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

COMMENT

Re: CBOT-CME Clearing Link

Dear Ms. Webb:

Today, a number of comment letters were filed in opposition to Commission approval of new Chicago Board of Trade Regulation 701.01. We have reviewed the letters and continue to believe that Regulation 701.01 does not violate the Commodity Exchange Act and should be approved by the Commission. The bulk of the comments filed appear to address not the terms of Regulation 701.01 but rather broad issues of regulatory policy dealing with clearing relationships. Those broad issues should not serve as a pretext for denying or delaying approval of Regulation 701.01.

Background

The Board of Trade and the Chicago Mercantile Exchange announced their clearing agreement on April 16, 2003. Since that time, we have been working diligently to inform all market participants and especially our Clearing Members about the benefits of the Clearing Link, including the savings and efficiencies it will bring to customers and Clearing Members alike. The process of involving and informing our members in the details of implementing the Clearing Link is extensive and ongoing.

Once the agreement was entered into, the Board of Trade began drafting the amendments to its rulebook that were necessary to reflect the transfer of the clearing function from our current provider, the Board of Trade Clearing Corporation, to the CME. In addition, in a series of meetings, the Board of Trade discussed and agreed with BOTCC and the CME on the processes and procedures for transferring open interest. The Commission and its staff have been consulted about these matters as those efforts have progressed.

Rules 700.00, 701.00 and 911.00

Prior to the Clearing Link, the Board of Trade's rules specified that all trades at the Board of Trade be cleared at BOTCC or such other corporation as may be authorized. Two rules accomplished this objective -- Board of Trade Rule 700.00 and 911.00, *effective December 1, 1925*. In addition, Board of Trade Rule 701.00 (*effective July 17, 1935*) specified

that the Board of Trade could discontinue the services of BOTCC and designate a different clearing services provider.

These three rules have been on the books of the Board of Trade for many years, pre-dating even the creation of the CFTC by decades. They are part of the history, custom and practice of the futures industry. The Board of Trade has a statutory obligation to administer and enforce these rules. Neither the Commission nor anyone else has ever questioned whether the Board of Trade had the authority to adopt these rules or whether the rules violated the Commodity Exchange Act in any respect. In fact, since 1976, the Commission has taken the position that the public interest requires a contract market, like the Board of Trade, to select an appropriate clearinghouse for trades that are executed on and through its facilities.

Since the Clearing Link provides that the CME will replace BOTCC as the Board of Trade's clearing services provider, the Board of Trade needed to change these rules. Amendments to Rules 700.00, 701.00 and 911.00 were drafted, approved by the Board of Trade's Board of Directors and submitted for the approval of the Board of Trade's membership, as required by applicable corporate law, on May 28, 2003. As a result, every member of the Board of Trade had notice of these rule changes as of that date.

The change to Rule 700.00 specifies that all contracts traded at the Board of Trade shall be cleared through and under the rules of the Clearing Services Provider (now defined to be the CME), not BOTCC. The change to Rule 701.00 updated that rule by providing that the Board of Trade may discontinue the clearance of contracts through a Clearing Services Provider and select an alternative Clearing Services Provider. (That rule change deleted the specific authority to discontinue clearing services through BOTCC since it will be moot after the Clearing Link is implemented.) Rule 911.00 was amended to delete reference to BOTCC as the Clearing House, substitute the term Clearing Services Provider and specify that the term Clearing Services Provider shall mean the CME "or any other entity with which the Exchange may enter into an agreement to provide clearing, settlement or any related services."

On June 24, 2003, the Board of Trade's membership approved these rule changes by a vote of 564 3/6 "For" and 9 "Against." Since these rule changes merely updated decades-old Board of Trade rules to reflect the transfer contemplated by the Clearing Link, in submitting these rules to the Commission on June 25, 2003, the Board of Trade certified that these rules comply with the Commodity Exchange Act and the rules thereunder (Reference File #2324.02). To date, no objection has been raised to these rules or the Board of Trade's certification.

Process for Transferring Open Positions and New Regulation 701.01

Once a decision was made to transfer clearance of trades at the Board of Trade to our new Clearing Services Provider, the CME, a mechanism was needed to shift any open Board of Trade positions from BOTCC to CME on the date of transfer. The Board of Trade met with the Commission as well as representatives of BOTCC and CME to develop an effective transfer

method that would ensure continuity of financial integrity and customer protection. The Board of Trade, CME and BOTCC reached an agreement on the appropriate steps for the transfer, an agreement that was discussed with senior Commission staff due to the strong public and Commission interest in making sure that the transfer occurred seamlessly. That agreement and the process for the actual transfer of any open positions from the BOTCC clearing system to the CME clearing system are reflected in the Statement of Policy submitted by the Board of Trade to the Commission on July 8, 2003 (Reference File #2341.01).

While the Board of Trade initially sought Commission approval of this Statement of Policy, following discussions with Commission staff, the Board of Trade decided that Commission approval of such a policy was cumbersome and unwarranted in light of the agreement of all three parties to its content. Therefore, on July 8, the Board of Trade resubmitted its Statement of Policy to the Commission, certified that the Statement of Policy's provisions comply with the CEA and CFTC regulations and acknowledged its "obligation to enforce these certified provisions in the same manner as is applicable to rules which the CFTC has approved."

Also on July 8, the Board of Trade resubmitted new regulation 701.01 for Commission approval. (The Board of Trade had submitted the regulation previously along with the Statement of Policy, asking for approval of both.) The regulation specifies:

"Each Clearing Member [of the Board of Trade] shall comply in all respects with any statement of policy or other notice issued by the Exchange relating to the procedures and processes that must be followed to effectuate the transfer of open positions to any Clearing Services Provider."

Section 5c(c)(3) of the CEA states that "The Commission shall approve any such ...new rule ...unless the Commission finds that the ... new rule would violate this Act."

Regulation 701.01 would not violate the CEA in any way. It merely provides an orderly chain of communication for any procedures and processes that Clearing Members of the Board of Trade must follow if they have open positions on their books as of the transfer date to the CME or, in the future, any other Clearing Services Provider as defined in Rule 911.00.¹ The only parties subject to the regulation are Clearing Members, a term defined under Board of Trade Rule 912.00(as approved by the membership on June 24 and found in reference file #2324.02) to

¹ Some comment letters suggest that the Board of Trade should agree to special quality standards for any new clearing services provider beyond CFTC regulation and the statutory core principles. The Board of Trade is as concerned, if not more concerned, than anyone about the financial integrity of any new clearing services provider and would have no reason to enter into an agreement with anyone that would pose a financial risk to our markets.

Jean A. Webb
July 14, 2003
Page 4

be "An Exchange Member or member firm that meets the Exchange's requirements to clear any futures or options listed for trading on the Exchange." It can hardly be said to violate the CEA for a Board of Trade member or member firm to be required to comply with a statement of policy issued by the Board of Trade. Indeed, in the context of an action as sensitive and complicated as the transfer of open positions to a new clearing services provider, that kind of basic organizational principle must be viewed to be both sensible and imperative.

The Commission's approval of the Regulation would simply confirm that it does not violate the CEA to require a contract market's members to follow the processes and procedures a contract market adopts to effectuate the transfer of open positions when that contract market selects a new clearinghouse. Any other result would jeopardize orderly self-regulation and could inject considerable uncertainty into the financial integrity of the clearing process.

The Commission should approve Regulation 701.01.

Very truly yours,

Bernard W. Dan
President and CEO
Board of Trade of the City of Chicago, Inc.