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Board of Trade
CLEARING CORPORATION

Nancy K. Brooks
Vice President, General Counsel,
and Secretary

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C.F.T.C.

February 24, 2000

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Re: **Proposed Revision to CFTC Reg. 1.41**

OFFICE OF THE SECRETARIAT

VIA U.S. POST AND E-MAIL

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

COMMENT

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Dear Ms. Webb:

The Board of Trade Clearing Corporation (the "Clearing Corporation") is writing this letter to comment on the proposal of the Commodity Futures Trading Commission (the "Commission") to revise the Commission's procedure for the review of contract market rules (the "Proposal").

The Clearing Corporation performs clearing and settlement functions for all futures and options trades executed on or through the facilities of the Chicago Board of Trade and affiliated exchanges. Such trades represent approximately one-half of all futures and options contracts executed on the markets located in the United States. The Clearing Corporation, which has been guaranteeing the financial integrity of these futures markets for 75 years, is the only clearinghouse in the world with both an "AAA" rating from Standard & Poor's Corporation and \$100 million in default insurance.

The Clearing Corporation applauds the Commission's Proposal to adopt Commission Reg. 1.41(z) which will permit contract markets to place a new rule into effect the business day after the Commission has received submission of the rule. The Clearing Corporation is pleased to note that, with respect to proposed Commission Reg. 1.41(z), the term "contract market" includes a clearing organization, such as the Clearing Corporation, that clears futures contract transactions (see proposed Commission Reg. 1.41(z)(1)(ii) and footnote 6 of the Proposal). We believe the Proposal represents a reasoned and pragmatic approach which will improve the ability of contract markets and clearing organizations to respond to market developments.

Given this need for contract markets to respond quickly and decisively in today's global marketplace, we believe that the "certification" requirement, as currently set forth in the proposed Reg. 1.41(z), will be difficult to apply and may hinder a

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contract market's ability to utilize the 1.41(z) procedure. In particular, we recommend that the Commission delete the "not inconsistent with" concept from the required certification as such a standard is too vague. The Commodity Exchange Act ("CEA") and Commission Regulations contain many nuances and there exists uncertainty in the interpretation of a number of the provisions thereunder. Given the difficulty of certifying such a highly subjective standard, contract markets could be greatly discouraged from utilizing the 1.41(z) procedure. Accordingly, we believe that the "certification" requirement for rules submitted under the 1.41(z) procedure should be limited to certifying that the rule *does not violate* any provision of the CEA or Commission Regulations.

With respect to the Commission's request for comment on whether it should reserve the authority to stay or suspend the operation of a contract market rule under Reg. 1.41(z) once the Commission has initiated a proceeding under CEA Section 5a(a)(10), 5a(a)(12), 8a(7) or 8a(9), we believe it would be a mistake to allow any such suspensions for the simple reason that this authority would go against the larger purpose of providing legal certainty in the marketplace. Of course, the Commission retains its authority to issue cease and desist orders under CEA Section 6b. Further, in this day of heightened competition, contract markets are very sensitive to the needs of their members and customers and will act to minimize the adverse impact of any rules adopted. Also, for this reason, we believe the Reg. 1.41(z) process needs to be fully applicable to rules and rule amendments relating to contracts that have open interest at the time the rule is implemented. It is difficult to envision circumstances in which the effectiveness of a rule of the Clearing Corporation would need to be delayed simply because there was open interest in one or more contracts. Indeed, if an open interest test were applied, it is unclear when - if ever—a clearing organization could amend its rules since those rules almost invariably apply equally to all contracts cleared by the clearing organization.

Also, given the need for contract markets and the Commission to be able to respond flexibly and appropriately, the Clearing Corporation feels it is important to retain the current rule approval process, including the provisions of existing Commission Regs. 1.41(b), (c) and (f), in addition to adopting the 1.41(z) process.


Lastly, we note the following technical points regarding the language of proposed Commission Reg. 1.41(z). First, under Reg. 1.41(z)(1)(ii), the word "and" following "5a(a)" should be replaced by the word "or" as it appears to be the Commission's intent to allow Commission Reg. 1.41(z) to be available to contract markets that trade or clear *at least one* contract that is not dormant. Next, under Reg. 1.41(z)(2)(ii), in order to be consistent with CEA Section 8a(7), the words "alter, supplement or" should be added in front of the word "disapprove."

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In summary, the Clearing Corporation commends the Commission on its initiative to adopt Reg. 1.41(z) thereby adding flexibility and ease to the rule approval process for contract markets.

The Clearing Corporation appreciates the opportunity to comment on the Commission's Proposal. If you have any questions with respect to this matter, please contact the undersigned or Heidi M. Rauh, Assistant General Counsel, at 312-786-5708.

Sincerely,



Nancy K. Brooks

cc: Dennis A. Dutterer