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July 14<sup>th</sup>, 2003

**COMMENT**

**Via Electronic Mail**

Ms. Jean Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**RE:   CBOT/CME  
      Common Clearing Link Rule Submission**

Dear Ms. Webb:

Pursuant to the Commodity Futures Trading Commission's ("CFTC") July 8<sup>th</sup>, 2003, request for comment on the above referenced rule submission, Goldenberg, Hehmeyer & Co. ("GHCO") respectfully submits the comments contained below.

GHCO opposes the Chicago Board of Trade's ("CBOT") proposed rule 701.01 titled "*Transfer of Open Positions to Clearing Services Provider*", in its entirety. The rule attempts to modify a relationship between the Board of Trade Clearing Corporation ("BOTCC") and a BOTCC clearing member that is contractual in nature. More importantly, Rule 701.01 attempts to mandate how and where a CBOT member must maintain pre-existing BOTCC positions without consideration as to who has assumed the risk of such positions, or whether implementation of such a rule provides U.S. capital markets with the best method of risk transfer.

Open positions carried by a clearing-house in the name of a clearing member are the financial and contractual responsibility of such clearing member, rather than the CBOT. In the unlikely event that a BOTCC member could not meet a financial commitment resulting from trading activity, BOTCC would not look to the CBOT to make them whole. Thus, while we recognize that CBOT may be entitled to require CBOT members to clear products where CBOT sees fit, products previously executed and cleared that result in open positions are the financial and contractual obligation of the BOTCC member rather than the exchange itself, and the CBOT should not mandate the destiny of such positions.

Ms. Jean Webb  
Commodity Futures Trading Commission  
July 14<sup>th</sup>, 2003  
Page 2

Further, GHCO opposes rule 701.01 on policy grounds. Requiring members to comply with the rule may jeopardize the main economic impetus of the futures industry, the efficient transfer of risk. Anti-competitive pressures that could result from imposing such a requirement, could reduce the efficiency of the industry, and could make utilizing the futures markets more expensive and costly for market participants. Approving such a rule could also result in the reduction of the industry's overall economic utility.<sup>1</sup>

Lastly, GHCO is concerned that the futures industry has not been given adequate time to digest the implications of the proposed rule. While GHCO recognizes the need for an efficient and speedy rule-approval process, we believe that the potential consequences to all market participants resulting from this particular rule are so great that additional time for receiving comments is necessary.

Please feel free to contact the undersigned at (312) 356-6000 if you have any questions regarding this communication.

Sincerely,

*Ralph Goldenberg*    *Chris Hehmeyer*

*Carl Gilmore*

Ralph I. Goldenberg,  
Co-Chairman

Christopher K. Hehmeyer  
Co-Chairman

Carl W. Gilmore  
General Counsel

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<sup>1</sup> We recognize that in lieu of a rule such as contemplated by rule 701.01, certain mechanical and operational processes and procedures would need to be instituted by CBOT firms. We are comfortable however, that adequate knowledge exists within the industry to implement commercially reasonable procedures.