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New York Board of Trade

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COMMENT

August 16, 1999

Ms. Jean A. Webb
Secretary of the Commission
Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Ms. Webb:

The Board of Trade of the City of New York ("NYBOT") and its subsidiaries Coffee, Sugar & Cocoa Exchange, Inc., New York Cotton Exchange, Citrus Associates of the New York Cotton Exchange, Inc. and New York Futures Exchange, Inc. (collectively referred to as the "Exchanges"), submit this comment letter in response to the Commission's proposed rulemakings concerning "Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Related Contract Terms and Conditions", as published in 64 F.R. 40528 (July 27, 1999) (hereafter referred to as the "Contract Proposal") and "Contract Market Rule Review Procedures", as published in 64 F.R. 38159 (July 15, 1999) (hereafter referred to as the "Rule Proposal").

The Exchanges fully support the Commission's effort to make contract market designations and rule review procedures more efficient and less time consuming. Such measures are critical to enhance the ability of U.S. commodity exchanges to meet competitive challenges. However, the Exchanges believe that the Contract Proposal, albeit well-intentioned, does not present a viable revision of the current, cumbersome process, and falls short of the kind of broad exemptive relief the Commission has granted to others. Likewise, the Rule Proposal fails to afford significant relief because it does not address the types of rules and amendments which form the vast majority of those that are filed by the Exchanges. For the reasons described below, the Exchanges believe that both Proposals require further modification if they are to provide meaningful relief to US exchanges.

The Contract Proposal

The Contract Proposal would allow an exchange to list a new contract (other than one subject to Shad-Johnson) prior to receiving Commission approval and designation, so long as the contract's terms were filed with the Commission prior to listing, and an application for designation was filed by the exchange within 45 days of listing. The Commission would still have to review the contract, and either approve the exchange's application for designation, refuse to designate the contract and/or require changes that may affect terms and conditions of the contract. Moreover, any changes required by the Commission in order to grant designation could be made applicable to open positions.

We believe that the Contract Proposal would create such uncertainty surrounding a new product, that it would be nearly impossible for an exchange to attract business to a product so listed. Specifically, the spectre of purchasing a contract on the basis of terms and conditions that could be changed mid-stream to terms which the Commission deems to be more appropriate, presents risks which few, if any, traders would intentionally entertain. Therefore, it would be impractical for an exchange to try to launch a new contract under the Contract Proposal.

The Exchanges believe that in exercising its exemptive authority under Section 4(c) of the Act, the Commission should grant relief to an exchange which meets the Commission's rigorous audit trail, market surveillance and compliance standards, by letting such an exchange list new contracts without Commission approval - - not "pending" such approval. By such action, the CFTC would not have lost oversight authority over the exchange or its contracts. To the contrary, it would still retain extensive authority under Section 8a(7) of the Act to alter or supplement exchange rules including those relating to contract terms and conditions. In addition, the Commission would still have authority under Section 8a(9) to require an exchange to take emergency action in appropriate circumstances. For the reasons discussed below, we believe that such an approach would strike the proper balance between regulatory oversight and exchange self-regulation, while continuing to protect the public interest.

It is in an exchange's self-interest to design the best contract possible. When developing a new contract, the Exchanges engage in extensive research and consult with potential market users, including producers, processors and merchandisers. Since the establishment of a new contract requires a substantial investment of time and funds, the Exchanges want to develop a contract that is not susceptible to manipulation, reflects cash market practices and appeals to a wide range of potential users. All new product initiatives must receive the approval of the appropriate Exchange's Board of Directors, comprised of experienced industry leaders as well as a core of public directors. This process ensures that a new contract meets the design criteria which the Commission enumerated in its proposed rulemaking - - lack of susceptibility to manipulation, price distortion or market congestion. It has been our experience that, in acting upon new contract applications under the existing rules, the Commission staff repeats the Exchange's development work. Neither public comments received by the Commission on contract proposals nor the Commission's own reviews have typically identified problems with new contracts. However, any approval process unnecessarily invites the Commission to substitute its

judgment for that of the Exchange, and affords competitors an opportunity to try to delay approval, all to the competitive disadvantage of US exchanges.

In addition, while contract design may be an important element, we disagree with the Commission's characterization of it as the best deterrent to market manipulation, price distortion or congestion. An effective market surveillance system is the best way to avoid such market situations. Therefore, to us it is most important that an exchange has a self-regulatory track record to ensure that trading will be conducted in a fair and orderly manner. We believe that the sophisticated systems developed over decades of experience, coupled with the oversight provided by the Commission, have proven to be exceptionally effective in identifying and dealing with the types of market situations which the Commission seeks to protect against. This track record strongly suggests that contract approval, while arguably useful in an era before exchanges had developed these self-regulatory systems and procedures, no longer serves any positive purpose.

If, nonetheless, the Commission adopts the approach taken in the Contract Proposal, we believe it needs to be modified and certain matters clarified, as described below.

First, any changes to terms and conditions that are required in order to gain Commission approval of a contract should be made effective only with respect to contract months in which there is no open interest. This is consistent with the approach taken by the exchanges today, and endorsed by the Commission, when amendments which affect terms and conditions are introduced to existing contracts. Typically the open interest in a new contract is held mostly in the near month, until the market determines whether or not it likes the contract. Therefore, although an exchange may list up to one year's worth of contract months pending Commission approval, it is unlikely that an exchange would have to wait a year before implementing changes. If for some reason a market problem occurred in the interim, the exchanges should be allowed to manage the situation just as they do for all other, approved contracts.

Second, an exchange should be able to make changes to a contract up until the time it files an application with the Commission. The Contract Proposal states that any amendments to a contract which has been listed pending approval would have to be submitted to the Commission under the normal Rule 1.41 procedures. However, an exchange has 45 days from the date of listing to file a designation application. Until it files that application, it should be free to change the contract's rules. Otherwise, the Commission would be reviewing a particular rule amendment under Rule 1.41 in isolation, without the rest of the designation application even being filed.

Third, the Commission should avoid creating any legal uncertainty regarding the validity and enforceability of contracts that are purchased and sold prior to Commission approval of the exchange's designation application. If the Commission were to require an exchange to change a term of a new contract, or refused to approve a new contract, traders would be in the potentially awkward position of holding positions in an undesignated contract. The existence of such a situation would not only be a strong deterrent against trading, it could raise questions regarding the legal status of contracts that are held by those who did trade the new contract. Therefore, the exemption should make clear that any action which the Commission may take or refuse to take with respect to a contract that has been listed pending approval, will not affect the validity or enforceability of transactions already effected in that contract by any person.

The Rule Proposal

The Rule Proposal does not address the majority of rule filings that the Exchanges submit to the Commission. Almost all of those filings are made either under Regulation 1.41(b), (changes to terms and conditions), or Regulation 1.41(c), (filings that are not excepted by the other sections of Regulation 1.41).

Regulation 1.41(b) currently provides for a so-called "fast track" forty-five day review procedure, which can be extended by the Commission for another thirty days, for changes to terms and conditions of existing contracts. The Commission also has the authority, at its own election, to terminate fast track review procedures and extend the review period for the full one hundred and eighty days as provided in Section 5a(a)(12)(A) of the Act. We believe these lengthy time periods are not necessary and can competitively disadvantage an exchange, particularly exchanges that, like NYBOT's subsidiary, CSCE, face international competition.

When exchanges alter the terms and conditions of existing contracts, they do so after a careful determination that the changes will most likely have a positive impact on the contracts. Since exchanges are already designated contract markets with the tools in place to conduct trading and market surveillance, and the contracts themselves already have been approved for trading by the Commission, rule changes should not require a forty-five (45) day window for review. In fact, the Commission has approved the designation of an entirely new contract in only ten days.

The Exchanges believe that, if a new contract can be listed without prior approval, then rules that relate to contract terms and conditions, amendments thereto, and any other rules should, likewise, be allowed to become effective immediately upon filing with the Commission. If the Commission believes that the rules submitted by an exchange appear to violate a provision of the Act or Commission regulations, then the Commission should be required to notify the exchange within 10 days of receipt of the rules (i) that a disapproval proceeding will be initiated and (ii) which specific sections of the Act or Commission regulations appear to be violated. Any such disapproval proceeding should be finalized within 45 days after notification is sent to the exchange. This approach would be consistent with the new contract listing procedures described above.

The Exchanges appreciate the opportunity to present their views on the issues raised by the proposed rulemakings and would be happy to discuss them further with Commission staff.

Very truly yours,

James J. Bowe
President

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