



**KANSAS CITY
BOARD OF TRADE**

C.F.T.C.
OFFICE OF THE SECRETARIAT

CLEARING CORPORATION JUN 18 PM 12 43

June 17, 2010

SENT VIA E-MAIL

submissions@cftc.gov

Mr. David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Submission pursuant to Commission Regulation Section 40.6(a)

Dear Mr. Stawick:

- I. **Certification.** The Kansas City Board of Trade Clearing Corporation ("KCBOTCC") hereby gives notification to the Commission pursuant to Commission Regulation Section 40.6(a), of its intention to implement new Rule 8.04 providing for the close-out of clearing member positions and netting of clearing member proprietary obligations in the event of a KCBOTCC insolvency. The KCBOTCC Board of Directors, in a regular meeting held on June 16, 2010, unanimously approved Rule 8.04. KCBOTCC certifies to the Commission that to the best of its knowledge the provisions of Rule 8.04 are in compliance with the Commodity Exchange Act and the regulations thereunder.
- II. **Date of Implementation.** KCBOTCC intends to make Rule 8.04 effective on Thursday, July 1, 2010.
- III. **Substantive Opposing Views.** To the knowledge of the Board of Directors and staff, no substantive opposing views were expressed by members or others regarding Rule 8.04.
- IV. **Text of New Rule.** The text of Rule 8.04 is shown as follows:

8.04 Close-Out Netting

(a) Insolvency of the Corporation. If at any time the Corporation: (i) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an Order for Relief or the making of an order for the Corporation's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "Bankruptcy Event"), all open positions in the Corporation shall be closed promptly.

(b) Default of the Corporation. If at any time the Corporation fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction cleared by the Corporation, for a period of thirty days from the date that the Corporation receives notice from the Clearing Member of the past due obligation, the Clearing Member's open proprietary and customer positions at the Corporation shall, at the election of that Clearing Member, be closed promptly.

(c) Netting and Close-Out. At such time as a Clearing Member's positions are closed pursuant to this Rule 8.04, the obligations of the Corporation to a Clearing Member in respect of all of its proprietary positions, accounts, collateral and Security Deposits shall be netted, in accordance with the Bankruptcy Code, the Act and the regulations adopted thereunder in each case, against the obligations of that Clearing Member in respect of both its proprietary and its customers' positions, accounts, collateral and Security Deposits to the Corporation. All obligations of the Corporation to a Clearing Member in respect of its customer positions, accounts, and collateral shall be separately netted against the positions, accounts and collateral of its customers in accordance with the requirements of the Bankruptcy Code, the Act and the regulations adopted thereunder in each case. At the time a Bankruptcy Event takes place, the authority of the Corporation, pursuant to Rule 8.03 to make new assessments and/or require a Clearing Member to cure a deficiency in its Security Deposits, arising after the Bankruptcy Event, shall terminate, and all positions open immediately prior to the close-out shall be valued in accordance with the procedures of paragraph (d) of this Rule.

(d) Valuation. As promptly as reasonably practicable, but in any event within thirty days of (i) the Bankruptcy Event, or (ii) if a Clearing Member elects to have its open positions closed as described in paragraph (b) of this Rule, the date of the election, the Corporation shall fix a U.S. dollar amount (the "Close-Out Amount") to be paid to or received from the Corporation by each Clearing Member, after taking into account all applicable netting and offsetting pursuant to paragraph (c) of this Rule. The Corporation shall value open positions subject to close-out by using the market prices for the relevant market (including without limitation any over-the-counter markets) at the time that the positions were closed out, assuming the relevant markets were operating normally at such time. If the relevant markets were not operating normally at such moment, the Corporation shall exercise its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally. In determining a Close-Out Amount, the Corporation may consider any information that it deems relevant, including, but not limited to, any of the following:

- (i) prices for underlying interests in recent transactions, as reported by the market or markets for such interests;
- (ii) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest;
- (iii) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and
- (iv) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

Amounts stated in a currency other than U.S. dollars shall be converted to U.S. dollars at the current rate of exchange, as determined by the Corporation. If a Clearing Member has a negative Close-Out Amount, it shall promptly pay that amount to the Corporation.

(e) Interpretation in Relation to FDICIA. The Corporation intends that certain provisions of this Rule be interpreted in relation to certain terms (identified by quotation marks) that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), as amended, as follows:

- (i) The Corporation is a "clearing organization."
- (ii) An obligation of a Clearing Member to make a payment to the Corporation, or of the Corporation to make a payment to a Clearing Member, subject to a netting agreement, is a "covered clearing obligation" and a "covered contractual payment obligation."
- (iii) An entitlement of a Clearing Member to receive a payment from the Corporation, or of the Corporation to receive a payment from a Clearing Member, subject to a netting contract, is a "covered contractual payment entitlement."
- (iv) The Corporation is a "member," and each Clearing Member is a "member."
- (v) The amount by which the covered contractual payment entitlements of a Clearing Member or the Corporation exceed the covered contractual payment obligations of such Clearing Member or the Corporation after netting under a netting contract is its "net entitlement."
- (vi) The amount by which the covered contractual payment obligations of a Clearing Member or the Corporation exceed the covered contractual payment entitlements of such Clearing Member or the Corporation after netting under a netting contract is its "net obligation."
- (vii) The By-Laws and Rules of the Corporation, including this Rule, are a "netting contract."

V. **Rationale for Action Taken.** Rule 8.04 provides certain capital charge relief for bank clearing members (or their bank parent) with respect to such clearing members' proprietary positions in the event of a KCBOTCC insolvency. Rule 8.04 is nearly identical to rules at other designated contract markets or designated clearing organizations, namely ICE Clear US Rule 806, CME & CBOT Rule 818 & NYMEX Rule 9.00

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VI. **Closing.** Any questions regarding this submission should be directed to the undersigned at 816-931-8964.

Sincerely,

A handwritten signature in cursive script that reads "Charles M. Savage". The signature is written in black ink and is positioned above the printed name and title.

Charles M. Savage
Assistant Vice President & Manager

Cc: Rick Shilts – CFTC Washington
Tom Bloom – CFTC Kansas City
Robin Hagedorn – CFTC Kansas City