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COMMENT

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OFFICE OF THE CLERK

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

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RECORDS SECTION

Re: Designated Contract Markets in Security Futures Products -
66 Fed. Reg. 29517 (May 31, 2001)

Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT®") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed rulemaking which would provide notice procedures for a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products, under the Commodity Futures Modernization Act of 2000 ("CFMA"). These proposed regulations would also establish limited continuing filing requirements for such notice-designated contract markets.

The CFMA authorized the trading of security futures products under the joint regulatory jurisdiction of the Commission and the Securities and Exchange Commission ("SEC"). The legislation added Section 5f to the CEA to allow a national securities exchange, a national securities association, or an alternative trading system to become a notice-designated contract market ("SFPCM") in security futures products. Section 5f(a)(2) of the CEA specifically permits the Commission to prescribe rules, as necessary or appropriate in the public interest or for the protection of customers, regarding the information that must be contained in such an entity's notice filing.

Accordingly, the Commission's proposed new Regulation 41.31 would require that an SFPCM provide the Commission with its name, address, and contact person; a description of the security futures products that it intends to make available for trading, including an identification of all facilities that would clear transactions in its security futures products; a copy of its current rules; and five specific certifications that it meets the requirements of the CFMA for trading security futures. The CBOT believes that these notice requirements are consistent with the intent of the CFMA, and are appropriate in the public interest and for the protection of customers for entities that are subject to the primary jurisdiction of the SEC.

The CFMA amended the Securities Exchange Act of 1934 ("Exchange Act") in a manner similar to the CEA. New Section 6(g)(1) of the Exchange Act permits designated contract markets and derivative transaction execution facilities to register with the SEC as Security Futures Product Exchanges, for the purpose of trading security futures products. Section 6(g)(2) allows the SEC to prescribe rules regarding the information that must be contained in such an entity's notice filing, as necessary or appropriate in the public interest or for the protection of investors.

However, the SEC's proposed notice-registration requirements are far more burdensome than the notice-designation requirements proposed by the Commission. The SEC proposed new Rule 6a-4 under the Exchange Act and new registration Form 1-N. 66 Fed. Reg. 29517. Specifically, the SEC's proposal would require futures exchanges desiring to notice-register as Security Futures Product Exchanges to submit nine separate Exhibits containing, among other things, information regarding officers, governors, persons with direct ownership and control, members, participants, subscribers and other users; information regarding affiliates, subsidiaries, and entities with which the exchange has contractual relationships relating to the operation of an electronic trading system; and a description of systems operations.

The CBOT filed a comment letter with the SEC on June 14, 2001 (copy attached), in which it urged the SEC to modify its proposed requirements for notice-registration as a Security Futures Product Exchange to be more consistent with the CFTC's proposed requirements for notice-designation of an SFPCM. If the SEC does not attempt to achieve greater regulatory parity, the CFMA's intent to level the regulatory playing field to provide the same opportunities for securities exchanges and futures exchanges to offer security futures products would be frustrated, and notice-registered Security Futures Product Exchanges could be placed at a competitive disadvantage.¹

The Commission has also proposed Regulation 41.32 to enable it to meet its market oversight responsibilities. That Regulation would require an SFPCM to notify the Commission with regard to changes in its regulatory status, to comply with the filing requirements of the CEA when a new security futures product is listed for trading, and to provide the Commission with any new rules or rule amendments that relate to the trading of security futures products, in addition to providing other information upon specific request.

¹ When Congress lifted the ban on single stock futures, it did so in recognition of the fact that futures markets had previously been restricted from competing with options exchanges and over-the-counter markets that offered products that were economically similar to futures. In order to further maximize competition, the CFMA also permitted Alternative Trading Systems ("ATs") to trade security futures products. Neither the SEC's notice-registration requirements nor the CFTC's notice-designation requirements should operate to place futures markets at a competitive disadvantage to any of these other types of markets.

Jean A. Webb

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By contrast, the SEC has proposed to require a Security Futures Product Exchange to amend Form 1-N if subsequent actions create new information or render the previously filed information inaccurate. In addition, the SEC has proposed to require a Security Futures Product Exchange to resubmit much of the initially required information on an annual basis, and other aspects of that information every three years.

Again, the CBOT believes that the CFTC's approach to requiring continuing notification is reasonable and consistent with the intent of the CFMA to rely upon a market's primary regulator in the first instance and to have the other agency apply a lesser degree of regulation. On the other hand, the SEC's proposed requirements would place an unjustifiable burden on Security Futures Product Exchanges, and this regulatory disparity may place them at a competitive disadvantage.

The substantial differences in the SEC's and the CFTC's proposed requirements for notice registration or designation and for periodic reporting would have the effect of maximizing rather than minimizing the burden of shared jurisdiction, and thus would be contrary to the general intent of the CFMA. The CBOT is hopeful that the SEC will modify its proposed requirements to parallel the CFTC's reasonable approach.

Sincerely,

David J. Vitale

June 14, 2001

BY CERTIFIED MAIL AND E-MAIL

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D. C. 20549-0609

Re: File No. S7 - 10 - 01
Release No. 34-44279 - Registration of National Securities Exchanges Pursuant to
Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of
National Securities Exchanges and Limited Purpose National Securities Associations - 66
Fed. Reg. 26978 (May 15, 2001)

Dear Mr. Katz:

The Board of Trade of the City of Chicago, Inc. ("CBOT®") appreciates the opportunity to comment on the above-captioned Release. Among other things, the Securities and Exchange Commission ("Commission") has proposed to adopt new Rule 6a-4 under the Securities Exchange Act of 1934 ("Exchange Act") and new registration Form 1-N.

The Commodity Futures Modernization Act of 2000 ("CFMA") authorized the trading of security futures products under the joint regulatory jurisdiction of the Commission and the Commodity Futures Trading Commission ("CFTC").

New Section 6(g)(1) of the Exchange Act permits designated contract markets and derivative transaction execution facilities to register with the Commission as Security Futures Product Exchanges, solely for the purpose of trading security futures products. Section 6(g)(2)(A) provides that such an exchange may register by filing a written notice with the Commission, in such form and containing such information as the Commission may prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors.

In a parallel manner, the CFMA added Section 5f to the Commodity Exchange Act ("CEA") to allow a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products ("SFPCM"). Section 5f(a)(2) of the CEA also permits the CFTC to prescribe rules, as necessary or appropriate in the public interest or for the protection of customers, regarding the information that must be contained in such a notice designation.

Pursuant to Section 6(g)(2)(A) of the Exchange Act, the Commission has proposed Rule 6a-4,

which would require exchanges that notice register as Security Futures Product Exchanges to file new Form 1-N. That form would require an exchange to provide information regarding the organization of the exchange, its rules and procedures, its criteria for membership, information on its subsidiaries and affiliates, and the security futures products it intends to trade.

Specifically, proposed Form 1-N would consist of an execution page and nine exhibits, requiring the submission of:

- the constitution, articles of incorporation or association with all subsequent amendments, and by-laws or corresponding rules of the exchange (Exhibit A);
- written rulings, settled practices (defined as the policies of an exchange that are not otherwise covered in its written rulings) and interpretations of the governing board or committees with respect to the rules, by-laws, constitution or trading practices (Exhibit B);
- similar information to that contained in Proposed Exhibits A and B for affiliates, subsidiaries, and any entity with which the exchange has a contractual or other agreement relating to operation of an electronic trading system to be used to effect transactions in security futures products. Specifically, the Commission would require information regarding the general characteristics of the entities and their operational relationship with the exchange, such as networking, software, or other agreements associated with the execution, reporting, clearance, or settlement of security futures transactions (Exhibit C);
- a description of systems operations, including the procedures governing the entry and display of quotations, execution, reporting, clearance, and settlement; proposed fees; procedures for ensuring compliance; hours of operation; date of intended commencement of operations; and a copy of the users' manuals (Exhibit D);
- general information regarding officers and governors (Exhibit E);
- similar background information for persons with direct ownership and control for non-member owned exchanges (Exhibit F);
- similar background information for members, participants, subscribers or other users (Exhibit H);
- a description of the criteria for membership and the conditions and procedures for suspension or termination of membership (Exhibit G); and
- a schedule of the security futures products the exchange lists or proposes to list for trading (Exhibit I).

The Commission has sought comment with regard to whether the proposed notice requirements contained in Form 1-N would be unreasonably burdensome for Security Futures Product Exchanges, and whether all of the Exhibits are necessary. The CBOT strongly believes that

these requirements are unreasonably burdensome. Moreover, they create a huge disparity with regard to the requirements that the CFTC has proposed to impose upon securities exchanges that desire to become SFPCMs. 66 Fed. Reg. 29517 (May 31, 2001).¹

If the Commission's proposed rules with regard to notice registration were adopted, it would be much more difficult for a designated contract market or a derivative transaction execution facility to notice-register with the Commission than it would be for a securities exchange to become notice-designated by the CFTC. Under these circumstances, the CFMA's intent to level the regulatory playing field to provide the same opportunities for securities exchanges and futures exchanges to offer security futures products would be frustrated, and could create a competitive disadvantage for notice-registered Security Futures Product Exchanges.

The CFTC's proposed notice requirements are substantially less burdensome than those proposed by the Commission. Specifically, the CFTC has proposed to require only that an SFPCM provide the CFTC with its name, address, and contact person; a description of the security futures products that it intends to make available for trading, including an identification of all facilities that would clear transactions in its security futures products; a copy of its current rules; and five specific certifications that it meets the requirements of the CFMA for trading security futures.

The notice requirements proposed by the CFTC would be appropriate in the public interest and for the protection of customers when markets subject to the primary jurisdiction of the Commission would offer security futures products, and similar requirements would be appropriate in the public interest and for the protection of investors when markets subject to the primary jurisdiction of the CFTC would offer security futures products. The CBOT strongly urges the Commission to modify its proposed Rule 6a-4 and Form 1-N to be consistent with the more moderate approach taken by the CFTC.

The CBOT recognizes that Section 6(g)(2)(A) of the Exchange Act specifically gives the Commission the authority to require a Security Futures Product Exchange to provide documents and information ". . . comparable to the information and documents required for national securities exchanges under section 6(a) . . ." of the Exchange Act, if it determines that such information meets public interest or investor protection needs. In this vein, the Commission has noted that its proposed Form 1-N requires Security Futures Product Exchanges to provide much of the same information that is required by Form 1, the application that is used to register as a national securities exchange, or to apply for an exemption from exchange registration, based on limited volume. However, as the Commission has acknowledged, Security Futures Product Exchanges are subject to all relevant requirements of the CFTC, their primary regulator. Therefore, the CBOT strongly believes that it is not necessary or appropriate in the public interest or for the protection of investors for the Commission to impose filing requirements that

¹ In a similar manner, the Commission has proposed to require the provision of extensive documentation in support of proposed rule changes submitted to the Commission by Security Futures Product Exchanges and limited purpose national securities associations. These proposed requirements present a striking contrast to the CFTC's rule certification procedures.

would treat Security Futures Product Exchanges in a substantially similar manner to other securities exchanges.

The Commission's proposed Rule 6a-4 would require a Security Futures Product Exchange to file periodic amendments to Form 1-N, if subsequent actions create new information or render the previously filed information inaccurate, with regard to the execution page, or proposed Exhibits C, E, F, or H. Such an amendment would be required to be filed within 10 days after such action was taken. Exhibits F, II, and I would be required to be resubmitted annually, and Exhibits A, B, C, and E would be required to be resubmitted every 3 years.

By contrast, the CFTC has proposed to impose continuing obligations upon an SFPCM that would only require it to notify the CFTC with regard to changes in its regulatory status, comply with the filing requirements of the CEA when a new security futures product is listed for trading, and provide the CFTC with any new rules or rule amendments that relate to the trading of security futures products, in addition to providing other information upon specific request.

The Commission has requested comment with regard to its proposal to require periodic amendments to proposed Form 1-N, as well as the proposed annual updates and three-year updates. Again, the CBOT believes that the CFTC's approach to requiring continuing notification is more reasonable and less burdensome than that proposed by the Commission, and would be appropriate in the public interest and for the protection of investors given the fact that Security Futures Product Exchanges remain subject to the primary jurisdiction of the CFTC. The CBOT strongly encourages the Commission to modify its proposal so as not to impose an unequal burden on Security Futures Product Exchanges.

At the very least, as suggested by the Commission, any requirement that amendments be filed to provide new information or to correct information that has become inaccurate based on subsequent actions, should be limited to material inaccuracies. In addition, the 10-day timeframe should be changed to a minimum of 30 days. Such a timeframe would be consistent with the proposal that the Form 1-N, when initially filed, should be up-to-date within one month of the date of filing.

It should be noted that it would be particularly burdensome to require that information pertaining to the addition of new, or the withdrawal of old, owners, members, participants, subscribers or other users be provided within ten days. On designated contract markets, where memberships are held in the name of individuals, the markets' membership lists may be changing multiple times a month. Similarly, lists of registered terminal operators authorized to enter trades into electronic trading systems may be subject to frequent change. The CBOT does not believe that the

Commission should require such information to be filed by Security Futures Product Exchanges in the first instance.² However, if the Commission determines to impose this requirement, the CBOT believes that the proposal that Exhibits F and H be resubmitted annually is more than sufficient to meet the Commission's perceived need for this information. If the Commission nevertheless determines to require more frequent amendments, it should not require piecemeal amendments every time one individual is added to or removed from one of these categories.

The Commission has proposed to reduce the filing burdens on Security Futures Product Exchanges by allowing certain requirements to be met by maintaining the information on an Internet web page, by referring to materials published by the exchange, or by making the information available upon request at the exchange's office, if such information is also made available to the public upon request. These proposals are useful attempts to make the filing requirements less burdensome. However, it should be noted that a significant portion of the information proposed to be required by the Commission is not information that is made generally available to the public, through an exchange's website, or its publications, or otherwise.

Consistent with the CFMA, the Commission has proposed that if a Security Futures Product Exchange has filed documents with the CFTC that contain information satisfying the Commission's informational requirements, copies of those documents may be filed with the Commission, in lieu of the required written notice. However, the Commission has proposed to require much more information than is routinely filed by a designated contract market with the CFTC. For example, designated contract markets are not required to periodically file information with the CFTC relating to all of their owners, members, participants, subscribers or other users. Therefore, this provision would not give to Security Futures Product Exchanges the same regulatory relief that would be given to SFPCMs that would be permitted to meet their proposed obligations to submit more limited types of information to the CFTC by providing copies of documents previously filed with the Commission.

The Commission has also proposed to require Security Futures Product Exchanges to furnish the Commission with copies of any materials related to the trading of security futures products that would be provided to their members, participants or subscribers, within 10 days of their provision. The CBOT does not believe that Security Futures Product Exchanges should be required to furnish the Commission with copies of all of these materials on a continuing basis, but if the Commission adopts this requirement, such materials should not be required to be furnished within a timeframe shorter than 30 days. The CBOT also agrees that if this requirement is retained, it should be able to be met by making such information available on a Security Futures Product Exchange's website.

² The Commission has noted that such required information would provide it with the names and roles of the participants using the exchange's system, which it believes is necessary for reviewing the operation and function of the system. The CBOT is particularly concerned with the Commission's proposed requirement that information be provided regarding participants, subscribers or other users. It is unclear whether this proposed requirement would relate to all persons who have direct access to the exchange, or to all customers, and in some instances these two categories of persons could be the same. The CBOT strongly believes not only that it is unnecessary for such information to be provided to the Commission on a routine basis, but that there would be an unmanageable administrative burden, if not an impossibility, in complying with such a requirement.

Jonathan G. Katz
June 14, 2001
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Conclusion

The CBOI urges the Commission to modify its proposed requirements for notice-registration as a Security Futures Product Exchange to be more consistent with the CFTC's proposed requirements for notice-designation of an SFPCM, in order to achieve greater regulatory parity. Only by doing so will the Congressional intent of the CFMA to minimize the burden of shared jurisdiction over security futures products be effectively implemented.

Sincerely,

David J. Vitale