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Chicago Board of Trade

Bernard W. Dan  
President and  
Chief Executive Officer

2005 OCT -4 AM 11: 24

September 26, 2005

BY E-MAIL AND CERTIFIED MAIL

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

COMMENT

Re: Proposed Clarifying Amendments for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

OFFICE OF THE SECRETARIAT

2005 OCT -3 PM 2: 39

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Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT®" or "Exchange") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") Proposed Clarifying Amendments for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications. The Commission has proposed these amendments to further clarify and codify acceptable practices for trading facilities, based on the Commission's experience in applying the rules that it had previously adopted in order to implement the Commodity Futures Modernization Act of 2000 ("CFMA").

I. Appendix B to Part 38 – Core Principle 7

The Commission has proposed to expand its guidance with respect to Core Principle 7 (Availability of General Information), in Appendix B to Part 38, which is applicable to designated contract markets ("DCMs").<sup>1</sup> Specifically, the Commission has stated that a DCM should place information on its website no later than the day a new product is listed, the day a new or amended rule is implemented, or the day previously disclosed information is changed. The Commission further indicates that such information could be placed on a DCM's website in the form of press releases, newsletters or notices to members. The CBOT supports this proposal and generally posts the required information on its website in the form of notices within this time frame.

However, the Commission has also proposed to include language in its guidance stating that a DCM should ensure that its online rulebook is current to within one day of implementation of a new or amended rule. The Exchange believes that if rule changes are posted to a DCM's website within one day of their implementation, in the form of a

<sup>1</sup> Core Principle 7 requires a DCM to make information concerning the terms and conditions of contracts and the mechanisms for executing transactions available to market authorities, market participants, and the public. Section 5(d)(7) of the Commodity Exchange Act, as amended.

press release, newsletter or notice, it would be sufficient if the changes to the rulebook itself were made on the website within five days. The information would already have been made publicly available, and this more realistic standard for online rulebook updates would allow for any staffing or system issues that may delay immediate entry.

In addition, rule amendments that are non-substantive, housekeeping changes, whether self-certified or provided to the Commission in summary notices pursuant to Commission Regulation 40.6, are generally not the subject of press releases, newsletters or notices to members, and, it should be sufficient if such changes are incorporated into the Exchange's online rulebook within five days.

## II. Derivatives Clearing Organization Registration Applications

The Commission has proposed to revise the application and review procedures for registration as a derivatives clearing organization ("DCO"). In particular, the Commission proposes to eliminate the presumption of automatic fast-track review of DCO applications, under which DCOs are deemed to be registered 60 days after the Commission receives their applications, unless notified otherwise by the Commission. The Commission's proposed amendments would specify that DCO applications would be reviewed pursuant to the 180-day time frame and procedures outlined in Section 6(a) of the Commodity Exchange Act, as amended ("Act"),<sup>2</sup> unless a DCO applicant requested expedited review. If expedited review were requested, the Commission would be required to register the DCO within 90 days after receiving the application, unless the Commission terminated the expedited review upon a determination, among others, that the application was materially incomplete or raised novel or complex issues that required additional time for review.

The Commission had previously adopted similar procedures for processing applications for DCMs and derivatives transaction execution facilities ("DTEFs") and the CBOT agrees that DCO applications should be treated in the same manner. Therefore, the CBOT supports the Commission's proposal to make the time frames for review of DCO applications consistent with the time frames for review of DCM and DTEF applications.

## III. Part 40

### A. Requests for additional information

The Commission has proposed to adopt several amendments to Part 40 of its Regulations. In particular, the Commission has expanded Regulation 40.2, which allows products to be listed for trading by certification, to require a registered entity to provide, upon the request of Commission staff, additional evidence, information or data relating to whether

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<sup>2</sup> Section 6(a) of the Act explicitly applies to designation as a contract market or registration as a derivatives transaction execution facility, and does not impose any statutory review period with respect to DCOs.

the contract meets the requirements of the Act or Commission regulations.<sup>3</sup> The CBOT understands that the Commission has the right and the obligation to conduct a due diligence review to ensure that the terms and conditions of any product listed by a registered entity comply with the Act and Commission Regulations. This is true whether the product is listed by certification or submitted for approval. The Exchange has received requests from Commission staff for additional data relating to certified contracts, and has complied with those requests.

However, the CBOT is concerned that the Commission appears to be moving in the direction of regularly requesting the type of data that is normally submitted in support of a product for which approval is requested, including research materials regarding any underlying cash markets. In fact, in its Federal Register release, the Commission suggests that a DCM or DTEF may minimize the potential for requests for additional information if it submits “. . . data, research reports, trade interview reports, exchange or third party analyses, or other background information . . .” along with its certification of a new product or rule amendments. 70 F.R. 39672, 39678. When the Commission routinely makes such requests, it produces a chilling effect on markets’ listing products immediately after certification. Knowing that the Commission is likely to request sometimes voluminous supporting data regarding certified contracts, markets may be hesitant to begin trading a particular new product until they know that the Commission has requested any additional data and completed its review. This defeats the purpose of permitting registered entities to bring products that comply with the Act and Regulations to market quickly as intended by the CFMA.

The Commission has proposed to amend Regulation 40.2 to include language permitting the Commission to affirmatively stay the listing of a certified contract in the same circumstances under which Regulation 40.6 currently permits the Commission to stay the effectiveness of a certified rule. These provisions explicitly permit such a stay during the pendency of Commission proceedings either for filing a false certification or to alter or amend rules of the registered entity pursuant to Section 8a(7) of the Act. The CBOT suggests that, at a minimum, the Commission should make it clear that any request for additional information under Regulation 40.2(b) or 40.6(a)(4), and any due diligence assessment by the Commission, is not intended to implicitly or explicitly operate as a stay with regard to the listing of a certified contract or the implementation of a certified rule amendment.

B. Review period for rules submitted for approval

Currently, Commission Regulation 40.5 establishes a review period of 45 days for rule amendments voluntarily submitted to the Commission for approval, with a possible extension for an additional 30 days. The Commission has proposed to change the extension period to 45 days to make it consistent with the permissible extension period with respect to new products submitted for Commission approval, which is contained in

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<sup>3</sup> The Commission has proposed to similarly amend Regulation 40.6 with respect to certified rules.

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Regulation 40.3. The Commission had originally proposed a 45-day extension period prior to the adoption of Regulation 40.5. In adopting the current provision for a 30-day extension period, the Commission stated:

Proposed rule 40.5 would have established procedures for the voluntary submission of rules for Commission review and approval. CBT objected that this rule would result in a potentially longer review process than was provided for under the Commission's fast track review procedure prior to enactment of the CFMA. CL 7-2.

Proposed rule 40.5 provided for a 45-day review period of rules submitted for Commission approval, with the possibility that the Commission could extend the review period once, for another 45 days, which would have comported with the statutory review period of 90 days. On further reflection, the Commission has determined to retain the review periods of its pre-CFMA fast track procedure: one 45-day initial review period, with the possibility of one 30-day extension.

(footnotes omitted). *A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations*, 66 F.R. 42256, 42263 (August 10, 2001).

The CBOT believes that the reasons that it had expressed in 2001 in favor of a 30-day extension period, and the reasons that the Commission relied upon in adopting it, remain valid today. Therefore, the CBOT does not believe the Commission should modify the 30-day extension period set forth in Regulation 40.5.

The CBOT appreciates the opportunity to provide comments on the Commission's proposal to clarify the rules relating to exempt markets, DTEFs, DCMs, and DCOs. If you have any questions regarding these comments, or wish to discuss this matter, please feel free to contact Anne Polaski, Assistant General Counsel, at (312) 435-3757, or at [apolaski@cbot.com](mailto:apolaski@cbot.com).

Sincerely,

Bernard W. Dan

