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RECEIVED COMMENT
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July 30, 2001

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

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

VIA FACSIMILE AND E-MAIL

Re: File No. S7-11-01, 66 Fed. Reg. 27560 (May 17, 2001) – Commodity Futures Modernization Act of 2000 and Securities Exchange Act of 1934 – Narrow-Based Security Indexes.

Dear Ms. Webb and Mr. Katz:

Chicago Mercantile Exchange Inc. ("CME") is pleased to offer additional comments on a proposal recently published by the Commodity Futures Trading Commission and the Securities and Exchange Commission ("Commissions") regarding rules designed to implement the definition of a Narrow-Based Security Index ("NBI") under the Commodity Futures Modernization Act of 2000 ("CFMA"). CME believes that comments on this matter submitted by the Futures Industry Association ("FIA") on July 17 require discussion.

FIA Alternative Proposal – FIA's letter of July 17 focuses on the treatment under the CFMA of security-index futures based on foreign-issued securities and traded on foreign boards of trade. FIA argues that although foreign securities markets are not as well developed as domestic markets, the benefits of allowing domestic market participants to have access to them are large enough that the strict standard for defining an NBI should not apply to them. FIA proposes an alternative weaker standard that would apply to security index futures that contain foreign-issued securities and that are listed on foreign boards of trade. FIA provides no justification for applying the weaker standard only to futures trading on foreign boards of trade.¹ CME believes that there is no valid reason to make a distinction based solely on the location of a board of trade. CME also believes that such a distinction would unfairly place domestic boards of trade at a competitive disadvantage and therefore would be contrary to Congress's explicit intentions in enacting the CFMA. CME has no other objections to the FIA proposal and would support it – for the reasons put forward by FIA and the other commenters – if made applicable to all boards of trade.

¹ Two commenters – Barclays Global Investors and Goldman, Sachs & Co. – wrote letters supporting FIA's proposal, but both concentrated on the differences in underlying markets and the need for risk management tools. Neither addressed the issue of discrimination against domestic boards of trade.

Ms. Jean A. Webb and Mr. Jonathan G. Katz

June 30, 2001

Page 2

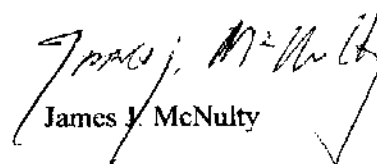
Statutory Authority – FIA cites section 3(a)(55)(C)(iv) of the Securities Exchange Act of 1934 (“Exchange Act”) and section 1a(25)(B)(iv) of the Commodity Exchange Act (“CEA”) as the statutory authority for its proposed weaker standard for foreign boards of trade. The statutes are virtually identical and exclude from NBI status indexes where “...a contract of sale for futures delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the [Commissions]....” But the Exchange Act at 3(a)(55)(C)(vi) and the CEA at 1a(25)(B)(vi) provide the same authority with respect to *all* boards of trade wherever located: “...a contract of sale for futures delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the [Commissions]....” Therefore, the Commissions clearly have the authority to provide to all boards of trade the relaxed treatment recommended by FIA for futures on indexes of foreign securities.

FIA does not explain why it chose to cite the narrower of the two paragraphs. Instead, FIA argues that the CEA at 4(c) allows the Commissions to grant exemptions from the requirements for trading security futures products on boards of trade contained in section 2(A)(1)(D) of the CEA. But seeking an exemption from rules and regulations is much more time-consuming and uncertain than the direct regulatory relief that FIA is proposing for foreign boards of trade. CME is not persuaded that it would be treated equitably vis-a-vis foreign boards of trade under the FIA’s proposal.

Alternative Proposal – CME notes that Philip McBride Johnson has recommended that the Commissions consider regulations to allow Eligible Contract Participants (“ECPs”) to trade security futures on boards of trade regardless of whether the underlying index is narrow or broad based. The logic is that ECPs are allowed to do so now in the upstairs market, so what is the point of prohibiting them from doing so on regulated boards of trade? As noted above, the Commissions have clear statutory authority to provide such exclusions. CME believes that this proposal deserves serious consideration by the Commissions.

CME appreciates the opportunity to comment on the proposed rules and hopes that its opinions and recommendations will be considered seriously by the Commissions.

Respectfully submitted,


James J. McNulty

cc: The Honorable Laura S. Unger
The Honorable James E. Newsome
The Honorable Isaac C. Hunt, Jr.
The Honorable Barbara Pederson Holum
The Honorable David D. Spears
The Honorable Thomas J. Erickson