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September 7, 2006

Via Electronic Delivery

COMMENT

Ms. Eileen Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Regulatory Governance: Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations; 71 Fed. Reg. 38,740 (July 7, 2006)

Dear Ms. Donovan:

The Chicago Mercantile Exchange Inc. ("CME") welcomes the opportunity to provide its views to the Commodity Futures Trading Commission ("Commission" or "CFTC") respecting the proposed Acceptable Practices for compliance with Core Principle 15 in section 5(d)(15) of the Commodity Exchange Act ("CEA" or "Act").

CME was the first U.S. exchange to demutualize and become publicly held. CME is currently the largest and most diverse financial exchange in the United States and the largest derivatives clearing organization in the world. As an international marketplace, CME brings together buyers and sellers on its CME Globex® electronic trading platform and trading floors. CME offers futures and options on futures primarily in five product areas: interest rates, equity indexes, foreign exchange, commodities and alternative investments. As a pioneer in the globalization of the futures markets, CME has helped to expand the customer base for futures products beyond traditional boundaries, serving users around the world.

CME believes that its leadership role in evolving from a non-profit, mutual organization to a shareholder owned public company will provide the Commission with a unique and valuable perspective on the optimal governance structure for self-regulatory organizations. CME has consistently been in the forefront of implementing changes to enhance its governance structure and self-regulatory function. Currently, 80% of our Board members are categorized as independent under the New York Stock Exchange ("NYSE") and NASDAQ listing standards. Seven of our directors have no industry relationships other than service on our Board. Moreover, as evidence of our leadership role in governance matters, CME determined in 2004 that it was appropriate to require that our Audit, Compensation and Governance Committees consist of a majority of non-industry directors, and that the Chairman of each such committee should be a non-industry director.

Additionally, CME has been a leader with respect to the disciplinary process. In 1990, CME added non-members to CME hearing panels and the degree of influence of non-members

has consistently been expanded. Currently, our Probable Cause Committee and Business Conduct Committee is each comprised of three members and three non-members, plus a non-voting chairman, which may be a member or non-member. No other futures exchange has been as proactive as CME in recognizing the value of non-member participants in the disciplinary process and requiring significant non-member representation. Also, in April, 2004, CME became the first futures exchange to appoint a board-level committee devoted to self-regulatory oversight. Our Market Regulation Oversight Committee ("MROC") is comprised solely of directors with no industry affiliation and reports to the CME board on an annual basis concerning the independence of CME's regulatory functions from CME's business operations, the independence of CME regulatory personnel from improper influence by industry directors regarding regulatory matters, and CME's compliance with its statutory self-regulatory responsibilities. In addition, the MROC reviews the funding and resources that CME has allocated to Market Regulation.

All of these changes and enhancements to our governance procedures were made on our own initiative without prescriptive direction from any regulatory agencies.

Summary

The Commission's proposed Acceptable Practices consist of three requirements. First, designated contract markets ("DCMs") would be required to have a board comprised of at least fifty percent "public" directors. Second, it calls upon exchanges to establish a regulatory oversight committee ('ROC") comprised solely of "public directors" with certain specified responsibilities and obligations to oversee regulatory functions. Finally, the Commission proposes that each disciplinary panel at all exchanges include at least one public participant.

The Commission, in issuing the proposed Acceptable Practices for section 5(d)(15) of the CEA, or Core Principle 15, states that: "The proposed Acceptable Practices would provide designated contract markets ('DCMs') with a safe harbor for compliance with selected aspects of Core Principle 15's requirement that they minimize conflicts of interest in their decision-making." 71 Fed. Reg. 38,740, 28,740 (July 7, 2006). The Commission's proposed safe harbor – the board composition requirement, the "public" director definition and the prescriptive rules for regulatory oversight committees and disciplinary panels – raises two fundamental questions. First, does the Commission have the authority under the Act to propose these requirements? Second, if the Commission has the authority, do the proposed requirements reasonably fit the statutory language and purpose?

CME urges the Commission not to adopt the proposed Acceptable Practices. CME does not believe that the language of the Act grants the Commission the authority to regulate board composition of exchanges other than mutually owned exchanges or dictate the formation or conduct of a ROC. In addition, the proposed safe harbor unfairly shifts the burden of demonstrating compliance with the Core Principle to the exchange in the event the exchange chooses not to follow the narrowly defined path laid out by the Commission, in contravention of the intent of the Commodity Futures Modernization Act ("CFMA"). Finally, the Commission's proposal is not demonstrably necessary to further legitimate regulatory concerns and it would subject U.S. futures exchanges to a degree of scrutiny and oversight substantially greater than that imposed on non-U.S. futures exchanges.

More specifically, CME notes the following concerns regarding the proposed Acceptable Practices, each of which are addressed more fully below.

1. The Commission does not have the statutory authority to regulate board composition of demutualized exchanges or to regulate the board's decision-making process and the day-to-day operations of board committees.

2. The proposed Acceptable Practices impermissibly impose required means for complying with the Core Principles that contravene the performance standards approach of the CFMA.

3. The obligation of CME's directors to serve the needs of all market participants is defined and controlled by CME's obligation to ensure that we fully comply with all of our legal obligations. The Commission's formulation of this responsibility seems to go beyond these parameters and impose an undefined obligation on our directors to act in a manner that serves the interest of market participants which may be inconsistent with his or her fiduciary duties under Delaware law.

4. The Commission has relied on uninformed and biased speculation to support its efforts to dictate board structure for demutualized exchanges.

5. There is no basis to conclude that either a "public" director or a board of directors comprised of at least 50% "public" directors would have a greater incentive than any exchange or other industry member to make the optimal investment in self-regulation.

6. The Commission has failed to consider the costs and benefits of the proposed Acceptable Practices as required by the Act.

7. The proposed Acceptable Practices inflexibly impose uniform requirements upon all exchanges without regard to the nature of a particular exchange or the futures products traded on that exchange.

8. To the extent this proposal evidences a return to a prescriptive regulatory regime, U.S. exchanges will be unfairly disadvantaged vis-à-vis their European counterparts, which are able to compete more effectively under flexible, principles-based guidelines.

BACKGROUND

Shortly before Congress added the Core Principles to the Act with the passage of the CFMA in 2000, the Commission approved CME's application to become a Delaware for-profit corporation and to demutualize by converting its memberships into common stock and rights representing trading privileges in CME.

We believe that CME has created a successful business model that continues to evolve and build on our legacy of innovation and leadership to benefit our customers and our

shareholders. As reflected in CME's certificate of incorporation approved by the Commission, all of CME's outstanding shares are held by Chicago Mercantile Exchange Holdings Inc., a Delaware for-profit corporation. CME Holdings completed its initial public offering in December 2002 and its Class A common stock is listed on both the NYSE and NASDAQ. At the present time, CME's market capitalization exceeds $15 billion and approximately 80% of the company's shareholders are institutional investors. Of the remaining 20% of individual owners, only a subset have membership privileges in the exchange.

Before the CFMA was enacted in December 2000, most exchanges were organized as member-owned, non-profit, mutual organizations. In a letter dated November 30, 1999, the chairmen and other members of the House and Senate Committees on Agriculture requested that the Commission "use the exemptive authority granted it by the Commodity Exchange Act to lessen regulatory burdens on United States' futures markets so that they may compete more effectively." In response, the Commission issued a February 22, 2000 staff report entitled "A New Regulatory Framework," which laid the foundation for the CFMA's flexible principles-based approach to regulation. Before the CFMA, U.S. futures exchanges had to seek approval of every new contract and every significant rule. It was nearly impossible to compete effectively with exchanges in markets whose regulators imposed performance standards rather than prescriptive standards. The CFMA greatly improved the competitive environment in the U.S. by adopting a performance standards rather than a prescriptive standards approach to regulating the U.S. exchanges.

Overall, we believe that the Commission has recognized the significant benefits of the flexible principles-based regulatory framework that Congress adopted in the CFMA. Rather than attempt to set specific prescriptive requirements for the composition of boards, regulatory oversight committees and disciplinary panels of U.S. exchanges, it is better to permit those exchanges to seek optimal ways to comply with the Core Principles based on the needs of each individual exchange. As Commissioner Walt Lukken recently remarked in the Hearing on Boards of Trade Located Outside the U.S. on June 27, 2006, the CFMA's "'principles-based' regulatory regime . . . puts the regulatory focus on the desired outcome instead of the means, allowing compliance with different paths." We agree with the Commission's statement that "self-regulation continues to be the most effective and efficient regulatory model available to the futures industry," 71 Fed. Reg. 38,740, 38,741 (July 7, 2006), and we encourage the Commission to continue its leadership in effectuating this regulatory framework.

Discussion

1. The Commission does not have the statutory authority to regulate board composition of demutualized exchanges or to regulate the board's decision-making process and the day-to-day operations of board committees.

The Act sets forth eighteen Core Principles with which boards of trade designated as contract markets must comply: "To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection." 7 U.S.C. §7(d)(1). Congress allocated the authority to the boards of trade, not to the Commission, to determine how a particular board of trade shall comply with the core principles: "The board of

trade shall have reasonable discretion in establishing the manner in which it complies with the core principles." 7 U.S.C. §7(d)(1).

As the Commission has previously recognized, of the "18 core principles applicable to DCMs, three . . . directly relate to exchange governance: Core Principle 14-Governance Fitness Standards; Core Principle 15-Conflicts of Interest; and Core Principle 16-Composition of Boards [of] Mutually Owned Contract Markets." 69 Fed. Reg. 32,326, 32,327 (June 9, 2004). In the proposed Acceptable Practices regarding governance, the Commission, however, addresses only Core Principle 15, ignoring the language in the other Core Principles, specifically the governance Core Principles 14 and 16.

Core Principle 15, "Conflicts of Interest," provides: "The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest." 7 U.S.C. §7(d)(15). Thus, Congress acknowledged that conflicts of interest may exist and deferred to the exchanges to determine their own procedures and practices for minimizing and resolving conflicts of interest. Congress did not impose any requirement specifying the composition of boards of for-profit exchanges or require any specific procedures for regulatory oversight or disciplinary panels at the exchanges.

Instead, Congress adopted a core principle specifically addressing the composition of boards for mutually owned exchanges and not for any for-profit exchange. Core Principle 16, "Composition of boards of mutually owned contract markets," provides: "In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants." 7 U.S.C. §7(d)(16). Even when Congress chose to direct the performance of the board of a mutually owned exchange, Congress required diversity by requiring representation of market participants, and did not require representation of so-called "public" directors with no relationship to the industry. Congress chose to adopt a performance standard only for boards of mutually owned exchanges, whose concentrated ownership gives rise to greater concerns about potential conflicts of interest. Congress thus made clear that it was not regulating board composition of demutualized exchanges.

Moreover, in Core Principle 14, Congress addressed the qualification requirements for directors of the exchanges, providing: "The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph)." 7 U.S.C. §7(d)(14). Congress did not impose any requirement or even suggest in Core Principle 14 that the "public" nature of a director has any bearing on whether the director is qualified. Instead, Congress deferred to the exchanges to determine fitness standards for the exchanges' directors.

Congress singled out the board composition of mutually owned exchanges and left demutualized exchanges to fashion specific rules concerning the composition of their boards. Congress adopted Core Principle 16 addressing only mutually owned exchanges against the backdrop of longstanding corporation law imposing well-defined fiduciary duties owed by directors to their companies and shareholders. Congress was well aware of demutualization of the exchanges when the CFMA was enacted. CME, for example, began submitting its

demutualization plan to the Commission for approval in May 2000, and demutualized in November 2000, before the CFMA was passed in December 2000. In approving CME's demutualization plan, the Division of Trading and Markets noted that although CME was the first contract market to submit such a plan to the Commission, the Chicago Board of Trade and the New York Mercantile Exchange were also pursuing demutualization plans by June 2000.[1] Congress chose not to impose additional federal regulation in addition to the existing state corporate law duties, and did not authorize the Commission to do so either.

It is improper for the Commission to ignore the statutory limits on its authority because it thinks a particular outcome is desirable. The principle that an agency's enabling statute governs was forcefully applied by the United States Court of Appeals for the District of Columbia overturning the Securities and Exchange Commission's construction of the term "client" in the Investment Advisers Act of 1940. Goldstein v. Securities and Exchange Comm'n, 2006 WL 1715766 (D.C. Cir. June 23, 2006). The court held that "[a]n agency construction of a statute cannot survive judicial review if a contested regulation reflects an action that exceeds the agency's authority. It does not matter whether the unlawful action arises because the disputed regulation defies the plain language of a statute or because the agency's construction is utterly unreasonable and thus impermissible." Id. at *7 (quoting Aid Ass'n for Lutherans v. United States Postal Serv., 321 F.3d 1166, 1174 (D.C. Cir. 2003)). The court added that "[t]he 'reasonableness' of an agency's construction depends," in part, "on the construction's 'fit' with the statutory language, as well as its conformity to statutory purposes." Goldstein, supra, at *7 (quoting Abbott Labs. v. Young, 920 F.2d 984, 988 (D.C. Cir. 1990)). The fact that there may have been a clear regulatory imperative for demanding that certain hedge fund advisers register was deemed irrelevant: "That the Commission wanted a hook on which to hang more comprehensive regulation of hedge funds may be understandable. But the Commission may not accomplish its objective by a manipulation of meaning." Goldstein, supra, at *8.

2. The proposed Acceptable Practices impermissibly impose required means for complying with the Core Principles that contravene the performance standards approach of the Act.

CME is concerned that the proposed Acceptable Practices are contrary to the purpose of the regulatory relief Congress enacted in the CFMA by adopting a fundamental shift from a prescriptive, rules-based regulatory regime to a flexible, principles-based, performance standards approach. The proposed Acceptable Practices are a stark reversal of the positive trend that began with CFMA because they purport to impose detailed requirements upon the exchanges and to shift the burden to require the exchanges to prove why they need not follow these proposed requirements. This regulatory approach is precisely what Congress rejected with the CFMA.

Congress carved out a specific role for the Commission regarding the Core Principles, permitting the Commission to "issue interpretations, or approve interpretations submitted to the Commission, of [the Core Principles] to describe what would constitute an acceptable business practice under such section." 7 U.S.C. §7a-2(a)(1). Congress made clear, however, that any

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[1] *See* Memorandum from Division of Trading and Markets to the Commission regarding CME's Proposed Demutualization Plan, at p. 2 n.1, available at www.cftc.gov/tm/tmcme_demutualization_memo.htm.

such interpretation "shall not provide the exclusive means for complying with such sections." 7 U.S.C. §7a-2(a)(2). Instead of requiring an exchange to prove that any new contracts or new rules or rule amendments adopted by the exchange comply with the Core Principles, Congress placed the burden on the Commission to find that the new contract or new rule or rule amendment would violate the Core Principles. 7 U.S.C. §7a-2(c)(3). Thus, the Commission must find, based on substantial evidence, that an exchange has violated a Core Principle, before the Commission can take any regulatory action. 7 U.S.C. §7a-2(d).

The Commission has previously acknowledged the limits on its authority to impose requirements regarding the Core Principles. The Commission stated in issuing rules implementing the Core Principles that "the core principles are specifically designed to afford flexibility to trading facilities to design innovative trading mechanisms in an expeditious manner." 65 Fed. Reg. 77,962, 77,973 (Dec. 13, 2000). The prescriptive nature of the proposed safe harbor is exacerbated by the Commission's statement that exchanges must demonstrate compliance with Core Principle 15 if they do not choose the safe harbor approach.

The Commission has also recognized that it lacks authority to require exchanges, which do not follow suggested guidance or acceptable practices to prove how they comply with the Core Principles. At the time the Core Principles were enacted, the Commission explicitly stated that "any interpretative advice, assistance or direction provided by the Commission would constitute guidance only. It does not preclude any facility from complying with the core principle in some other manner." Id. The Commission made clear that the new regulatory framework adopted by the CFMA "does not place the burden of proof upon those covered by the framework to demonstrate why a particular practice that differs from the specific guidance offered in a statement of acceptable practices complies with a particular core principle." Id. The Commission explained that "[b]y moving from prescriptive rules to more general core principles, self-regulatory organizations will have not only greater flexibility in how they meet the regulatory requirements, but more responsibility as well." Id. Thus, the "guidance offered on the means of complying with the core principles is for illustrative purposes only and is not intended to be a mandatory checklist for compliance." Id. at 77,974.

The Commission's issued "Guidance on, and Acceptable Practices in, Compliance with Core Principles," 17 C.F.R. Part 38, Appendix B, expressly provides that the "guidance for each core principle is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be used as a mandatory checklist." Id. at ¶1. Acceptable practices also are "for illustrative purposes only," and an acceptable practice "does not state the exclusive means for satisfying a core principle." Id. at ¶2. A review of the existing Guidance and Acceptable Practices for DCMs in Part 38 confirms that the proposed Acceptable Practices are a dramatic shift from a performance-based regulator approach to a prescriptive-based approach.

The language of the statute is unambiguous. The exchanges, not the Commission, determine how to comply with Core Principle 15. But here, in proposing the Acceptable Practices, the Commission states that the exchanges which elect not to abide by the Commission's new prescription "will be required, however, to demonstrate that their policies and practices with respect to governance and decision-making are in compliance with Core Principle 15 by other means." 71 Fed. Reg. at 38,743. The Act does not give the Commission the

authority to shift the burden of proving compliance to the exchange. Moreover, since the Commission has proposed an absolute numerical standard that has no relationship to avoiding conflicts of interest, there is no legitimate way to prove compliance by other means.

Here, the CFMA circumscribed the Commission's authority to impose the means for compliance with Core Principle 15, instead granting the exchanges that discretion. Congress also chose to leave board composition of demutualized exchanges up to the exchanges, restricting the application of board composition Core Principles to mutualized exchanges. The Commission does not have statutory authority to issue the proposed safe harbor or to impose the burden on exchanges to demonstrate compliance with Core Principle 15 through other means.

Notably, the Commission's published Guidance on Compliance with Core Principles for DCMs (Appendix B to Part 38) does not purport to impose any prescriptive requirements for board member qualifications and contains no "public" director notion. Indeed, the Guidance indicates a preference for industry members to participate on boards and disciplinary panels. The Commission Guidance for Core Principle 14, Governance Fitness Standards, provides that the exchanges "should have appropriate eligibility criteria . . . that should include standards for fitness and for the collection and verification of information supporting compliance with such standards." The Guidance suggests that directors of exchanges with governing responsibilities should, at a minimum, be market participants – directly contrary to the proposed "public" director requirement, which effectively would require that a majority of the board consist of non-industry directors. The Commission's Application Guidance for Core Principle 14 specifically states:

> Members with trading privileges but having no, or only nominal, equity in the facility and non-member market participants who are not intermediated and do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a "market participant."

The Commission's Guidance on compliance with the other Core Principles, including Core Principles 2, 3, 4, 9 and 12 directly governing the exchanges' self-regulatory function, contain no notion of a "public" director or non-industry participant in the exchanges' self-regulatory process.

3. The obligation of CME's directors to serve the needs of all market participants is defined and controlled by CME's obligation to ensure that we fully comply with all of our legal obligations.

The Commission's formulation of this responsibility seems to go beyond these parameters and impose an undefined obligation on our directors to act in a manner that serves the interest of market participants which may be inconsistent with his or her fiduciary duties under Delaware law.

CME's current policy on board composition is fully consistent with Delaware corporate law, as well as the federal securities laws and the NYSE and NASDAQ listing standards. All of

these corporate governance standards are designed to ensure that the board acts in the best interest of the shareholders. The price of CME's stock in the public marketplace reflects the confidence of CME's shareholders in the board's ability to represent their interests. The proposed Acceptable Practices would impose a new and unique requirement on boards of demutualized exchanges, which is a small subset of all publicly held companies.

In addition, publicly held exchanges must abide by the disclosure requirements of the Securities and Exchange Commission and the listing requirements of the securities exchanges on which their stock is traded. As CME explained in detail in its September 30, 2004 Responses to Questions posed by the Commission in its SRO Review, CME complies with the corporate governance listing standards of the NYSE and NASDAQ. CME, for example, has a Compensation Committee comprised solely of directors who are independent under applicable (both NYSE and NASDAQ) listing standards. The Compensation Committee is responsible for reviewing and approving all forms of compensation for the Chief Executive Officer and President and Chief Operating Officer. The Company's independent Audit Committee also complies with applicable (both NYSE and NASDAQ) listing standards and with the Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes-Oxley Act of 2002). In compliance with SEC rules and the listing standards, CME publicly discloses its corporate governance principles and the process for nominating directors and assigning directors to board committees in its annual proxy statement and on its website.[2]

4. The Commission has relied on uninformed and biased speculation to support its efforts to dictate board structure for demutualized exchanges.

   A. The Commission's proposal is based upon bias and speculation.

The Commission assumes that "[t]he trend towards demutualization represents an additional challenge to exchanges' performance of self-regulatory duties." 71 Fed. Reg. at 38,741. But there is nothing inherent in the for-profit structure of a demutualized exchange that increases the risk of conflicts of interest. The Commission points to no specific event or documented self-regulatory failure caused by the fact an exchange has demutualized to a for-profit entity. The papers cited in footnote 10 do not report any factual basis for the assertion that demutualization gives rise to any additional or heightened conflict of interest in exercising the self-regulatory function. 71 Fed. Reg. at 38,741 n.10. For example, the IMF Working Paper asserts that a demutualized securities exchange has "the disincentive to regulate market participants (who represent order flow and are a direct source of revenue for the exchange)," but fails to recognize that that same disincentive exists for a mutually owned exchange in which members are the sole owners and benefit directly from order flow by requiring market participants to conduct order flow through the members.

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[2] CME's corporate governance policies, including its Corporate Governance Principles, Conflict of Interest Policy, Director Independent Standards and Code of Conduct, are publicly available at http://investor.cme.com/governance/overview.cfm. Additionally, a detailed description of our process for nominating directors can be found in our most recent proxy statement, at http://investor.cme.com/edgar.cfm.

The Commission's extensive SRO Review has revealed no facts justifying the proposed Acceptable Practices for Core Principle 15. In seeking additional comments on self-regulation and SROs on November 25, 2005, the Commission explicitly sought information concerning the alleged concerns of demutualization, stating: "The Commission is particularly interested in specific examples of instances where an SRO's new commercial motives and incentives may have altered its self-regulatory behavior." 70 Fed. Reg. 71,090, 71091 (Nov. 25, 2005). Despite having requested such examples, the Commission cites none to support the proposed Acceptable Practices.

The Commission's unsupported assertion that demutualization somehow affects an exchange's conflicts of interest is contrary to the specific findings in the Commission's approval of CME's demutualization plan in 2000. The Division of Trading and Markets, in its memorandum to the Commission recommending that the Commission approve CME's new Certificate of Incorporation and By-Laws to implement its proposed demutualization plan, expressly found that "the change in status from a membership organization to a for-profit corporation does not inherently create an organization that would not have the ability or the motivation to comply with its regulatory responsibilities."[3] The Division pointed out that the potential for conflicts of interests exists regardless of the ownership structure:

> The Division also notes that the potential for conflicts of interest also is present under the current exchange organization. Traditional non-for-profit exchanges, operated by members, are interested in enhancing seat value and reducing costs. Furthermore, disciplinary procedures used in the current exchange structure traditionally allow members to sanction other members. Finally, Exchange decisions may be made for political reasons not connected to the concerns of every exchange member.

Id. at p. 6. The Division also stated that "this risk [of self-regulatory conflict of interest] is also inherent for a mutual exchange whose members may also be interested in cutting costs to themselves." Id. With respect to the market incentives for a for-profit exchange, like CME, to minimize conflicts of interest, the Division stated that CME "has a strong business incentive to preserve its reputation as a well-regulated exchange and views its reputation for market integrity to be significant for [demutualized] CME as well, rather than adverse to its interests." Id.

The Commission also points to increased competition among the exchanges as a reason to regulate board composition. The assumption that competition somehow requires additional regulation, however, is unsupported. When the Commission introduced the new regulatory framework in early 2000, its chairman at the time, William J. Rainer, underscored that "Competition provides a strong incentive for market participants to perform at the lowest cost and with the highest degree of integrity by giving market users the ability to choose the products and providers that best serve their individual needs. . . . Competition imposes a discipline on the markets that reduces the need for regulation. The greater the level of competition in the

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[3] Memorandum from Division of Trading and Markets to the Commission regarding CME's Proposed Demutualization Plan, at p. 7, available at http://www.cftc.gov/tm/tmcme_demutualization_memo.htm.

marketplace, the lower the level of direct regulation required to ensure that key public policy goals are met."[4]

The Commission admits that there is no factual basis to impose additional regulatory requirements regarding disciplinary panels. The Commission states that its SRO Review "has found no indication of widespread inadequacy in exchange disciplinary committees," and those disciplinary procedures are adequate and sanctions are fair and do not discriminate. 71 Fed. Reg. at 38,747. Although the Commission states that "significant new measures are not required at this time" respecting disciplinary panels, it nonetheless proposes a "safe harbor" for disciplinary panels, imposing the burden on exchanges which do not adopt the safe harbor to prove that their rules comply with the Core Principle.

B. The Commission's proposal is unwarranted.

The exchanges, including CME, have long had extensive procedures to address the quality of the members of their board and disciplinary panels. The Commission has regularly reviewed and approved CME's rules without question. CME also has effective rules, which currently ensure fair and equitable trading to comply with the other Core Principles, including Core Principles 2, 3, 4, 9 and 12.

Before the CFMA, which abolished the previous rules in favor of a performance based standard, SRO governance was addressed primarily through Section 5a of the Act, as amended by the Futures Trading Practices Act of 1992 ("FTPA"). The FTPA required greater diversity of representation on SRO boards and disciplinary committees, imposed fitness standards for service on boards and disciplinary and oversight committees, and required SROs to adopt procedures to avoid conflicts of interest in deliberations by persons serving on such bodies. The Commission had promulgated regulations to enact the FTPA's governance provisions. Specifically, Regulation 1.64 addressed composition requirements for SRO boards and disciplinary committees, requiring meaningful representation for FCMs, floor traders, floor brokers, commercial interests, participants in a variety of pits or principal groups of commodities traded on the exchange, and other market users. Regulation 1.64 also required that at least ten percent of each exchange board consist of commercials and that at least twenty percent of the board include non-members who were knowledgeable about the futures industry.

Regulation 1.69 dealt explicitly with the conflicts of interest in the decision-making process of boards, disciplinary committees and regulatory oversight committees. Regulation 1.69 precluded voting by any director or member of a disciplinary or oversight committee on any matter in which the person had a significant, ongoing business relationship with the named party in interest. Additionally, after the FTPA, the Commission amended Regulation 1.63, which already established fitness standards for members of SRO boards and disciplinary committees, to include individuals serving on SRO oversight panels.

Notably, none of the prescriptive legislation or regulation prior to the CFMA contained any notion similar to the "public" director requirement and certainly nothing in the pre-CFMA era

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[4] Remarks of William J. Rainer, Chairman, CFTC, BOCA 2000: 25th Annual International Futures Industry Conference (March 16, 2000).

imposed the onerous burdens contemplated in the proposed Acceptable Practices for Core Principle 15. The fact that the Proposed Acceptable Practices impose more onerous and detailed requirements than the prescriptive regulations repealed by the CFMA confirms that the safe harbor proposal is ill-advised.

For instance, the Commission proposes to require a ROC to prepare an annual report to the board and even dictates the specific contents of such a report, which "sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels. . . ." Proposed Acceptable Practice (3)(B)(v), 71 Fed. Reg. at 38,749. The Commission's attempt to command the day-to-day operations of an exchange's ROC is untenable and unwarranted.

CME has previously explained to the Commission its corporate governance policies, board composition and approach to minimizing conflicts of interest in its decision-making process, including in carrying out its regulatory oversight duties. CME's twenty-member board currently has sixteen members who are independent under the independence standards of the NYSE and NASDAQ, as well as our own categorical independence standards (which exceed the mandated listing requirements); seven of our board members have no other industry affiliation other than their service as a director.[5] In order to ensure appropriate oversight, the listing standards require that a majority of the board be "independent" or lack a material relationship with the company. The listing standards are consistent with the independence criteria imposed by numerous rating agencies, including Institutional Shareholder Services ("ISS") and Governance Metrics International ("GMI"), which also recognize that an immaterial financial relationship that does not exceed specified thresholds will not vitiate a director's independence. In their most recent review of CME's governance, ISS and GMI have each concurred in CME's assessment's of its directors independence.

Numerous other governance authorities, including the National Association of Corporate Directors, the Business Roundtable, the American Law Institute and the Conference Board Commission on Public Trust and Private Enterprise, endorse a view of independence similar to that put forth by the NYSE, NASDAQ, ISS and GMI.[6] The premise behind these independence standards is to ensure that a board is sufficiently free of material relationships that could undermine the board's ability to operate without undue influence. Relationships are assessed to determine whether a particular business relationship with the company rises to a level such that the director would be unable to act independently. At a minimum, a majority of our Board Members meet or exceed the independence standards put forth by each of these governance authorities.

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[5] CME's categorical independence standards are available at: http://investor.cme.com/governance/independence.cfm.

[6] *See* American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations*, Vol 1 (1994, pocket supplement 2002); The Business Roundtable, *Principles of Corporate Governance* (May, 2002), National Association of Corporate Directors, *Report of the NACD Commission on Director Professionalism* (Nov. 1996, reissued 2001), and the Conference Board Commission on Public Trust and Private Enterprise, *Findings and Recommendations, Part 1: Executive Compensation* (Sep. 17, 2002); *Findings and Recommendations, Part 2: Corporate Governance and Part 3: Audit and Accounting* (Jan. 9, 2003).

By being a member of CME, a customer is entitled to direct access to our open outcry trading floor and is entitled to substantially lower fees than the fees paid by customers that lease trading rights on CME or are non-members and the ability to elect six of our directors and to vote on certain matters relating to the operation of our trading floors. We believe that the relationships our directors have with CME as a result of their memberships are adequately assessed for materiality under the existing independence standards that apply to us as a publicly traded company. For example, in 2006, to assess whether any of our directors were not independent under the applicable listing standards, CME's Board reviewed the payments made directly to us or indirectly to us through their clearing firms in connection with their trading activity on CME. The Board noted that all payments were made in the ordinary course of our business, were on terms consistent with those prevailing at the time for corresponding transactions by similarly situated unrelated third parties and were not in excess of the applicable payment thresholds. We believe that our Board's careful assessment of the relationships that arise as a result of membership in the Exchange under the applicable listing standards and are own categorical independence standards sufficiently evaluates the materiality of the relationships such directors have with the Exchange. We do not believe an additional bright-line standard imposed by the CFTC is necessary or appropriate.

In proposing the Acceptable Practices, the Commission effectively seeks to trump not only the listing standards of the NYSE and NASDAQ, but the established and time-tested standards endorsed by numerous other governance authorities. The CFTC, however, provides no justification and can point to no specific examples to warrant such a major departure. Rather than create new standards applicable to self-regulatory organizations based upon supposition and speculation, the Commission should focus on enforcing the standards established under the Act.

CME's Board has long applied conflict of interest rules to govern its decision-making. CME's rules are aimed to insure fairness among market participants in disciplinary proceedings and in connection with actions that affect the value of open positions. Thus, CME's By-laws require that (i) the board shall have meaningful representation of a diversity of interests, including floor brokers, floor traders, futures commission merchants, producers, consumers, processors, distributors and merchandisers of commodities traded on CME, and other market users or participants; (ii) at least 10% of the board members shall represent farmers, producers, merchants or exporters of principal commodities traded on CME; and (iii) at least 20% of the board members shall not have trading privileges on the Exchange, shall not be employed with CME and shall not be affiliated with operating the futures exchange related business of a firm entitled to members' rates.[7]

CME's policies are well known by the Commission from the pre-CFMA era when CME submitted for approval its rules on board composition and self-regulation, and in the Commission's review and approval of CME's Certificate of Incorporation and By-laws as part of CME's demutualization. In addition, the Division of Market Oversight has conducted detailed market surveillance and rule enforcement reviews of the CME.

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[7] CME's by-laws are available at http://investor.cme.com/governance/overview.cfm.

The proposed Acceptable Practices are also unwarranted because Core Principle 14 already governs the quality of the members of an exchange's board and disciplinary panels, and other Core Principles already govern responsible enforcement by the exchanges to ensure fair and equitable trading. Specifically, the following Core Principles provide clear performance standards for the exchanges' self-regulatory function:

- Core Principle 2, Compliance with rules. The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

- Core Principle 3, Contracts not readily subject to manipulation. The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

- Core Principle 4, Monitoring of trading. The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

- Core Principle 9, Execution of transactions. The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

- Core Principle 12, Protection of market participants. The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

7 U.S.C. §§7(d)(2)-(4), (9) and (12).

CME's well-established corporate governance practices and self-regulatory programs, existing NYSE and NASDAQ listing standards, and applicable state and federal corporate and securities laws, render the proposed Acceptable Practices a burdensome and unnecessary additional layer of regulation. In short, the proposed "public" director requirement, the board composition requirement, the regulatory oversight committee requirements and the disciplinary panel requirements are simply not necessary.

5. There is no basis to conclude that either a "public" director or a board of directors comprised of at least 50% "public" directors would have a greater incentive than any exchange or other industry member to make the optimal investment in self-regulation.

The Commission asserts that the proposed Acceptable Practices "would ensure that there is adequate independence within the SRO's board to insulate regulatory functions from the interests of the exchange's management, members, and other business interests of the market itself." 71 Fed. Reg. at 38,741. But requiring that the exchange's board consist of more than fifty percent of directors who are not associated with any member of the exchange says nothing about the exchange's decision-making process. Having a board comprised of a

specified percentage of "public" directors doesn't guarantee or increase the likelihood of effective decision-making.[8]

Board composition requirements do not address the board's processes for addressing potential conflicts of interest. Under the Delaware law, boards are responsible for managing all of the affairs of the corporation. In our experience, conflicts of interest rarely arise. For the instances in which a potential conflict of interest may exist, CME and other exchanges have developed specific board governance procedures to ensure proper disclosure of the potential conflict and to remove the potential conflict from the decision-making process. The Commission has approved these rules and procedures.

Particularly problematic is the novel "public" director definition and representation requirement. The Commission states that its SRO Review confirmed that "regulation works best when conducted close to the markets by individuals with market-specific expertise," 71 Fed. Reg. at 38, 742, but the proposed "public" director requirement is inconsistent with that finding and with CME's experience. Most importantly, the "public" director requirement is not a reasonable means for avoiding under-investment in regulation, which the Commission mistakenly classifies as a conflict of interest. There is no basis to conclude that a "public" director who is not affiliated with the industry will have an incentive to expend any more resources than anyone affiliated with the exchange to promote regulation by an exchange. To the contrary, industry members have a significant interest in ensuring an optimal investment in self-regulation. A healthy, competitive futures industry needs knowledgeable industry representatives to effect self-discipline and self-regulation in a transparent process.[9] As Dr. James E. Newsome reported at the Hearing on Self-Regulation and Self-Regulatory Organizations in the U.S. Futures Industry on February 15, 2006 (pages 82-83), Chairman Alan Greenspan had noted at a working group meeting that "the potential risk was that you develop a structure in which you have a board that looks very, very good on paper but leads the business to failure because of a lack of understanding of a business in a very technical field."

There is no reason that a "public" director will have any greater incentive than any industry member to maximize an investment in regulating a particular exchange. Indeed, public directors with no industry experience might be less inclined to invest in the self-regulatory functions of an exchange. Independent directors of a public corporation typically do not have experience in self-regulation. In contrast, futures industry participants have an interest in ensuring the integrity of the futures markets and typically do have experience relating to the self-regulatory processes in the industry.

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[8] SEC Commissioner Cynthia Glassman recently made this point: "What does independence mean? It should mean independence of thought and action, which is not necessarily guaranteed by having a higher number of outside directors." Speech by Cynthia A. Glassman, *Observations of an Economist Commissioner on Leaving the SEC,* before the National Economists Club, Washington, D.C. (July 6, 2006).

[9] *See* Craig S. Donohue, CME, CFTC Hearing on Self-Regulation and Self-Regulatory Organizations in the US Futures Industry (February 15, 2006), available at: http://www.cftc.gov/files/opa/opapublichearing021506final.pdf.

In the Hearing on Self-Regulation and Self-Regulatory Organizations in the U.S. Futures Industry on February 15, 2006 (page 19), Commissioner Dunn stated that the Commission's "task is to ensure that adequate firewall exists between the market and regulatory functions of an SRO." The board composition requirement, however, does not further that goal. Changing the mix of the board does not lead to an improved regulatory process or assure that market and regulatory functions of an exchange are separated. Moreover, requiring a majority of directors to be outside the industry would undermine the premise of self-regulation in the futures industry, which "reflects a belief that ensuring the integrity of the futures market can best be accomplished through allowing organizations with firsthand industry experience to assume the lead role." Id. at 18.

The proposed board composition rule would likely preclude qualified persons from serving on CME's board and potentially diminish the quality of the board without contributing to the avoidance of conflicts in the decision-making process. CME's board is comprised of a diverse group of individuals, which includes CME members that have substantial industry expertise, including directors associated with exchange members, traders, brokers, FCMs and clearing firms, and non-industry directors with, among other expertise, significant public company experience, financial expertise, experience in international business and expansion and knowledge of the legislative process. Input from these knowledgeable individuals enhances the decision-making process and provides appropriate checks and balances on the exchange. (For a detailed description of the backgrounds of our board members, please see Exhibit A.)

6. The Commission failed to consider the costs and benefits of the proposed Acceptable Practices as required by the Act.

Under Section 15 of the Act, as amended by section 119 of the CFMA, the Commission is required, before issuing a new regulation under the Act, to consider the costs and benefits of its action. The Commission's proposal does not comply with Section 15 because it lacks an analysis of its consideration of the costs that would be imposed by the proposed Acceptable Practices. As demonstrated below, the costs are substantial and the benefits at best are uncertain.

The proposed board composition rule would be difficult and burdensome to implement under governing corporate law. The Commission incorrectly asserts that the exchange can simply elect the correct directors to its board. Exchanges do not elect directors; shareholders do, and the shareholders are independent of the board. Under Delaware corporate law, common stockholders generally have the right to elect directors at an annual meeting. 8 Del. C. §211, Meetings of stockholders; §212, Voting rights of stockholders; proxies; limitations. In addition, a corporation's charter "may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term . . . ." 8 Del. C. §141(d). The charter may also divide directors "into 1, 2 or 3 classes" whose terms of office may expire at staggered dates. 8 Del. C. §141(d). CME's charter provides for staggered director classes and that the Class B shareholders shall elect six directors.

The proposed non-industry director requirement imposes three unpalatable choices. First, CME may attempt to replace three qualified, productive directors-but only when their terms end. Second, CME may attempt to eliminate, but not replace, six independent directors, who do

not meet the Commission's proposed qualifications. Third CME may attempt to increase the size of its board from twenty directors to twenty-seven directors and add seven new directors who fulfill the "independence" qualification.

Because of CME's classified board, the right of the Class B shareholders to elect six directors, the composition of the board and the inability to remove directors except for cause, and because shareholders may nominate and elect board members regardless of the board's efforts to meet the Commission's requirements, CME may be required to amend its charter to comply with the proposal. CME's charter fixes board size and qualifications, so any change in size or qualifications may only be implemented through a charter amendment as approved by the stockholders (8 Del. C. §141(b)); again, a time-consuming and expensive process the outcome of which CME cannot control.

Delaware corporate law also governs the removal of directors. The Delaware Corporations Code provides that when a corporation has a classified board, directors can be removed only for cause, and only by a majority shareholder vote, unless a charter provides for a super-majority vote requirement. 8 Del. C. §141(k). Article Five of CME's charter provides that a director may be removed only for cause and only upon the affirmative vote by holders of at least two-thirds of the outstanding class of stock entitled to elect the director.

In short, CME's board lacks the power under corporate law to turn a switch and comply with the Commission's proposed safe harbor. Compliance will require demutualized exchanges to amend their certificates of incorporation, by-laws, and various public disclosures and respond to any shareholder challenge. This process would be time-consuming and expensive, and may place the exchange in conflict with its shareholders. Certificates of incorporation can be amended only by a shareholder vote, requiring the issuance of a proxy statement and a voting process outside the control of an exchange's board.

7. The proposed Acceptable Practices inflexibly impose uniform requirements upon all exchanges without regard to the nature of a particular exchange or the futures products traded on that exchange.

The proposed Acceptable Practices would apply to all exchanges, regardless of a particular exchange's needs and requirements. CME believes that a board's composition should be designed in the best interest of the organization and its particular situation.

As former Chairman William J. Rainer remarked in commenting on the principles-based regulatory framework shortly after the Commission introduced that framework in February 2000,[10] "[t]he public interest also demands that we acknowledge the differences among futures contracts and adjust our regulatory burden to a level commensurate with the nature of the product traded and the type of entity trading it."

8. To the extent the proposal evidences a return to a prescriptive regulatory regime, U.S. exchanges will be unfairly disadvantaged vis-à-vis their European

[10] Remarks of William J. Rainer, Chairman, CFTC, BOCA 2000: 25th Annual International Futures Industry Conference (March 16, 2000).

counterparts, which are able to compete more effectively under flexible, principles-based guidelines.

CME's global competitors do not have to meet such burdensome board composition requirements. For example, in the United Kingdom, the Financial Services Authority (the "FSA") follows a principle-based regulation rather than prescriptive rules, recognizing "the principle that it is neither possible nor desirable to write a rule to cover every specific situation or need for decision that a regulated firm might encounter."[11] The FSA's eleven principles include: "3) Management and control. A firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems;" and "8) Conflicts of interest. A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client." FSA Handbook, PRIN 1.1.1.

The FSA incorporates the Combined Code of Principles of Good Governance and Code of Best Practice, which states "that those concerned with the evaluation of governance should do so with common sense, and with due regard to companies' individual circumstances."[12] The Principles of Good Governance include, "Board Balance. The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision taking." Under the Code of Best Practice, non-executive directors must comprise at least one-third of the board, and of those, a majority should be independent from management and free of any material relationships with the exchange.

The European Commission has also published corporate governance guidance, which is principles-based and not prescriptive. In the Commission Recommendation of February 15, 2005, on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, the European Commission states that the "[i]n view of the complexity of many of the issues at stake, the adoption of detailed binding rules is not necessarily the most desirable and efficient way of achieving the objectives pursued." Official Journal of the European Union (2005/162/EC), L52/51 ¶4 (Feb. 25, 2005). The European Commission observes that "[n]on-executive or supervisory directors are recruited by companies for a variety of purposes. Of particular importance is their role in overseeing executive or managing directors and dealing with situations involving conflicts of interest." Id. at ¶3. The European Commission stated that a board "should comprise a sufficient number of committed non-executive or supervisory directors, who play no role in the management of the company or its group and who are independent in that they are free of any material conflict of interest." Id. at L52/52 ¶8. But the European Commission did not impose prescriptive requirements on board composition. Nor did the European Commission suggest that independent directors should have no industry affiliation. Rather, the European Commission noted that "[I]ndependence is most often understood as the absence of close ties with management, controlling shareholders or the company itself." Id. at 52/53, ¶18.

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[11] FSA, Essential facts about the FSA, at p. 6, Feb. 2000, available on FSA's website at http://www.fsa.gov.uk/pubs/other/essential_facts.pdf.

[12] Code, Preamble, paragraph 6 (July 2003), available on FSA's website at http://www.fsa.gov.uk/pages/Doing/UKLA/pdf/lr_comcode2003.pdf.

Conclusion

CME believes that the Commission should permit each exchange to adopt its own guidance for the composition of its board to comply with Core Principle 15, rather than impose a specific composition requirement. The CFMA requires that the Commission defer to the exchanges' own determination on the means for compliance with the Core Principles. The proposed Acceptable Practices are contrary to the CFMA and serve only to impose an additional layer of unnecessary and costly regulation without an incremental benefit. We urge the Commission not to adopt the proposed Acceptable Practices.

Sincerely,

Craig S. Donohue

CSD/RL/7026.ltr

cc: Chairman Reuben Jeffrey, III
Commissioner Michael V. Dunn
Commissioner Fred Hatfield
Commissioner Walter L. Lukken

Exhibit A

Name and Age	Background
Craig S. Donohue, 44	Mr. Donohue has served as a director of CME Holdings' and CME's boards since January 2004. Mr. Donohue has served as Chief Executive Officer since January 2004. Mr. Donohue served as Managing Director and Chief Administrative Officer, Office of the CEO, from October 2002 to December 2003. Mr. Donohue previously served as Managing Director and Chief Administrative Officer of CME Holdings from its formation on August 2, 2001 and of CME from April 2001, when his title was changed from Managing Director, Business Development and Corporate/Legal Affairs of CME, which he had held since March 2000. He also previously served as Senior Vice President and General Counsel of CME from October 1998 to March 2000. Prior to that, Mr. Donohue served as Vice President of the Division of Market Regulation from 1997 to 1998 and Vice President and Associate General Counsel from 1995 to 1997. Mr. Donohue serves as a member of the Commodity Futures Trading Commission's Global Market Advisory Committee. He also serves as Vice Chairman of the National Council on Economic Education and as a member of the boards of directors of the Executives Club of Chicago and the Chicagoland Chamber of Commerce.
Terrence A. Duffy, 47	Mr. Duffy has served as Chairman of CME Holdings' and CME's boards since April 2002, has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1995 and has been a member of our exchange for more than 20 years. Mr. Duffy served as Vice Chairman of CME Holdings' board from its formation on August 2, 2001 until April 2002 and of CME's board from 1998 until April 2002. Mr. Duffy has served as President of T.D.A. Trading, Inc. since 1981. Mr. Duffy has also been appointed by President Bush to the Federal Retirement Thrift Investment Board, which appointment was confirmed by the U.S. Senate.
Daniel R. Glickman, 61	Mr. Glickman has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 2001. Since September 2004, Mr. Glickman has served as President, Chairman and Chief Executive Officer of the Motion Picture Association of America, Inc. Until September 2004, Mr. Glickman served as a Senior Advisor in the law firm of Akin, Gump, Strauss, Hauer & Feld, where he was a partner from February 2001 to June 2002. Mr. Glickman served as Director of the Institute of Politics at Harvard University's John F. Kennedy School of Government from August 2002 through August 2004. Mr. Glickman also previously served as U.S. Secretary of Agriculture from March 1995 through January 2001 and as a member of the U.S. Congress, representing a district in Kansas, from January 1977 through January 1995. Mr. Glickman is a director of The Hain Celestial Group, Inc. and America's Second Harvest.

William P. Miller II, 50	Mr. Miller has served as a director of CME Holdings' and CME's boards since April 2003. Mr. Miller serves as the Senior Investment Officer, Fund Management for the Ohio Public Employees Retirement System. Mr. Miller served as Senior Risk Manager at Abu Dhabi Investment Authority from April 2003 to September 2005. Mr. Miller was a risk management advisor for the Rockefeller Foundation, a non-profit foundation, from June 2002 to April 2003. From September 1996 through May 2002, he served as Senior Vice President and Independent Risk Oversight Officer for Commonfund Group, an investment management firm for educational institutions. Mr. Miller previously served as Director, Trading Operations and Asset Mix Management with General Motors Investment Management Corp. He previously served as a director of CME from 1999 through April 2002. Mr. Miller also serves as a director of American Axle and Manufacturing, as director and chairman of the audit committee of the BTOP50 Index Fund and as a director of the Dubai International Financial Exchange. Mr. Miller is also a member of Financial Accounting Standards Board's User Advisory Council and serves as the chairman of the executive committee, End-Users of Derivatives Council for the Association of Financial Professionals. Mr. Miller is a member of the Investor Risk Steering Committee for the International Association of Financial Engineers and serves on the Kent State University Masters of Science Program in Financial Engineering Board. Mr. Miller is also a chartered financial analyst and a member of the Association of Investment Management and Research.
James E. Oliff, 57	Mr. Oliff has served as Vice Chairman of CME Holdings' and CME's boards since April 2002, as a director of CME since 1994 and has been a member of our exchange for more than 25 years. Mr. Oliff served as Second Vice Chairman of CME Holdings' board from its formation on August 2, 2001 until April 2002 and of CME's board from 1998 until April 2002. He previously served on CME's board from 1982 to 1992. Mr. Oliff served as President and Chief Executive Officer of FFast Trade U.S., LLC from December 2001 to February 2005, as Chairman and CEO of FFastFill Inc., an organization that provides trading and risk management software solutions, from June 2003 to February 2005 and as its Chief Operating Officer from December 2001 to June 2003. Mr. Oliff also served as Executive Director of International Futures and Options Associates from 1996 to July 2005 and as President of LST Commodities, LLC, an introducing broker, from 1999 until January 2002. Mr. Oliff has served as President of FILO Corp., a floor brokerage business, since 1982. Mr. Oliff currently serves on the Advisory Board for the Masters of Science Program in Financial Engineering at Kent State University and as Deputy Chairman of FFastFill, plc.
John F. Sandner, 64	Mr. Sandner has served as a director of CME Holdings' board since its formation on August 2, 2001. Mr. Sandner has been a member of CME's board since 1978 and a member of our exchange for more than 30 years. He also served as Special Policy Advisor to CME Holdings' board from August 2001 to October 2005 and to CME's

	board from January 1998 to October 2005. Previously, he served as Chairman of CME's board for 13 years. Mr. Sandner has served as Chairman of E*Trade Futures, LLC since July 2003. Mr. Sandner also previously served as President and Chief Executive Officer of RB&H Financial Services, L.P., a futures commission merchant and one of our clearing firms, from 1985 to November 2003. RB&H Financial Services, L.P. is now a division of Man Financial Inc., one of our clearing firms. Mr. Sandner currently serves on the board of directors of Click Commerce, Inc. and as a member of that company's audit committee.
Terry L. Savage, 61	Ms. Savage has served as a director of CME Holdings and CME since April 2003. Ms. Savage is a financial journalist, author and President of Terry Savage Productions, Ltd., which provides speeches, columns and videos on personal finance for corporate and association meetings, publications and national television programs, and networks, including CNN, NBC and PBS. She was a member of our exchange from 1975 to 1980.
William G. Salatich, Jr., 54	Mr. Salatich has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1997 and has been a member of our exchange for more than 30 years. Mr. Salatich has been an independent broker and trader since 1975.
David J. Wescott, 48	Mr. Wescott has served as a director of CME Holdings' and CME's boards since April 2003. Mr. Wescott has been a member of our exchange for more than 20 years. He previously served as a director of CME from 1989 through 1996 and has served as President of The Wescott Group Ltd., one of our clearing firms, since 1991.
Gary M. Katler, 59	Mr. Katler has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1993 and has been a member of our exchange for more than 15 years. He is currently Vice President of O'Connor & Company L.L.C., one of our clearing firms. Previously, Mr. Katler was Head of the Professional Trading Group of Fimat USA from November 2000 to April 2002. Prior to that, Mr. Katler served as Senior Vice President of ING Barings Futures and Options Inc.
Dennis H. Chookaszian, 62	Mr. Chookaszian has served as a director of CME Holdings and CME since April 2004. From November 1999 until February 2001, Mr. Chookaszian served as Chairman and Chief Executive Officer of mPower, Inc., a financial advice provider focused on the management of 401(k) plans online. Mr. Chookaszian served as Chairman and Chief Executive Officer of CNA Insurance Companies ("CNA") from September 1992 to February 1999. During his 27-year career with CNA, Mr. Chookaszian held several management positions at the business unit and corporate levels, including President and Chief Operating Officer from 1990 to 1992 and Chief Financial Officer from 1975 to 1990. He served as chairman of the executive committee of CNA from 1999 to 2001. Mr. Chookaszian is

	a director of Sapient Corporation, Career Education Corporation and Insweb Corp. Mr. Chookaszian received certification as a public accountant in 1971.
Martin J. Gepsman, 53	Mr. Gepsman has served as Secretary of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1998, has served as a director of CME since 1994 and has been a member of our exchange for more than 20 years. Mr. Gepsman has also been an independent broker and trader since 1985.
Elizabeth Harrington, 63	Ms. Harrington has served as a director of CME Holdings and CME since April 2004. Ms. Harrington has served as President and CEO of E. Harrington Global since October 2002. Previously, Ms. Harrington served as a partner with PricewaterhouseCoopers, LLP in its Global Strategy and China practices from 1995 until her retirement in 2002. She specialized in the consumer and industrial products sectors and the Asian market. Ms. Harrington previously served in senior executive positions responsible for global business expansion and marketing for Pillsbury and Quaker Oats. She also served as a partner at A.T. Kearney and Vice President of the J. Walter Thompson Company. She began her career at Proctor & Gamble. Ms. Harrington has 20 years of experience working in the Asian market and is an advisor to the government of the People's Republic of China on modernizing several major industries, foreign investment and global development.
Bruce F. Johnson, 63	Mr. Johnson has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1998 and has been a member of our exchange for more than 30 years. He has been an independent trader since 2002. Mr. Johnson previously served as President, Director and part owner of Packers Trading Company, a former futures commission merchant and former clearing firm, from 1969 through December 2003.
Patrick B. Lynch, 40	Mr. Lynch has served as Treasurer of CME Holdings' and CME's boards since April 2002 and as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 2000. He has been a member of our exchange and an independent trader for more than 15 years.
Leo Melamed, 73	Mr. Melamed has served as director, Chairman Emeritus of CME Holdings' board since its formation on August 2, 2001. Mr. Melamed has served as a director of CME for more than 30 years as both a voting and non-voting director and in 1997 was appointed as Chairman Emeritus and Senior Policy Advisor. He served as Senior Policy Advisor to CME's Holdings' board from its formation to November 2005 and to CME's board from 1997 to November 2005. He served as director and Secretary of CME's board from 1967 to 1969, Chairman from 1969 until 1972 and founding Chairman of the International Monetary Market from 1972 until its merger with our exchange in 1976. Upon completion of the merger, Mr. Melamed

	became the first Chairman of the combined institution. Mr. Melamed served as Special Counsel to CME's board from 1977 until 1991 and Chairman of our exchange's Executive Committee from 1985 until 1991. He has been a member of our exchange for more than 45 years. From 1993 to 2001, he served as Chairman and Chief Executive Officer of Sakura Dellsher, Inc., a former clearing firm of our exchange, and he currently serves as Chairman and Chief Executive Officer of Melamed & Associates, a global consulting group. He is also a member of the Commodity Futures Trading Commission's Technology Advisory Committee and a special advisor to the National Futures Association.
Alex J. Pollock, 63	Mr. Pollock has served as a director of CME Holdings and CME since April 2004. Mr. Pollock has served as Resident Fellow of the American Enterprise Institute in Washington, D.C. since July 2004, and previously served as President and Chief Executive Officer of the Federal Home Loan Bank of Chicago from 1991 through June 2004. He was previously President and CEO of Community Federal Savings. Mr. Pollock serves as a director of Allied Capital Corporation and Great Lakes Higher Education Corporation.
Myron S. Scholes, 64	Mr. Scholes has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 2000. He is Chairman of Oak Hill Platinum Partners and Managing Partner of Oak Hill Capital Management. Mr. Scholes is the Frank E. Buck Professor of Finance, Emeritus, at Stanford University's Graduate School of Business and a 1997 Nobel Laureate in Economics. He was formerly a limited partner and principal of Long Term Capital Management from 1993 until 1998. Mr. Scholes is also a director of Dimensional Fund Advisors Mutual Funds, the American Century Mutual Funds and Intelligent Markets.
Howard J. Siegel, 49	Mr. Siegel has served as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 2000 and has been a member of our exchange for more than 25 years. Mr. Siegel has been an independent trader since 1977.
William R. Shepard, 59	Mr. Shepard has served as Second Vice Chairman of CME Holdings' and CME's boards since April 2002 and as a director of CME Holdings' board since its formation on August 2, 2001 and of CME's board since 1997 and has been a member of our exchange for more than 30 years. Mr. Shepard is founder and President of Shepard International, Inc., a futures commission merchant.