



December 30, 2010

Sent electronically to:
www.cftc.gov

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: **RIN 3038-AD07**
Federal Register Release: 75 FR 67282
17 CFR Part 40 – Provisions Common to Registered Entities

Dear Mr. Stawick:

The Kansas City Board of Trade (“KCBT”) appreciates the opportunity to offer comments regarding the aforementioned Federal Register release. As a Designated Contract Market (“DCM”), KCBT is concerned with the unnecessary burdens created by two requirements proposed in §§ 40.5 and 40.6. Specifically, we take exception to the following additional submission requirements for voluntary and self-certification of rules and rule amendments:

1. Documentation relied upon to establish the basis for compliance under the Act and the Commission’s regulations thereunder, including the applicable Core Principles.
2. A written statement verifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may affect the trading of the product underlying the contract.

While we do not take exception to the inclusion of the additional requirements for purposes of §§ 40.2 and 40.3, we question the necessity or relevance of such requirements in rule or rule amendment filings. Certainly, any new contract developed for trading should not only comply with Commission regulations, but should reasonably contemplate the potential for legal action by others through the use of protected intellectual materials or information in connection with the trading of such contract. However, once a contract has been approved and listed for trading, additions or amendments to such contract should only be subject to the current requirements under §§ 40.5(a)(7) and 40.6(a)(3)(v).

In many cases, for purposes of satisfying the requirements of §§ 40.5(a)(7) and 40.6(a)(3)(v), KCBT rule and rule amendment submissions are accomplished by cursory review of the rule or rule change in relation to Commission regulations and DCM Core Principles. This process has

worked efficiently, in that many rules or rule amendments that are deemed contract terms or conditions do not contravene with the language of specific Commission regulations or DCM Core Principles (i.e., last trading day; settlement procedures; price limits; etc.). Consequently, there is no documentation relied upon to establish the basis for compliance under the Act and the Commission's regulations thereunder, including the applicable Core Principles. Any such documentation would amount to a written statement that the Exchange has reviewed the rule or rule change in relation to Commission regulations and DCM Core Principles and finds that the rule or rule changes comply with the Act and regulations thereunder. We find no difference in or significant benefit achieved by such a statement in comparison to the current requirements of §§ 40.5(a)(7) and 40.6(a)(3)(v).

Similarly, we find no reason to "undertake a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may affect the trading of the product underlying the contract" when filing rules or rule amendments to an existing contract's terms or conditions. As stated earlier, this is an unnecessary burden for "ordinary course of business" additions and changes to existing contract rules. Further, given that trade in the underlying cash commodity is a separate and distinct venue not regulated by the Commission or KCBT, we question the Commission's propriety in requiring registered entities to evaluate the legal conditions, contractual or otherwise, that the rule or rule change may have on the underlying cash market trade (trading of the product underlying the contract). Finally, given the internal process that registered entities go through in developing and proposing rules and rule amendments, the longer review times associated with self-certification of rules submissions and the proposed § 40.6(c)(1) stay procedure, the adequate Commission review timeframe for voluntary submission of rules and rule amendments, and the added transparency of requiring a registered entity to post all rules and rule amendment submissions on its website, it is unlikely that any significant legal challenge would go undetected.

In closing, KCBT appreciates the opportunity to express its views regarding the Commission's proposed Part 40 revisions. If you have any questions, please contact the undersigned at 816-753-7500.

Sincerely,



Jeff C. Borchardt
President