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Chicago Board of Trade

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Bernard W. Dan
President and
Chief Executive Officer

COMMENT

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OFC. OF THE SECRETARIAT

April 29, 2003

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BY FIRST CLASS MAIL AND E-MAIL

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

Re: Eligible Orders - 68 Fed. Reg. 12319 (March 14, 2003)

Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT®" or "Exchange") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposal to amend its Rule 1.35(a-1)(5), to modify the requirements applicable to post-execution allocation of bunched orders by account managers. The Commission has responded to an evolving marketplace, by proposing changes that would provide greater benefits to a wider range of customers, while retaining valuable customer protections. In making this proposal, the Commission has carefully considered the conclusions of, and adopted recommendations made in, the recent Best Practices Study conducted by the National Futures Association and the Futures Industry Institute.

The amendments would expand both the category of customers and the category of account managers who would be able to reap the advantages of post-execution allocation procedures. Specifically, such procedures would become permissible for all customers who provide written discretionary trading authority to their account managers. The universe of eligible account managers would be modified to include account managers and investment managers who are excluded from the definitions of such professionals by law or rule, those who are exempt from relevant registration requirements, and all foreign advisors whose discretionary customers are non-U.S. persons.

In addition, the detailed affirmative disclosure requirements would be replaced by a requirement that account managers make generally the same, and some additional, information available to their customers, upon request. Finally, the account certification requirement would be eliminated, and the respective responsibilities of account managers and FCMs would be clarified.

Essential customer protections would be retained. The amended rule would continue to provide that any allocation must be fair and equitable, and no account or group of accounts may receive consistently favorable or unfavorable treatment. Account

141 W. Jackson Blvd.
Chicago, Illinois 60604-2994
312 435-3606
Fax: 312 347-4259

accounts may receive consistently favorable or unfavorable treatment. Account managers would be required to provide allocation information to FCMs in a time sufficiently before the end of the day during which the orders are executed to ensure that clearing records correctly identify the ultimate customer. The allocation methodology would have to be sufficiently objective and specific to permit independent verification of the fairness of the allocations over time. FCMs would continue to be required to monitor accounts subject to post-execution allocation for unusual account activity. Both account managers and FCMs would be subject to specific recordkeeping requirements that would provide the ability to demonstrate compliance with the rule to the Commission and self-regulatory authorities.

Proposed Rule 1.35(a-1)(5)(iv)(C) requires that FCMs executing orders or carrying eligible accounts, and members of contract markets executing orders, must maintain records that, as applicable, identify orders subject to post-execution allocation and accounts to which such trades are allocated. The CBOT understands that, although the Commission has referenced contract market members who execute orders, it has included the phrase "as applicable", to indicate that it does not intend to place these recordkeeping responsibilities upon floor brokers. Such brokers do not maintain account information in the normal course of their business.

The Exchange supports the adoption of the amendments to Rule 1.35(a-1)(5), as proposed. The CBOT believes that these amendments strike the appropriate balance between streamlining and expanding the availability of post-execution procedures and protecting customers by ensuring fair and equitable allocations.

The Exchange thanks the Commission for the opportunity to provide comments on this important proposal. If you have any questions or comments, please contact Anne Polaski, Assistant General Counsel, at (312) 435-3757.

Sincerely,

Bernard W. Dan