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Craig S. Donohue  
Chief Executive Officer

February 8, 2008

VIA E-MAIL

Mr. David Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

COMMENT

OFFICE OF THE SECRETARIAT

2008 FEB 11 AM 9:30

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Re: ICE Clear Section 4(c) Request – 72 F.R. 68862 (December 6, 2007)

Dear Mr. Stawick:

CME Group, Inc. ("CME Group") appreciates the opportunity to comment on the exemption requests filed by ICE Clear U.S., Inc. ("ICE Clear") and ICE Futures U.S., Inc. ("ICE Futures U.S.") pursuant to Section 4(c) of the Commodity Exchange Act ("CEA").

CME Group was formed by the July 2007 merger of Chicago Mercantile Exchange Holdings Inc. and CBOT Holdings, Inc. CME Group is the parent of Chicago Mercantile Exchange Inc. and the Board of Trade of the City of Chicago, Inc. ("CBOT"). CME Group also owns Swapstream Operating Services Limited, an OTC trading facility, and owns an interest in FXMarketspace Limited, an FX trading platform that is authorized and regulated by the United Kingdom's Financial Services Authority. CME Group serves the global risk management needs of our customers and those who rely on the price discovery provided by the competitive markets maintained by CME Group. CME Group offers a comprehensive selection of benchmark products in most major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, agricultural commodities, energy, and alternative investment products such as weather and real estate. Additionally, CME Group offers order routing, execution and clearing services to other exchanges by means of our Globex® electronic trading platform and our clearing house. CME Group is traded on the New York Stock Exchange and NASDAQ under the symbol "CME."

I. Overview

ICE Clear has requested that the Commission exercise its Section 4(c) exemptive authority to extend the exemption granted under Part 35 of the Commission's regulations to certain over-the-counter ("OTC") agricultural swap transactions that do not meet all of the requirements of Regulation 35.2. ICE Futures U.S. has also requested that the Commission exercise its Section 4(c) exemptive authority to determine that ICE Futures U.S. floor brokers and floor traders are eligible swap participants, for the purpose of entering into these OTC agricultural swap transactions, when they are trading for their own accounts.<sup>1</sup>

<sup>1</sup> ICE Clear has also filed a related petition for an order pursuant to Section 4d of the CEA to permit it to commingle customer funds used to margin these OTC agricultural swap transactions with other funds held in segregated accounts.

ICE Clear's petition represents the first formal request that the Commission grant an exemption that would permit a derivatives clearing organization ("DCO") to clear standardized agricultural swap contracts that are traded in an OTC environment. CME Group believes that the Commission should promptly respond to any such exemption requests from any DCO in order to facilitate the extension of the benefits of centralized clearing to OTC agricultural swap markets, subject to appropriate conditions to protect the market and market participants. The Commission should also consider whether it may be appropriate to propose a general rule, subject to public comment, that would apply to any DCO that wishes to clear OTC agricultural products in the future. Such a general rule could serve as a framework that would allow additional OTC agricultural products to be cleared by a DCO without the need for an individualized exemption request. However, we do not believe that any general rulemaking should delay the Commission's response to petitions that are filed by DCOs with respect to specific products. Additionally, the Commission should remove the regulatory impediments that currently prohibit a derivatives transaction execution facility ("DTEF") from listing agricultural futures and options contracts unless the Commission grants a product-specific exemption, in order to permit the development of an alternative where market participants could execute agricultural transactions in the context of a regulated market.

II. The Commission should permit the clearing of standardized OTC agricultural swap contracts, pursuant to appropriate conditions to protect the market and market participants, in a manner which would establish a level playing field for all DCOs.

The Commodity Futures Modernization Act of 2000 provided legal certainty for certain swap transactions by incorporating an explicit exemption from most provisions of the CEA in Section 2(g). However, the Section 2(g) definition of "excluded swap transactions" does not apply to swap transactions that involve agricultural commodities. Commission Regulation 35.2 sets forth the conditions under which agricultural swaps, and persons dealing in agricultural swaps, will be exempt generally from the CEA (except with respect to the anti-fraud and anti-manipulation provisions). Specifically, the Regulation 35.2 swap exemption only applies to agricultural swaps that are entered into solely between eligible swap participants, are not executed on or through a multilateral transaction execution facility, are not cleared, and are not part of a fungible class of agreements that are standardized as to their material economic terms. Regulation 35.2 also provides that any person may apply to the Commission for an exemption for other arrangements or facilities. ICE Clear is seeking an exemption from both the requirement that OTC agricultural swaps must not be cleared, and from the requirement that such swaps must not be fungible and standardized.

CME Group believes that the Commission should promptly respond to any specific exemption requests from individual DCOs, and should apply the same standards with respect to its consideration of each such request in order to ensure a level playing field among DCOs. However, without delaying its consideration of any particular exemption request, the Commission should also consider whether it may be appropriate to propose a general rule, subject to public comment, that would set forth the conditions that would apply to any DCO that wishes to clear OTC agricultural products in the future. Such a rule could permit DCOs to clear additional OTC agricultural swaps without the need to make an individualized

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petition with respect to each and every product, and thus further the interests set forth in Section 4(c) of the CEA.

The statutory standards set forth in Section 4(c) of the CEA establish the framework for the analysis of the appropriate conditions that should be attached to any exemption from the Regulation 35.2 requirements that agricultural swaps must not be cleared and must not be standardized and fungible. Specifically, the Commission must determine that: (1) the exemption will promote responsible economic or financial innovation or fair competition; (2) the exemption will be consistent with the public interest and the purposes of the CEA<sup>2</sup>; and (3) the contracts will be entered into solely between appropriate persons and will not have a material adverse effect on the ability of the Commission or the relevant market to discharge their regulatory or self-regulatory duties under the CEA.

The Commission should determine the appropriate conditions under which any OTC agricultural swaps with respect to which an exemption is sought might meet these requirements. The Commission should specifically consider the standards that should apply to all DCOs that seek to clear standardized and fungible agricultural swaps, including the applicability of any requirements related to:

- the nature of the permissible underlying commodities and the liquidity of the underlying markets;
- whether and under what circumstances it is permissible to substitute cleared swaps into "look-alike" futures contracts;
- reporting of settlement prices, volume and open interest;
- large trader reporting, speculative position limits or position accountability;
- risk management practices of the DCO;
- requirements applicable to clearing members carrying such positions relating to financial and operational resources, risk management, recordkeeping, and reporting;
- any conditions under which the funds used to margin such contracts will be permitted to be commingled with segregated funds;
- who will qualify as an eligible swap participant; and/or

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<sup>2</sup> The applicable public interest and the purposes of the CEA are identified in Section 3 of the CEA, which provides as follows:

- (a) **FINDINGS.** – The transactions subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.
- (b) **PURPOSE.** – It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

- information sharing arrangements with respect to related products executed on a regulated market.

By applying the same conditions to protect market and market participants with respect to any permitted cleared and standardized OTC agricultural products, the Commission could ensure the promotion of responsible innovation and fair competition, consistency with the public interest and purposes of the CEA, and the ability of the Commission and the affected market to fulfill their regulatory responsibilities.

III. The Commission should remove the regulatory impediments which currently prohibit a DTEF from listing agricultural futures and options unless it obtains a case-by-case exemption.

The Commission should also remove the regulatory impediments which currently prohibit a DTEF from listing agricultural futures and options without obtaining a product-specific exemption. A registered DTEF may be an attractive alternative for some market participants that are currently expressing an interest in cleared, standardized OTC agricultural products. The Commission has clear authority to eliminate these impediments, as described below. Moreover, if these products could be executed pursuant to the rules of a DTEF, market participants would receive all of the benefits of trading on a regulated market under the oversight of the Commission, floor traders and floor brokers would qualify as "eligible contract participants" under Section 1a(12) of the CEA, and any customer could trade these products if its clearing FCM had net capital of at least \$20 million.

The need for Commission approval to list agricultural products on a DTEF is imposed by two separate sections of the CEA. First, Section 5(e) was adopted to preclude the listing of futures on enumerated commodities on a DTEF if those futures had been trading on a contract market as of December 21, 2000. However, the Commission was granted exemptive authority, "[i]n order to promote responsible economic or financial innovation and fair competition . . .", to permit futures and options on these commodities to be traded on a DTEF, pursuant to Commission rules.<sup>3</sup>

Second, Section 5a(b)(2) of the CEA governs the requirements for the underlying commodities for which futures and options may be listed on a DTEF. It prohibits most agricultural commodities from being listed without a Commission determination, "based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation . . . ." The Commission's interpretation of this provision severely

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<sup>3</sup> Section 5(e) of the CEA provides as follows:

(e) CURRENT AGRICULTURAL COMMODITIES.-

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(4) that is available for trade on a contract market, as of [December 21, 2000], may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

restricts the listing of agricultural futures on DTEFs unless the exchange has a demonstrable capability to make manipulation highly unlikely.<sup>4</sup> Commission Regulation 37.3(a)(4) puts all futures based on the enumerated commodities into the same class and requires a thorough demonstration that the Commission's criteria have been met with respect to each individual product, before they can be listed on a DTEF. Regulation 37.3(a)(3) requires the same demonstration for non-enumerated agricultural commodities. Thus Congress and the Commission have restricted agricultural futures and options to DCMs absent special circumstances that will permit them to be traded on a DTEF.

CME Group welcomes a re-examination of the limitations on trading agricultural futures and options contracts, including enumerated commodities, on DTEFs. In particular, CME Group urges that the Commission consider granting a general exemption, by rule, that will permit the listing and trading of such products on DTEFs in any case where the DTEF, or its affiliated DCM, where applicable, has an exemplary record as a self-regulatory organization. The Commission has the authority to do so under Section 5(e) of the CEA "[i]n order to promote responsible economic or financial innovation and fair competition . . . ." If the listing criteria for a DTEF were eased, it might provide a viable alternative to help meet the current market demand for the clearing of standardized OTC agricultural products by permitting similar products to receive the benefits of trading in a regulated environment. Moreover, it would be inconsistent to permit the clearing of standardized OTC agricultural products while not permitting agricultural futures and options products to be traded on a registered DTEF that is subject to Core Principles and Commission oversight.

#### IV. Conclusion

For all of the reasons discussed above, CME Group believes that the Commission should promptly address any particular requests for exemptions from the requirements of Regulation 35.2 that would permit a DCO to clear standardized OTC agricultural swaps, in a manner that would establish a level playing field for all DCOs. Without delaying its consideration of any exemption requests, the Commission should also consider the appropriateness of proposing a general rule for public comment that would set forth generally applicable conditions with respect to the clearing of OTC agricultural products that would apply to new products, and which may obviate the need for individualized exemption requests in the future. Additionally, the Commission should remove regulatory impediments in order to allow DTEFs to list agricultural futures and options contracts, without the necessity for a product-specific exemption, based on the self-regulatory record of the DTEF, or its affiliated DCM, where applicable, in order to provide an alternative for such products to be traded on a Commission-regulated market. We do not believe that standardized OTC agricultural contracts should be permitted to be cleared by a registered DCO while at the same time restricting them from being traded on a regulated DTEF platform.

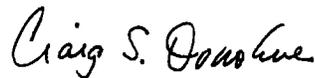
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<sup>4</sup> Among other things, Section 5a(b)(2) of the CEA permits a DTEF to trade futures and options contracts where ". . . (B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation; . . ." This provision does not exclude agricultural commodities. However, in adopting Commission Regulation 37.3, the Commission made a determination that it would interpret this provision to only encompass commodities that meet the definition of "excluded commodities" in Section 1a(13) of the CEA, which does not include agricultural commodities. Regulation 37.3(b).

Mr. David Stawick  
February 8, 2008  
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We would be happy to discuss any of these issues with Commission staff. Please feel free to contact me at (312) 930-8275 or [Craig.Donohue@cmegroup.com](mailto:Craig.Donohue@cmegroup.com); Richard Lamm, Managing Director, Regulatory Counsel, at (312) 930-2041 or [Richard.Lamm@cmegroup.com](mailto:Richard.Lamm@cmegroup.com); or Anne Polaski, Associate Director and Regulatory Counsel, at 312-338-2679 or [Anne.Polaski@cmegroup.com](mailto:Anne.Polaski@cmegroup.com). Thank you for your consideration.

Sincerely,



Craig S. Donohue

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cc: Acting Chairman Walter Lukken  
Commissioner Bart Chilton  
Commissioner Michael Dunn  
Commissioner Jill E. Sommers  
Ananda Radhakrishnan  
Richard Shilts  
David Van Wagner