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COMMENT

By Electronic Mail

December 14, 2009

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

**Re: Kansas City Board of Trade and Kansas City Board of Trade Clearing Corporation
Petition Pursuant to Section 4(c) of the Commodity Exchange Act**

Dear Mr. Stawick:

The Futures Industry Association ("FIA")¹ is pleased to submit this letter in support of the petition filed by the Kansas City Board of Trade ("KCBT") and the Kansas City Board of Trade Clearing Corporation ("Clearing Corporation" and, collectively with the KCBT, the "Petitioners"), pursuant to section 4(c) of the Commodity Exchange Act ("Act"), for an exemption from certain requirements of Commodity Futures Trading Commission ("Commission") Rule 35.2, 17 CFR § 35.2, in order to list for clearing and clear, respectively, wheat calendar swap contracts.² FIA also supports the Petitioners' request that the Commission issue an order, pursuant to section 4d(a)(2) of the Act, authorizing the Clearing Corporation and any FCM carrying cleared-only wheat calendar swap contracts to hold funds deposited by customers to margin, guarantee or secure such contracts with customer funds otherwise required to be held in a customer segregated account ("section 4d account").

The relief the Petitioners have requested is similar to the relief that the Commission has previously granted to ICE Clear US, the Chicago Mercantile Exchange and their respective clearing member FCMs, in which they were authorized to clear, and to commingle in a section 4d account funds

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants ("FCMs") in the United States. Among FIA's associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

² Specifically, the Petitioners have requested relief from the provisions of Commission Rule 35.2, which provide (i) that a swap agreement may not be part of a fungible class of agreements that are standardized as to their material terms and, further, (ii) that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the agreement.

supporting positions in, certain cleared-only OTC agricultural swaps.³ In this regard, the Petitioners have indicated that their cleared-only wheat calendar swap contracts will be subject to essentially the same requirements as those to which the ICE Clear US and CME swaps are subject. That is:

- The wheat calendar swap contracts will be submitted for clearing by a clearing member of the Clearing Corporation;
- Each cleared-only contract will be marked to market on a daily basis;
- The Clearing Corporation will apply its margining system and calculate required margin for each cleared-only contract in accordance with its normal and customary practices;
- The Clearing Corporation will apply appropriate risk management procedures with respect to transactions and open interest in the cleared-only contracts;
- The Clearing Corporation will conduct financial surveillance and oversight of clearing members clearing cleared-only contracts sufficient to assure the Clearing Corporation that the clearing member has appropriate operational capabilities necessary to manage defaults in such contracts; and
- The Clearing Corporation will make available open interest and settlement price information for cleared-only contracts in the same manner as exchange-traded contracts.⁴

The Petitioners' proposed wheat calendar swap contract also appears to meet the criteria supporting a finding that cleared-only OTC contracts and related margin should be permitted to be held in a customer segregated account, which we preliminarily identified in our letter to the Commission dated September 14, 2009.⁵ Specifically: (i) the wheat calendar swap contract is integrally related with an exchange-traded contract; (ii) the contract is sufficiently liquid to permit offset in the event of a clearing member default; (iii) in the absence of offset, the risk of carrying the positions may be easily hedged; and (iv) the cleared-only contract provides opportunities for cross-margining with exchange-traded contracts.

³ Commission Order dated December 12, 2008, 73 Fed.Reg. 77015 (December 18, 2008) (with respect to cleared-only OTC swaps on coffee, sugar and cocoa and other agricultural products cleared by ICE Clear US); and Commission Order dated March 18, 2009, 74 Fed.Reg. 12316 (March 24, 2009) (with respect to in cleared-only OTC swaps on corn, wheat and soybeans cleared by the CME).

⁴ We note that, because the products underlying each of the cleared-only agricultural swaps also underlie exchange contracts traded on each clearing organization's related designated contract market ("DCM"), each Commission order was also subject to the conditions that: (i) the related DCM establishes a coordinated market surveillance program that encompasses the cleared-only contracts and corresponding futures contracts listed on the DCM; (ii) the related DCM adopts speculative position limits for each cleared-only contracts that are the same as the limits for the corresponding contract listed by the DCM; (iii) the cleared-only contracts are not be treated as fungible with any contract listed for trading on the related DCM; (iv) each FCM acting pursuant to the order keeps the types of records that are described in section 4g of the Act and Commission rules thereunder, including Rule 1.35; and (v) the relevant DCM applies large trader reporting requirements to cleared-only contracts. To the extent the KCBT has not already undertaken to do so, we would expect the Commission to impose similar terms and conditions here.

⁵ Letter from John M. Damgard, President, Futures Industry Association, to David A. Stawick, Secretary to the Commission.

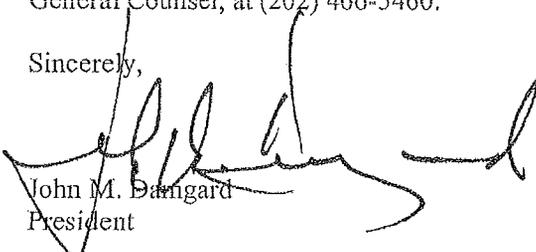
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As the Commission will recall, in that comment letter, FIA generally supported the Commission's proposal to amend its bankruptcy rules, 17 CFR Part 190, to establish a separate account class for those cleared-only contracts with respect to which the Commission has not issued an order requiring such positions and assets to be held in a section 4d account ("cleared OTC derivatives"). At that time, we encouraged the Commission, concurrent with the creation of the proposed separate account class, to adopt (after notice in the Federal Register and a reasonable opportunity for comment) objective standards by which the Commission will determine which cleared OTC derivatives will be eligible or required to be held in a section 4d segregated account and which cleared OTC derivatives will be required to be held in separate, *i.e.*, non-section 4d, accounts. We expressed concern that failure to adopt such objective standards will result in legal uncertainty in the event of an FCM bankruptcy, which may threaten the integrity of the section 4d customer segregated account. We want to take this opportunity to reiterate this recommendation.

Conclusion

We appreciate the opportunity to submit these comments in support of the Petitioners' requests (i) for an exemption from certain requirements of Commission Rule 35.2, with respect to the Petitioners' proposed wheat calendar swap contract, and (ii) for an order, pursuant to section 4d(a)(2) of the Act, authorizing the Clearing Corporation and any FCM carrying cleared-only wheat calendar swap contracts to hold funds deposited by customers to margin such contracts with customer funds otherwise required to be held in a section 4d account. If the Commission has any questions concerning the matters discussed in this letter, please contact Tammy Botsford, FIA's Assistant General Counsel, at (202) 466-5460.

Sincerely,



John M. Bangard
President

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner

Division of Clearing and Intermediary Oversight
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