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Craig S. Donohue
Chief Executive Officer

RECORDS SECTION

20 South Wacker Drive
Chicago, IL 60606-7499
www.cme.com

312/930.8275 tel
312/930.3209 fax

August 25, 2004

VIA ELECTRONIC DELIVERY

Ms. Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

2004 AUG 25 PM 4:30

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Re: **Confidential Information and Commission Records and Information;**
69 Fed. Reg. 44981 (July 28, 2004)

Dear Ms. Webb:

Chicago Mercantile Exchange Inc. ("CME") welcomes the opportunity to comment upon the Commodity Futures Trading Commission's (the "Commission") proposed amendments to Rule 40.8, which pertains to the portions of an application for registration as a designated contract market, designated clearing organization and designated transaction execution facility that the Commission will make public.

In the release, the Commission states that Commission staff has consistently determined that the release of certain documents does not cause any competitive harm to the applicant and that such documents should be made available to the public. The documents are: 1) the applicant's transmittal letter; 2) the applicant's proposed rules; 3) the applicant's regulatory compliance chart; 4) the documents establishing the applicant's legal status (e.g., corporate charters); 5) the documents setting forth the applicant's governance structure; and 6) any other part of the application not covered by a request for confidential treatment. The Commission thus proposes to amend Rule 40.8 to provide explicitly that these specific documents will be made available to the public as a matter of course.¹

CME agrees with the Commission that these documents should be made available to the public as a matter of course. In making these documents public, the Commission will continue its long-standing policy of injecting transparency into the comment process, and thereby ensure that interested parties have the opportunity to comment meaningfully on matters that may impact the futures markets.

¹ We presume and ask the Commission to confirm that documents other than the stipulated documents, even if confidential treatment has been sought with respect to such non-stipulated documents, may be released by the Commission pursuant to a proper and valid Freedom of Information Act request.

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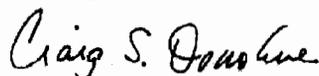
CME believes, however, that the Commission should also make available to the public as a matter of course two other types of important information. First, the Commission should ensure that the public has the opportunity to comment meaningfully upon the salient operational features of the proposed exchange, as well as any proposed plans that could adversely impact market integrity, such as payment for order flow or internalization plans. None of the above stipulated documents necessarily encapsulate such information. Rather than require interested parties to ferret information from secondary sources or the applicant's promotional material, the Commission should seek to ensure that interested parties have the opportunity to understand the nature of such potentially important plans. In publishing any such material, we recognize the Commission's right to withhold or redact any information that may relate to the applicant's trade secrets or competitive efforts.

Second, the Commission should make available to the public any outsourcing arrangements upon which the applicant intends to rely. To the extent that an applicant proposes to outsource any of its operational, self-regulatory, or clearing functions, the public cannot provide useful comments regarding the applicant's proposed compliance with the Commodity Exchange Act's core principles or designation criteria unless the key provisions of those arrangements are made public. Indeed, if all of these functions were to be performed in-house, one would expect that they would be described in the application. An applicant's decision to outsource the performance of certain functions that are necessary to its performance of its statutory obligations should not diminish the applicant's regulatory burden or shield the arrangements from public scrutiny. To the extent that such arrangements contain material financial information, we recognize that it would be appropriate for the Commission to redact such information.

By making public the Commission's proposed stipulated documents, as well as the information described above, the Commission will take an important step in ensuring that interested parties have a sufficient opportunity to provide meaningful comments to the Commission on matters of important public interest.

Thank you for the opportunity to comment on the proposed rule amendments. If you have any questions or comments, please do not hesitate to contact me or Matthew F. Kluchenek, Director and Associate General Counsel, at (312) 338-2861.

Sincerely,



Craig S. Donohue

CSD/cf/6579ltr