity covered by the futures contract. The forward instrument component of an SUB transaction must comply with applicable CFTC forward regulatory requirements, if any. The Exchange shall determine eligible futures contracts and over-the-counter instruments.

### 804. SUBSTITUTION

Except with respect to trades made pursuant to Rules 526, 537, 538, 719, 853 and transactions entered into under CME AM and Rule 8D38, the Clearing House shall be substituted as, and assume the position of, seller to the buyer and buyer to the seller of the relevant number of Exchange or Marketplace contracts upon the successful matching of trade data submitted to the Exchange by the clearing members on the long and short sides of a trade. With respect to contracts that are traded on and matched by another exchange or market, the Clearing House shall be substituted as, and assume the position of, seller to buyer and buyer to seller of the relevant number of such contracts upon matching of trade data submitted to and accepted by the Exchange.

Upon such substitution, each clearing member shall be deemed to have bought the contracts from or sold the contracts to the Clearing House, as the case may be, and the Clearing House shall have all the rights and be subject to all the liabilities of such member with respect to such transaction. Such substitution shall be effective in law for all purposes.

With regard to trades made pursuant to Rules 526, 537, 538, 719 and 853, the Clearing House shall be substituted at the time payment of the first settlement variation and performance bond due for such trades pursuant to Rules 814 and 815, respectively, is confirmed by the appropriate settlement bank for both members.

With respect to trades made pursuant to Rule 8D38 (Finality), the Clearing House shall assume the obligation to perform when the results of an Auction are final as set forth in the CME AM rules.

**CHAPTERS 251, 252, 253, 254, 255, 261, 301, 303**

- 251. British Pound**
- 252. Canadian Dollar**
- 253. Japanese Yen**
- 254. Swiss Franc**
- 255. Australian Dollar**
- 261. Euro FX**
- 301. Euro FX/British Pound Cross Rate**
- 303. Euro FX/Japanese Yen Cross Rate**

(Rule Numbers and Letters are Adjusted Appropriately for Individual Chapters)

**XXX30. SCOPE OF CLEARED ONLY FUTURES RULES**

Unless otherwise noted below, the following Rules supersede the Rules presented earlier in this chapter. All other contract specifications remain the same as presented earlier in this chapter.

**XXX31. CLEARED ONLY FUTURES CHARACTERISTICS**

**XXX31.A. Nature of Cleared Only Futures Contracts**

“Cleared only” futures contracts shall be permitted for termination dates on any Exchange business day, other than applicable standard termination dates in futures offered for “trading and clearing.” Cleared only contracts may be assigned to the Clearing House only through the Substitution process per CME Rule 537., SUBSTITUTION OF FUTURES FOR FORWARDS (SUB).

**XXX31.B. Trading Unit**

(Refer to Rule XXX01.B. Trading Unit)

**XXX31.C. Price Increments**

(Refer to Rule XXX01.C. Price Increments)

**XXX31.D. Position Accountability**

(Refer to Rule XXX01.D Position Accountability)

**XXX31.E. Accumulation of Positions**

(Refer to Rule XXX01.E. Accumulation of Positions)

**XXX31.F. [Reserved]**

**XXX31.G. Termination of Cleared Only Futures Contracts**

“Cleared only” futures contracts shall terminate on any Exchange business day mutually agreed to by buyer and seller, other than applicable standard termination dates in futures offered for “trading and clearing.”

**XXX31.H. Contract Modifications**

(Refer to Rule XXX01.H. Contract Modifications)

**XXX32. SETTLEMENT PROCEDURES (Chapters 251, 252, 253, 254, 255, 261 only)**

**XXX32.A. Physical Delivery of Cleared Only Futures Contracts**

1. Procedures

In addition to the procedures and requirements contained in this chapter, delivery procedures shall be governed by the rules set forth in Chapter 7.

2. Delivery Days

Delivery shall be made on the second business day succeeding the termination date for the respective “cleared only” futures contract. If that day is not a business day in the country of delivery or is a bank holiday in either Chicago or New York City, then delivery shall be made on the next day which is a business day in the country of delivery and is not a bank holiday in Chicago or New York City.

*For CME Rule 25232.A.2. Delivery Days for Canadian Dollar only:*

2. Delivery Days

Delivery shall be made on the first business day succeeding the termination date for the respective “cleared only” futures contract. If that day is not a business day in the country of delivery or is a bank holiday in either Chicago or New York City, then delivery shall be made on the next day which is a business day in the country of delivery and is not a bank holiday in Chicago or New York City.

**XXX32.B. [Reserved]**

**XXX32. SETTLEMENT PROCEDURES (Chapters 301 and 303 only)**

**XXX32.A. Physical Delivery of Cleared Only Futures Contracts**

1. Procedures

In addition to the procedures and requirements contained in this chapter, delivery procedures shall be governed by the rules set forth in Chapter 7.

The Euro/ (enter either British pound or Japanese yen) cross-rates futures contracts assigned pursuant to Chapter XXX shall be delivered in banks designated by the Exchange. Buyers of the Euro/ (enter either British pound or Japanese yen) cross-rate futures contract shall deliver the minimum-fluctuation currency (enter either British pound or Japanese yen) and receive the trading-unit currency (Euro). Sellers of the Euro/ (enter either British pound or Japanese yen) cross-rate futures contract shall deliver the trading-unit currency (Euro) and receive the minimum-fluctuation currency (enter either British pound or Japanese yen).

2. Delivery Days

Delivery shall be made on the second business day succeeding the termination date for the respective “cleared only” futures contract. If that day is not a business day in both countries of delivery or is a bank holiday in either Chicago or New York City, then delivery shall be made on the next day which is a business day in both countries of delivery and is not a bank holiday in Chicago or New York City.

**XXX33. EMERGENCIES, ACTS OF GOVERNMENT, ACTS OF GOD**

(Refer to Rule XXX03. EMERGENCIES, ACTS OF GOVERNMENT, ACTS OF GOD)

**CHAPTER 452  
Three-month Eurodollar Futures**

**45230. SCOPE OF CLEARED ONLY FUTURES RULES**

Unless otherwise noted below, the following Rules supersede the Rules presented earlier in this chapter. All other contract specifications remain the same as presented earlier in this chapter.

**45231. CLEARED ONLY FUTURES CHARACTERISTICS**

**45231.A. Nature of Cleared Only Futures Contracts**

“Cleared only” futures contracts shall be permitted for termination dates on any London bank business day that is also an Exchange business day, other than applicable standard termination dates in futures offered for “trading and clearing.” Cleared only contracts may be assigned to the Clearing House only through the Substitution process per CME Rule 537., SUBSTITUTION OF FUTURES FOR FORWARDS (SUB).



**45231.B. Trading Unit**

(Refer to Rule 45202.B Trading Unit.)

**45231.C. Price Increments**

Positions shall be marked in terms of the IMM Index, 100.00 minus the yield on an annual basis for a 360-day year. (A deposit rate of 7.20% shall be quoted as 92.80.)

1. The Nearest Expiring Contracts with Terminations within 31 Days of the Trade Date

Minimum fluctuations of the IMM Index shall be in multiples of .0025 (\$6.25). For each .0025 increase in the Index, the Clearing House shall credit (\$6.25 per contract) those clearing members holding open long positions and debit (\$6.25 per contract) those clearing members holding open short positions. For each .0025 decline in the Index, the Clearing House shall debit (\$6.25 per contract) those clearing members holding open long positions and credit (\$6.25 per contract) those clearing members holding open long positions.

2. All Expiring Contracts with Terminations Exceeding 31 Days from the Trade Date

Minimum fluctuations of the IMM Index shall be in multiples of .005 (\$12.50). For each .005 increase in the Index the Clearing House shall credit (\$12.50 per contract) those clearing members holding open long positions and debit (\$12.50 per contract) those clearing members holding open short positions. For each .005 decline in the Index the Clearing House shall debit (\$12.50 per contract) those clearing members holding open long positions and credit (\$12.50 per contract) those clearing members holding open short positions.

**45231.D. Position Accountability**

(Refer to Rule 45202.D. Position Accountability)

**45231.E. Accumulation of Positions**

(Refer to Rule 45202.E. Accumulation of Positions)

**45231.F. [Reserved]**

**45231.G. Termination of Trading**

“Cleared only” futures contracts shall terminate at 11:00 a.m. (London Time)\* on any London bank business day that is also an Exchange business day, mutually agreed to by buyer and seller, other than applicable standard termination dates in futures offered for “trading and clearing.”

\* This is 5:00 a.m. (Chicago Time) except when Daylight Savings Time is in effect in either, but not both, London or Chicago.

**45231.H. Contract Modifications**

(Refer to Rule 45202.H. Contract Modifications)

**45232. SETTLEMENT PROCEDURES**

**45232.A. Final Settlement Price**

The final settlement price shall be 100 minus the British Bankers' Association Interest Settlement Rate for Three-Month Eurodollar Interbank Time Deposits, rounded to the nearest 1/10000th of a percentage point, on the contract termination date. (Decimal fractions ending in a five (5) are rounded up. For example, an average rate of 8-21/32% - 8.65625% - would be rounded to 8.6563 and then subtracted from 100 to determine a final settlement price of 91.3437.) (The 16 reference banks selected by the British Bankers' Association to provide offered rates are major participants in the London Eurodollar Market.)

**45232.B. Final Settlement**

(Refer to Rule 45203.B. Final Settlement)

**45233. FAILURE TO PERFORM**

(Refer to Rule 45204. FAILURE TO PERFORM)

**45234. [RESERVED]**

**45235. EMERGENCIES, ACTS OF GOD, ACTS OF GOVERNMENT**

(Refer to Rule 45206. EMERGENCIES, ACTS OF GOD, ACTS OF GOVERNMENT)

(End Chapter 452)