

David J. Vitale
President and
Chief Executive Officer

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April 12, 2001

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OFFICE OF THE SECRETARY

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington DC 20581

Re: Commodity Futures Trading Commission Proposed Rule 1.68

Dear Ms. Webb:

The Chicago Board of Trade ("CBOT®") appreciates the opportunity to present its views to the Commodity Futures Trading Commission ("Commission" or "CFTC") regarding proposed Rule 1.68 and related rule amendments. The proposed rule would allow Futures Commission Merchants ("FCMs") to offer eligible customers the right to "opt out" of segregation with regard to funds used to margin, guarantee, or secure trades on or through a registered derivatives transaction execution facility ("DTF").

The CBOT agrees that customers that have opted out of segregation should not receive the same or better treatment in the event of an FCM's bankruptcy than customers included in segregation. The CBOT does not, however, believe that the CFTC should require that customers who opt out of segregation be treated the same as "general creditors". This aspect of the proposal would put opt out customers at a disadvantage to "non-public customers". The CBOT believes that opt out customers should be treated the same as non-public customers in the Commission's bankruptcy rules.

The CBOT agrees with the CFTC's proposal to include the equity of customers that have opted out of segregation in the computation of an FCM's minimum capital requirements. This approach is consistent with the risk based capital requirement that has been adopted by most commodity self-regulatory organizations. The CBOT also agrees that an FCM must have an agreement signed by the customer that has opted out of segregation, and that the agreement must clearly state the consequences of having done so.

The CFTC is also proposing that a customer may revoke its election to opt out of segregation by notifying the FCM in writing. The CFTC stated, in its Federal Register release, that "to avoid undue disruption of the FCM's business, however, the revocation of the election to opt out of segregation would only be effective for trades entered into after the FCM received such notice from the customer". The CBOT believes that it may be less disruptive to FCMs to allow, but not require, open positions and account equity to

be transferred into the customer's segregated account. In this way, the FCM would avoid the maintenance of separate accounts and it would facilitate the offsetting of positions. That being said, under no circumstances should a firm transfer a customer that had previously opted out of segregation into segregation if such a transfer would result in an under-segregated condition at the FCM, or if the FCM has filed or is in the process of filing for bankruptcy. Furthermore, the CBOT believes that the CFTC should make it clear that where a customer holds both segregated and opt out accounts, any new positions that would offset existing positions, must be placed in the appropriate account to effectuate the offset. The CBOT does not believe the CFTC intended to allow a customer to circumvent rules requiring offset through the use of both segregated and opt out accounts.

The CBOT agrees that under no circumstances may funds related to opt out accounts be commingled with customer funds held in segregation. The CFTC should, therefore, clarify the conditions under which the funds in one account may be used to margin or secure a debit/deficit in the other account, where a customer maintains two accounts, one that is segregated and another that is an opt out account. Specifically, the CBOT suggests that the CFTC use the same principles applied currently to segregated and non-segregated accounts.

The CBOT would like to thank the CFTC for giving it the opportunity to comment on proposed Rule 1.68 and related rule amendments. If you have any questions, or would like to discuss this matter further, please contact Barbara Lorenzen, at (312) 435-3683 or Bryan Durkin, at (312) 435-3687.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Vitale". The signature is written in a cursive, flowing style with a large initial "D".

David J. Vitale
President and Chief Executive Officer