Board Of Trade
CLEARING CORPORATION

Dennis A. Dutterer
President and Chief Executive Officer

March 20, 1998

Re: **Amended Proposed CFTC Regulation 1.69 (Voting by Interested Members of SRO Governing Boards and Committees)**

98-4
(5)

VIA U.S. POST and E-MAIL (secretary@cftc.gov)

COMMENT

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

Dear Ms. Webb:

I. INTRODUCTION

The Board of Trade Clearing Corporation (the "Clearing Corporation") is writing this letter to comment on the amended proposal of the Commodity Futures Trading Commission (the "Commission") to adopt a new Commission Regulation 1.69 (the "Proposed Rule"). The Proposed Rule would require self-regulatory organizations ("SROs") to adopt rules prohibiting members of their governing boards and certain committees from deliberating and voting on matters where the member has a conflict of interest.[1]

The Clearing Corporation performs clearing and settlement functions for approximately 120 members for futures and options trades executed on or through the facilities of the Chicago Board of Trade ("CBOT") and affiliated exchanges. The Clearing Corporation's primary responsibility is to ensure the financial integrity of all futures and options contracts traded on the CBOT and its 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 is governed by a Board comprised of nine clearing member representatives

[1] The Proposed Rule was first published for public comment on May 3, 1996 in Volume 61 of the Federal Register at pages 19,869-19,878 (the "Original Proposed Rule"). In response to comments received by the Commission on the Original Proposed Rule, an amended Proposed Rule (referred to in this letter as the "Proposed Rule") was published for public comment on January 23, 1998 in Volume 63 of the Federal Register at pages 3,492-3,505 (the "Release").

Principal Office
141 West Jackson Boulevard
Suite 1460
Chicago, Illinois 60604
(312) 786-5700
FAX: (312) 786-9171

New York Office
Four World Trade Center
Suite 7246
New York, New York 10048
(212) 524-9185-86

(the "governors"). The governors also serve on, and are the only members of, the Clearing Corporation's three Board committees: Risk, Audit and Business Committees. The Clearing Corporation's Risk Committee is charged with the responsibility of setting the amount of original margins which are called to protect the Clearing Corporation on trades cleared by the Clearing Corporation.

The Clearing Corporation commented on the Commission's Original Proposed Rule in its letter to the Commission dated July 29, 1996 (see Attachment A hereto). Such comment letter primarily focused on the Clearing Corporation's belief that Congress did not intend to include clearing organizations under Section 5a(a)(17) (the "Statute") of the Commodity Exchange Act (the "CEA")[2] as to do so could result in no action being taken during an emergency thereby adversely impacting the financial integrity of the clearing system. The Clearing Corporation continues to believe extension of this regulation to clearing organizations is beyond the scope of the applicable congressional intent. The Commission, however, apparently has rejected this argument and intends to impose the requirements of Proposed Rule 1.69 on clearing organizations. Accordingly, the Clearing Corporation has now reviewed the Proposed Rule as it may be applied to the Clearing Corporation and has the following comments and requests for clarification.

In sum, the Clearing Corporation believes that the Commission's Proposed Rule exceeds the requirements of the Statute thereby creating substantial uncertainty and inviting litigation. We urge the Commission to reconsider the application of the Proposed Rule to clearing organizations. As a reminder, the Clearing Corporation's primary goal is to ensure the financial integrity of the futures markets. Thus, no one has a stronger interest than the AAA-rated Clearing Corporation in maintaining its integrity by avoiding conflicts of interest. To that end, the Clearing Corporation already has adopted a conflicts of interest policy which meets our particular needs and has served us well.

II. DISCUSSION AND ANALYSIS OF CFTC PROPOSED RULE 1.69

A. Definition of "Significant Action" Does Not Conform to the Statute

The definition of "significant action" as set forth in the Proposed Rule with respect to margin changes is contrary to that required by the Statute and will lead to

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[2] The addition of a conflicts of interest requirement is set forth in Section 217 of the Futures Trading Practices Act of 1992 which amended the CEA.

substantial uncertainty and possible litigation. Congress defined "significant actions" to include the following type of margin changes:

> "Any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, . . ." CEA Section 5a(a)(17)(B)(ii).

The Commission, however, has expanded the Congressionally-mandated definition of "significant actions" in Proposed Rule 1.69(a)(8)(ii) to include margin changes that

> "**(1)** are designed to respond to extraordinary market conditions such as actual or attempted corners, squeezes, congestion, or undue concentrations of positions **or** **(2)** are likely to have a substantial effect on prices in any contract traded **or cleared** at the SRO." (Emphasis added, see page 3,496 of the Release.)

Thus, the Commission has bifurcated the definition of "significant action." This approach expands the definition well beyond the scope intended by Congress by creating a category of margin changes that must be considered, irrespective of whether or not an extraordinary market condition exists. The Statute is very clear that significant actions include only those margin changes *that are designed to respond to extraordinary market conditions.* This approach makes sense as market participants typically have more at stake when such volatile conditions exist. Hence, there is no basis for the Commission to apply the significant action definition to margin changes when no extraordinary market conditions are present.

By deleting the requirement of "extraordinary market conditions" from the Proposed Rule's definition of margin changes that may be a significant action, the Commission has greatly exceeded congressional intent and created a setting where second-guessing and litigation will occur. For example, the Clearing Corporation, reviews its original margin levels for the purpose of managing risk on a regular monthly basis and makes recommendations to the Clearing Corporation's Risk Committee for changes in margin levels, if any, based on such review. The Clearing Corporation strongly believes that any adjustment of margin levels based on this monthly review is NOT "likely to have a substantial affect on prices in any contract traded." The Clearing Corporation believes that margin changes are generally price neutral, affecting both long and short positions equally. Thus, it is

impossible to predict whether the price discovery function performed by futures traders is impacted by a change in margin level. Nonetheless, a substantial price movement could occur following one of the regular monthly margin adjustments (just as a substantial price movement could occur at any moment in the futures markets). Under the Proposed Rule, aggrieved parties could argue that such change in contract price was the result of the margin level change and that, accordingly, the conflicts of interest determination should have been undertaken. Given this possibility, the Clearing Corporation may have no choice but to undertake the conflicts of interest determinations for *all* margin changes -- including its regular risk management margin adjustments that are not in response to extraordinary market conditions. This results in an onerous burden on the Clearing Corporation and an invasion of the governors' privacy that will greatly discourage members from serving on the Clearing Corporation's board or committees. Accordingly, we respectfully urge the Commission to limit margin changes deemed to be significant actions to those changes designed to respond to extraordinary market conditions *as per the Statute*.

Next, we again note that the Statute applies on its face to contract markets and not to clearing organizations as the term "or cleared" was not in Congress' definition of significant action (please see our comment letter dated July 29, 1996, Attachment A, for our full argument as to why the Statute does not apply to clearing organizations). As margin changes by clearing organizations are primarily for the purpose of managing risk (and not for the purpose of regulating trading), and such risk management margin changes are not likely to have a substantial effect on contract prices, it makes sense to exclude margin setting by clearing organizations from the conflicts of interest determination requirement. Thus the absence of the words "or cleared" from the definition of significant action in the Statute indicates Congress' realization that clearing organizations need not be covered by the conflicts of interest requirement.

Lastly, the Statute does not elaborate upon the types of "extraordinary market conditions" that may arise and neither should the Proposed Rule. By specifying, extraordinary market conditions "such as actual or attempted corners, squeezes, congestion, or undue concentrations of positions," the Commission is unnecessarily including conditions that may not rise to the level of "extraordinary." Further, such a list will never be exhaustive. Again, we respectfully request that the Commission's definition of "significant action" conform to that in the Statute, thereby leaving discretion in the hands of those most familiar with what is and is not an extraordinary market condition.

B. Review of Position Information

Proposed Rule 1.69(b)(2)(iii) lists positions that "must" be reviewed in determining whether any committee members have a direct and substantial financial interest in the matter. However, it could be the situation that the SRO will not be able to obtain all such position information based on the sources of information specified in Proposed Rule 1.69(b)(2)(iv). For example, as noted in our comment letter with respect to the Original Proposed Rule, the Clearing Corporation does NOT maintain "gross positions" information (except with respect to individuals identified on "Large Trader" reports). Accordingly, the gross positions that "must" be reviewed per Proposed Rule 1.69(b)(2)(iii)(B)-(C) will not be available from the Clearing Corporation's clearing records. Further, it is possible that the committee members themselves will not know such information[3] (Proposed Rule 1.69(b)(2)(iv)(B)) and that such information is not reasonably available from another source (Proposed Rule 1.69(b)(2)(iv)(C)). Accordingly, please clarify in the Proposed Rule that the SRO's responsibility with respect to reviewing the position information set forth in Proposed Rule 1.69(b)(2)(iii) is limited to the sources of information as available per Proposed Rule 1.69(b)(2)(iv).

We commend the Commission's recognition in Proposed Rule 1.69(b)(2)(iv) of the "exigency of the situation" when making conflicts of interest determinations. As noted above, as the definition of "significant action" is limited to emergency or "extraordinary market" situations, the "financial interest" conflicts of interest determination will necessarily only be undertaken during such exigent circumstances. Accordingly, the "exigency of the situation" should also be a criteria when undertaking the position review required by Proposed Rule 1.69(b)(2)(iii). Please revise that rule accordingly.

Lastly, please clarify in Proposed Rule 1.69(b)(2)(iii) that the positions to be reviewed are limited to those positions that reasonably could be affected by the significant action. I.e., if the significant action concerns soybeans, then there is no need to review Treasury positions.

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[3] As the Commission recognized in the Release, deleting the presumption of knowledge provision from the Original Proposed Rule makes sense as committee members who are not aware of their financial interest in a committee matter cannot be motivated by that interest. (Page 3,499 of the Release).

C. Board or Committee Member's Recusal

The Proposed Rule is not clear that the conflicts of interest determination review need not be performed in the case where a board or committee member recuses himself prior to undergoing the disclosure of position information, etc. Accordingly, please clarify that if a board or committee member voluntarily agrees not to participate in deliberation or voting on a matter due to a conflict of interest in advance of undertaking the conflict of interest determination procedures, then there is no need for the SRO to undertake such procedures and the minutes will reflect such recusal accordingly.

III. CONCLUSION

The definition of "significant action" in the Proposed Rule should be identical to Congress' definition as set forth in the Statute. Most importantly, the Proposed Rule should reflect, as per the Statute, that only margin changes that respond to extra-ordinary market conditions are deemed significant actions for purposes of the Proposed Rule. Failure to conform the definition of significant action to the Statute will create substantial uncertainty resulting in increased burdens on SROs and discouragement of SRO members from participating on SRO boards or committees. Next, it is important to realize that the "financial interest" conflicts of interest determination will necessarily only occur during times of market emergency and thus the position review that occurs must take into account the sources of information available at such time. Accordingly, Proposed Rule 1.69(b)(2)(iii) should be clarified to reflect that the review of position information is limited (1) to the sources of information available per Proposed Rule 1.69(b)(2)(iv), (2) by the exigency of the situation, and (3) to only those positions that are likely to be affected by the significant action. Finally, in order to further reduce the burdens associated with the conflict of interest determinations, the Proposed Rule should provide for voluntary recusals by board or committee members.

The Clearing Corporation appreciates the opportunity to comment on the Commission's proposal which is of extreme importance to us.

Sincerely,

Dennis A. Dutterer

Attachment

Attachment A

Board Of Trade
CLEARING CORPORATION

Dennis A. Dutterer
Executive Vice President
and General Counsel/Secretary

July 29, 1996

Re: Proposed CFTC Regulation 1.69 (Voting by Interested Members of SRO Governing Boards and Committees)

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

Dear Ms. Webb:

I. INTRODUCTION

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 adopt a new Commission Regulation 1.69 (the "Proposed Rule"). The Proposed Rule would require self-regulatory organizations ("SROs") to adopt rules prohibiting members of their governing boards and certain committees from deliberating and voting on matters where the member has a conflict of interest.[1]

The Clearing Corporation performs clearing and settlement functions for over 125 members for futures and options trades executed on or through the facilities of the Chicago Board of Trade ("CBOT") 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 also provides a number of related services to a wide range of market participants, including bookkeeping services, risk analysis, market-wide information sharing and clearing and settlement processing for other futures exchanges. The Clearing Corporation is governed by nine members elected to its governing board (the "governors"). The governors also serve on, and are the only members of, the Clearing Corporation's three operating committees.

[1]The Proposed Rule was published for public comment on May 3, 1996 in Volume 61 of the Federal Register at pages 19,869-19,878 (the "Release").

141 West Jackson Boulevard
Suite 1460
Chicago, Illinois 60604
(312) 786-5703 Fax: (312) 786-9171

II. DISCUSSION AND ANALYSIS OF CFTC PROPOSED RULE 1.69

A. Application of the Proposed Rule to Clearing Organizations will Impact Financial Integrity

1. General

In its request for public comment, the Commission invited comments on whether the Proposed Rule should apply to clearing organizations. *The Clearing Corporation fully recognizes the importance of eliminating conflicts from its decision making processes* and has established policies and procedures to do so. However, for the reasons set forth below, the Clearing Corporation believes that the Proposed Rule should not apply to clearing organizations as any such application (a) is unnecessary and not required by Section 5a(a)(17) of the Commodity Exchange Act (the "CEA")[2] and (b) would greatly impact the effectiveness of a clearing organization's critical function of preserving the financial integrity of the markets.

2. Clearing Organizations Must be Able to Take Immediate Action

Clearinghouses exist to ensure the financial integrity of all futures and options contracts traded on futures exchanges. To perform this critical function, a clearing organization *must* be able to respond immediately to market changes. Any hindrance to a clearing organization's ability to take immediate action will impose risk into the clearing system. Applying CEA Section 5a(a)(17) to clearing organizations would greatly impact the ability of clearing organizations to protect the markets. Imposing the Statute (and the accompanying Proposed Rule) on clearing organizations would have the wrong result of introducing greater uncertainty and thus more risk into the marketplace as clearing organizations would be effectively prevented from taking immediate action during emergency situations. Congress did not intend to apply CEA Section 5a(a)(17) to clearing organizations as the costs of such application greatly outweigh any perceived benefits from a federally mandated conflicts of interest rule.

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[2]The addition of a conflicts of interest requirement is set forth in Section 217 of the Futures Trading Practices Act of 1992 which amended the CEA. CEA Section 5a(a)(17) is also referred to herein as the "Statute."

3. CEA Section 5a(a)(17) Does Not Apply to Clearing Organizations

Neither CEA Section 5a(a)(17) nor the legislative history thereto specifically reference "clearing organizations" or give any other indication that Congress saw a need to apply the conflicts of interest provision to clearinghouses. Instead, the language therein refers to "contract markets" and "exchanges" only.[3] For example, even when defining "significant actions" to be included under the conflicts of interest statute, Congress did not mention clearing organizations. Such "significant actions" were defined to include:

> "Any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, . . ." CEA Section 5a(a)(17)(B)(ii) (emphasis added).[4]

Further, simply because the statute references "changes in margin levels," it does not follow that Congress meant to include clearing organizations as a clear distinction exists between contract markets and clearing organizations. Whereas contract markets are concerned with regulating trading, the clearing organization's primary function is to ensure the financial integrity of the clearing system. Accordingly, contract markets take various forms of action to regulate trading. For example, a contract market may increase margin levels in response to actual or potential market congestions. Such actions by a contract market are designed to have a market impact which could influence prices and raise serious conflicts of interests concerns.

Actions by a clearing organization, however, are generally not intended to regulate trading. Instead, clearing organizations' central functions are to act to ensure the financial integrity of the clearing system. For example, in

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[3]See Senate Report No. 22, 102d Cong., 1st Sess. 12-13 (Mar. 12, 1991) and House Report No. 6, 101st Cong., 2d Sess. (sic probably should be 102d Cong., 1st Sess.) 18 (Mar. 1, 1991).

[4]Note that the Proposed Rule exceeds the language of the Statute by adding the phrase "or cleared" after the term "any contract traded." CFTC Proposed Rule 1.69(a)(7)(ii).

response to a threat to the financial integrity of the clearing system, a clearing organization may increase margin levels in order to strengthen the clearing firms' bond and promise to honor their futures and options trades and to protect clearing members from financial risks. In this situation, *all* of the members of a clearing organization committee who vote with respect to changes in margin levels in response to a threat to the financial integrity of the clearing system may, under the Statute, "have a direct" financial interest in the result of the vote as their clearing member firms clear all or almost all of the commodities traded on the exchange. Such an across the board disqualification, leading to the potential inability of a clearing organization to act in times of emergency, could not have been intended by Congress.

4. Clearing Organizations are Already Subject to Laws Which Effectively Address Conflicts of Interest Concerns

Clearing organizations are already subject to laws which address conflicts of interest situations and serve strongly to influence their board and committee member's behavior. For example, clearing organizations which are separately incorporated, such as the Clearing Corporation, are subject to state corporate conflicts of interest laws.[5] Furthermore, a company's directors (i.e., governors in the case of the Clearing Corporation) have a common law fiduciary duty of loyalty to the company and its shareholders. In addition, clearing organizations are subject to Commission Regulation 1.41(f) which sets forth procedures to be followed with respect to temporary emergency rules including certain disclosures regarding the interests of the members of their governing boards. Lastly, and perhaps most importantly, clearing organizations and their officials will be subject to personal liability under CEA Section 22(b) for acting in bad faith. Thus, there is no need to apply the Statute (or any associated rules) to clearing organizations and there is no evidence in the Statute or legislative history that Congress felt there was a need to apply additional conflicts of interest laws to clearing organizations.

The Clearing Corporation's conflicts of interest policy is shaped by these existing laws. It is designed to provide the Clearing Corporation with the

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[5]As a Delaware corporation, the Clearing Corporation is subject to Section 144 of the Delaware General Corporation Law (the "Delaware Act") governing director conflict of interest situations. Del. Code Ann. tit. 8, § 144 (1983).

ability to react quickly to protect the financial integrity of the markets. The Clearing Corporation does believes that clearing organizations should have policies and procedures in place to address potential conflicts of interest on their governing boards and committees but feels that a better approach would be for the Commission to issue a letter to clearing organizations urging them to adopt such policies.

5. Conclusion

For the reasons set forth above, Congress did not intend to include clearing organizations under CEA Section 5a(a)(17) as to do so could result in no action being taken during an emergency thereby adversely impacting the financial integrity of the clearing system. Application of the Statute and the Proposed Rule to clearing organizations would add no further benefit to the existing conflicts of interest laws but would have a detrimental effect on clearing organizations' decision making processes. The remainder of this letter will address certain aspects of the Proposed Rule which further demonstrate the high costs associated therewith.

B. The Proposed Rule Exceeds the Statutory Requirements of CEA Section 5a(a)(17) and Will Cause Substantial Harm to SROs' Decision Making Processes

1. The Statute Does Not Require Extensive Commission Conflicts of Interest Rules

CEA Section 5a(a)(17) requires *contract markets,* not the Commission, to adopt conflicts of interest rules. The Statute requires the Commission to adopt only one rule in the following situation – to establish conditions under which a member who has a conflict of interest in a matter may deliberate but not vote on such matter. CEA Section 5a(a)(17)(C). Allowing SROs to adopt their own conflicts of interest rules (in accordance with the statutory requirements) does not mean that conflicts of interests will be allowed. Rather, vesting SROs with this rulemaking responsibility was a practical decision recognizing that conflicts of interests can take numerous forms and SROs are in the best position to establish appropriate policies that meet their particular business challenges. It is critically important that SROs be given the discretion to properly address each conflicts of interest situation on a case by case basis. Nonetheless, the Proposed Rule attempts to cover every possible type of conflict situation that might arise thus exceeding the

statutory authority of the Commission, creating uncertainty and placing onerous burdens on SROs.

2. The Terms of the Proposed Rule Create Uncertainty and Have a Chilling Effect on SRO Governing Members

a. Definition of "Significant Action"

The Proposed Rule exceeds the requirements of the Statute in its definition of "significant actions." Congress outlined two situations as "significant actions": (1) *nonphysical* emergencies and (2) certain changes in margin levels. CEA Section 5a(a)(17)(B)(i) and (ii). Nonetheless, Section 1.69(a)(7) of the Proposed Rule includes, "at a minimum," actions or rule changes which address emergencies as defined in CFTC Reg. 1.41(a)(4). However, CFTC Reg. 1.41(a)(4)(v) includes *physical* emergencies. Extension of the Proposed Rule to physical emergencies directly contradicts the language of the Statute. Requiring SROs to undertake the burdensome conflicts of interest review required by the Proposed Rule during a time of physical emergency is especially unwarranted considering that everyone has the same urgent interest during such an emergency, i.e., to provide for the continuing smooth functioning of the markets. Furthermore, such a review may be impossible as, e.g., computers could be down, people inaccessible, etc.

Likewise, the addition of the phrase "at a minimum" in the Proposed Rule's definition of "significant action" exceeds Congressional intent. As stated above, Congress only set forth two specific areas to be deemed "significant actions." The expansion of this definition in the Proposed Rule creates substantial uncertainty for SROs as to what other actions of SROs might be deemed "significant." Such uncertainty exposes SROs to the possibility of extensive litigation second-guessing their actions. Such exposure will result in serious delays, or inaction, with respect to decision making by the SRO. Accordingly, no further "significant actions" should be covered by the Proposed Rule and any rule in this area should track the language of the Statute -- including the addition of the statutory language that "significant actions" do *not* include "any rule not submitted for prior Commission approval because such rule is unrelated to terms and

conditions of any contract traded on such contract market." CEA Section 5a(a)(17)(B).

b. Review of Position Information

The Proposed Rule again exceeds the requirements of the Statute when setting forth position information to be considered when determining if a member has a financial interest in the result of the vote. The Statute provides that a member must abstain from voting on a "significant action" if the member "knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm." CEA Section 5a(a)(17)(A)(ii). The Proposed Rule, however, sets forth *six* categories of position information that must be verified -- including positions held in certain *customer* accounts (even though the Statute is silent with respect to customer accounts). CFTC Proposed Rule 1.69(b)(2)(i)-(vi). Further, the Release states on page 19,873 that "(p)roposed Commission Regulation 1.69(b)(2) would *specifically fix* the types of positions which SROs would *have* to review" (emphasis added).

This detailed attempt in the Proposed Rule to categorize every single type of position that may lead to a conflict of interest will cause many problems at SROs. First, obtaining the position information required by Section 1.69(b(2)(i)-(vi) of the Proposed Rule for *each* SRO board or committee member will take a *significant* amount of time. Information will have to be obtained from brokerage firms and clearing organizations in addition to the books of the contract market. In addition, the Commission should note that some clearing organizations, such as the Clearing Corporation, only have *net* (not gross) position information on their books. Substantial SRO resources will have to be devoted to this task on a continuous basis (as explained below).

Second, Section 1.69(b)(3)(i) of the Proposed Rule requires the SRO staff to compile this position information "(p)rior to the start of any (SRO's) governing board, disciplinary committee or oversight panel deliberations or voting on a matter." As a meeting could be held at any time and *as new matters may be raised* in a meeting at any time, SROs would have to monitor *constantly* the *entire* trading positions of each board and committee member. The resulting invasion of

privacy will greatly discourage members from serving on an SRO's board or committees. Furthermore, how would SROs handle an issue raised for the first time during the middle of a board or committee meeting? Limit discussions to "scheduled" issues only without any information from the "new" issue which may be pertinent? Adjourn the meeting? In this situation, the result could be delays in decision making or decisions based upon less than full and complete information.

Third, the Proposed Rule states that the SRO staff shall review the six categories of position information with respect to each member based upon (1) the most recent large trader reports and clearing records; (2) positions as reported to SRO staff by committee members and (3) "any other source of position information which is readily available to the staff." CFTC Proposed Rule 1.69(b)(3)(i)(A)(1)-(3). This "readily available" standard is much too vague given the urgency with which SROs will be acting when undertaking position reviews. The Clearing Corporation, for example, generates a large number of reports with respect to a broker's trading. However, many of these reports contain duplicative and stale position information and would be irrelevant to a conflicts of interest determination. Yet, under the broad terms of the Proposed Rule, SROs would be compelled to make a request for and examine every single report available, whether or not such reports were useful in determining whether a conflict of interest existed, in order to be in a position to protect itself against plaintiffs' claims that such reports were "readily available." Again, the Proposed Rule leads to costly delays in SRO decision making.

Lastly, under the Proposed Rule, members have a duty to disclose the six categories of position information referred to in CFTC Proposed Rule 1.69(b)(2)(i)-(vi) which is known or should be known by the member. CFTC Proposed Rule 1.69(c). Furthermore, members are *presumed* to know the four out of six categories of position information referred to in CFTC Proposed Rule 1.69(b)(2)(i)-(iv). According to the Release, this presumption is rebuttable but the committee member bears the burden of proof. Release at page 19,875. *Nothing in the Statute allows this presumption of knowledge to be made.* Furthermore, this aspect of the Proposed Rule directly contradicts CEA § 22(b)(4) which requires the *plaintiff* to prove bad faith on the part of the contract market or its officials. These Proposed Rule provisions far exceed

Rule will provide a strong disincentive to any member considering serving on a board or committee of an SRO.

The primary responsibility of clearing organizations is to ensure the financial integrity of all futures and options contracts traded on futures exchanges. For the reasons set forth above, application of the Proposed Rule to clearing organizations would greatly compromise a clearing organization's ability to perform this critical function. Accordingly, the Clearing Corporation submits that the Proposed Rule should not apply to clearing organizations and, if applied to exchanges or clearing houses, must be modified so that the proposed burdensome conflicts of interest procedures do not effectively diminish the proper regulation and oversight of the markets by SROs.

The Clearing Corporation appreciates the opportunity to comment on the Commission's proposal which is of extreme importance to us.

Sincerely,

Dennis A. Dutterer

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