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CHICAGO MERCANTILE EXCHANGE INC.

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Via Facsimile

June 25, 2002

Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Comments on Amendments to Trading Facility Rules

To Whom It May Concern:

Chicago Mercantile Exchange Inc. ("CME" or "Exchange") appreciates this opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, which were published in the Federal Register on April 26, 2002. In particular, the Exchange would like to register its concerns regarding the Commission's proposed amendments regarding exchange fees.

Regulation 40.6 (c), which governs the rules that may be placed into effect without prior certification to the Commission has been amended in a manner that creates an implication that any new fee or fee change greater than one dollar may not be implemented without prior certification to the Commission. The Commission characterizes the change to Regulation 40.6 as intended to make clear, "that the imposition or change of any fee by less than $1.00, including delivery-related fees, need not be certified to the Commission." This language creates the unfortunate impression that fee changes that are unrelated to any specific contract, and that may be de minimus in relationship to the existing fee that is being change are being converted from administrative actions about which the Exchange is merely required to inform the Commission to matters that need to be certified.

It is possible that the Commission's proposal has consequences other than those that were intended. CME administers a business that makes charges for a wide variety of services performed. Most of these charges have no direct impact on the trading of any contract subject to the Commission's jurisdiction. Moreover, one dollar is generally an insignificant percentage of such charges. For example, CME charges fees for dues, badges, telephone lines, telephone installation, booth space, real time quotations, historical information, rule books, software licenses, etc. Such matters have never been considered to constitute or relate to the "terms and conditions" of a futures contract.

If the Commission were to require certification of such fees it would risk inserting itself in every contest between the Exchange and its members respecting the proper allocation of costs and expenses. For example, a fee cap reducing the charges to major liquidity providers might be deemed a fee reduction of more than one dollar. CME does not believe that these basic business decisions that do not affect terms and conditions of specific contracts should be subject to review and stay under Regulation § 40.6 (b) at the behest of a competitor or market user. Nor does CME believe that the Commission is in any position to adjudicate such matters. The Commission can limit the impact of this change by clarifying that certification is only required for new fees or fee changes of more than one dollar that relate to the "Terms and Conditions" of contracts traded on the Exchange. The Commission could clarify this further by noting in the explanatory material that an exchange's only obligation with respect to administrative fees is to report them to the Commission on a weekly or other periodic basis.

With respect to the requirement under proposed Regulation § 40.4 (b)(7), CME suggests that this threshold should apply only to fees that are under the direct and exclusive control of an exchange. There are many fees that apply to the enumerated commodities over which exchanges have absolutely no control, and therefore the exchanges serve as little more than transfer agents. These fees include such things as USDA grading and inspection charges, which are passed on to the end-user intact, without any "markup" by an exchange. These fees can be quite substantial: USDA charges a flat fee of $150 per delivery unit for carcass grading of Live Cattle, and will charge $300 per delivery unit for the grading of Frozen Pork Bellies effective November 1, 2002. Furthermore, increases in these charges in recent years have been many multiples of the proposed $1.00 per contract. It is absolutely essential that exchanges be allowed to "pass through" all such externally imposed costs and cost increases to end-users, in the same manner that exchanges are allowed to adopt changes to grades or standards of commodities established by an independent third party. See, Regulation § 40.6(c)(2)(ii). Exchanges should not be required to submit to an approval process—the inherent delays of which may force the exchange to absorb these costs or impose them on the incorrect party.

This problem is illustrated by reference to the standard freight rate for Live Cattle deliveries, found in CME Rule 1504.C.8. The standard freight rate is used to reimburse the delivering short for his additional transportation costs in carcass-graded deliveries. This rate is established annually, based on a survey of livestock trucking firms, and applies to deliveries for that calendar year in contracts that have already listed for trading. In 2001, the rate was increased by 25 cents per mile, from $2.00 to $2.25 per mile. If the Commission's proposed $1.00 per contract limit had been in effect, the new, higher freight rate would have applied to only the first 4 miles of the applicable distance! This would have seriously disadvantaged the delivering short because he would have paid the actual, higher freight rate on the entire distance. Similar examples could be given for other delivery-related costs at CME, and likely for enumerated commodity contracts traded at other exchanges.

CME appreciates the opportunity to comment on this issue, and is willing to provide any additional information that the Commission might find useful in its consideration of these comments.

Sincerely,

James J. McNulty