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COMMENT

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January 26, 2000 OFFICE OF THE SECRETARIAT

Ms. Jean A. Webb
Office of the Secretariat
COMMODITY FUTURES TRADING COMMISSION
1155 21st Street, N.W.
Washington, D.C. 20581

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RE: Proposed Amendments to Regulation 1.59

Dear Ms. Webb:

The Chicago Mercantile Exchange ("CME") is pleased to submit these comments on the Commission's proposal to amend Regulation 1.59. Regulation 1.59 requires self-regulatory organizations ("SROs") to adopt rules prohibiting employees, governing board members and committee members from certain trading activities and from disclosing material, non-public information. The regulation prohibits exchange employees from trading any commodity interest traded on the employing exchange, or any related commodity interest.¹ Governing board and committee members, on the other hand, are permitted to trade futures and other commodity interests, provided that they do not trade on the basis of material, non-public information obtained in the course of their official duties.²

TREATMENT OF CONSULTANTS AND NON-PAID ADVISORS

Regulation 1.59 defines the term "employee" to mean "any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization." The Commission is requesting comments on whether consultants hired by SROs in a variety of capacities should be treated as "employees" for purposes of the general trading ban contained in Regulation 1.59.

In our view, the answer depends on the extent to which the consultant performs the same role as an exchange employee. For example, at one extreme, an exchange might outsource certain functions and hire consultants to perform them. The consultants would be working full-

¹ CME Rule 255.A. contains a more stringent restriction that prohibits CME employees from trading any futures or commodity options contracts traded on any U.S. or foreign market, as well as certain securities option contracts which are closely related to futures contracts traded on the CME.

² This prohibition is contained in CME Rule 432.m.

time at the exchange's premises, performing work that otherwise would have been performed by exchange staff. In that example, we believe that the consultants are the functional equivalent of exchange employees and should be subject to identical trading restrictions.

At the other extreme, an exchange might retain an international consulting firm to advise it on strategic planning. A partner of the consulting firm, who is working on numerous projects for other clients at the same time, might spend 20 hours over the course of two months interviewing staff and members of the exchange. The CME would require such a consultant not to disclose, nor to trade on the basis of, any material, non-public information that he obtained in the course of his work for the exchange. However, such a consultant is not the functional equivalent of an exchange employee, and we believe it is not necessary to impose a general trading ban on such a consultant.

The Commission also requested comment concerning the application of Regulation 1.59 to non-paid advisors of SRO governing boards and committees. Clearly, such advisors do not function as exchange employees and should not be subject to a general trading ban. It would be unusual for such advisors to have access to material, non-public information. However, to the extent that they do have access to such information, they should be barred from disclosing it or using it as the basis for trading.

TECHNICAL AMENDMENTS

The Commission proposes to amend Regulation 1.59 by adopting certain technical amendments. These amendments would:

- clarify that board members who receive a salary or stipend from the SRO solely for serving on the board would not be regarded as employees;
- clarify that individuals who participate in board deliberations as *ex officio* or *emeritus* members and are paid a salary or stipend for their board service would be treated as board members rather than employees; and
- clarify the situations in which SRO employees are totally prohibited from trading from the situations in which they are prohibited from trading only if they have access to material, non-public information.

The CME believes that the proposed amendments help to clarify the scope of the regulation, and we support them.

Respectfully submitted,

Scott Gordon (CR)

Scott Gordon