



Date August 31, 2004

**SENT VIA E-MAIL**

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

**Re: Certification and Request for Approval of Rule 102.01 Pursuant to  
Commission Regulation Sections 40.6(a) and 40.5.**

Dear Ms. Webb:

- I. **Rule Certification & Request for Approval.** The Kansas City Board of Trade ("KCBT") hereby gives notification to the Commission pursuant to Commission Regulation Section 40.6(a), of its intent to implement new Rule 102.01 pertaining to the recovery of legal defense costs. In addition, KCBT requests that the Commission approve Rule 102.01 pursuant to Commission Regulation Section 40.5.

The Board of Directors, in a regular meeting held on June 29, 2004, approved Rule 102.01 and submitted the Rule to all Class AA members/shareholders for a shareholder vote. The shareholders, in a special meeting held on August 30, 2004, ratified the Board action by a vote of 92 to 3. KCBT certifies to the Commission that the provisions of Rule 102.01 are in compliance with the Commodity Exchange Act and the regulations thereunder.

- II. **Date of Implementation.** Rule 102.01 shall become effective Wednesday, September 1, 2004.
- 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 102.01.
- IV. **Text of Rule 102.01.**

**102.01 Defense Expenses.** Any current or former member or member firm who fails to prevail in a lawsuit or any other type of legal proceeding instituted by that current or former member or member firm against the KCBT or any of its officers, Directors, committee members, employees or agents must pay to the KCBT all reasonable expenses, including attorney's fees, incurred by the KCBT in the defense of such proceeding. Any current or former member or member firm required to compensate the KCBT pursuant to this section shall be assessed interest on such amount at the rate of Prime plus 1%, which interest shall accrue from the date such amount was demanded in writing after the member or member firm failed to prevail in a lawsuit or any other type of legal proceeding against the KCBT.

- V. **Rationale for Action Taken.** At both their May and June meetings, the executive committee discussed the adoption of a rule for the protection of the exchange against the potential defense costs associated with frivolous lawsuits brought against the exchange by current or former members. While this potential threat has not been an issue, the committee noted that a number of self-regulatory organizations have adopted similar provisions in their articles, bylaws or rules. Examples are: Chicago Board of Trade Articles of Incorporation, Article VIII, Section 7; New York Mercantile Exchange Rule 2.43 and NFA Bylaw 1402.

The executive committee concluded that such a rule might serve the best interests of the membership as a deterrent to any such frivolous lawsuits being filed against the exchange. Further, such a deterrent might also serve to help prevent unnecessary increases in insurance costs, most notably director's and officer's liability insurance, associated with defending against these types of lawsuits. In that regard, the executive committee forwarded proposed Rule 102.01 to the Board with a recommendation for its adoption. The Board concurred with the executive committee's recommendations.

- VI. **Closing.** Any questions regarding this submission should be directed to the undersigned at 816-753-7500.

Sincerely,

Jeff C. Borchardt  
President

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