

Thomas R. Donovan
President and
Chief Executive Officer

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Chicago Board of Trade

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By Facsimile and Certified Mail

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

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OFFICE OF THE SECRETARIAT

COMMENT

Received CFTC
Records Section

Re: Proposed Rulemaking Concerning Amendments to Insider Trading Regulation –
64 Fed. Reg. 248 (December 28, 1999)

Dear Ms. Webb:

The Chicago Board of Trade ("CBOT®" or "Exchange") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") Proposed Rulemaking Concerning Amendments to Insider Trading Regulation 1.59. Regulation 1.59 currently addresses certain trading prohibitions which are imposed upon persons employed by or associated with self-regulatory organizations. Specifically, SROs are required to adopt rules prohibiting employees, governing board members, and members of committees from defined trading activities and from disclosing material, non-public information. Employees, as well as paid consultants, are currently prohibited absolutely from trading any commodity interest traded on or cleared by the employing contract market or clearing organization, or any related commodity interest. Governing board members and committee members are subject to a different standard, and are only prohibited from trading for their own accounts, or for or on behalf of any other accounts, based on material, non-public information.

The proposed amendments seek to clarify that governing board members are not employees even though they may draw a salary or are otherwise paid. This amendment is reasonable and desirable in light of the fact that self-regulatory organizations have an interest in encouraging qualified members to serve on their boards and also may desire to provide them with remuneration for doing so. The CBOT also suggests that the amendment be expanded to make it clear that committee members who are compensated by a self-regulatory organization solely for committee activities are not employees. In this regard, the Exchange notes that it routinely pays a small fee to non-member panelists who serve on disciplinary committees to meet the requirements of Commission Regulation 1.64(c), and to non-members who serve on arbitration panels.

The Commission also seeks to make it clear that individuals who may be paid by an SRO to serve as the "functional equivalent" of governing board members, e.g., ex officio or emeritus members who participate in board deliberations but are not technically members of the board, are to be treated as board members and not employees for purposes of

Regulation 1.59. Although the CBOT does not have any such individuals participating with its Board of Directors, the Exchange agrees with the proposed amendment.

The Commission has also requested comment regarding whether non-paid advisors to a governing board or committees should be subject to the insider trading restrictions, since they are neither employees nor actual members of such governing boards or committees. The Commission has noted that such individuals are not currently subject to the Regulation 1.59 requirements, and stated its belief that such advisors may merit special treatment under the Regulation. The Commission has requested comment on the extent to which such individuals are utilized by SRO governing boards and committees and their level of participation in those bodies' deliberations. The CBOT does not use non-paid advisors to its Board of Directors. Several exchange committees have or have had one or two non-paid advisors and their level of participation has varied depending on the nature of the committees and the individuals involved. Generally, these advisors are members of the Exchange. Therefore, if the Commission were to make Regulation 1.59 applicable to non-paid advisors, they should not be subject to any greater trading restrictions than those which apply to members of the Board of Directors or exchange committees.

The CBOT supports the Commission's proposed clarification of the scope of the SRO employee trading prohibition, to correct the confusion that may have been created by its current punctuation.

The Commission has specifically invited comment regarding the treatment of paid consultants under Regulation 1.59. The Regulation currently includes paid consultants within the definition of employee, such that they are subject to an absolute prohibition against trading the products offered on the relevant contract market. The Commission has correctly noted that consultants are most frequently used in the field of information technology. In addition, the CBOT, and other exchanges, have made increasing use of management consultants, particularly in connection with analyzing appropriate corporate structures for the future. Other types of consultants may be utilized in connection with issues relating to exchanges' physical facilities. Some consultants are retained in connection with specific, time-limited projects and other consultants are retained to perform ongoing services over a longer period of time. Despite these distinctions, consultants frequently have access to material, non-public information.

Although there may be differences in the terms of various consulting contracts, and in the nature of the work performed by consultants, the Exchange believes that individual consultants should continue to be treated like employees for purposes of Regulation 1.59, even though such consultants may not be considered to be employees for other purposes. However, the Exchange notes that business entities may be retained to provide consulting services, and some of those business entities may be member firms of the Exchange. Therefore, the CBOT recommends that those individual employees of such entities, who are directly involved in providing the consulting services, be treated like exchange employees, and be subject to the absolute trading prohibition with regard to their personal accounts. However, the business entities themselves should only be subject to the prohibition applicable to governing board members, and should be permitted to trade for

the firms' accounts as long as they do not trade based upon material, non-public information. The CBOT further believes that it is important that the Commission recognize that exchanges have no effective means for policing a Regulation 1.59 trading prohibition against consultants, and they should not be expected to do so.

The CBOT appreciates the opportunity to comment on the proposed amendments to Regulation 1.59. Please feel free to contact Anne Polaski, Assistant General Counsel, at (312) 435-3757, if you have any questions about the Exchange's comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas R. Donovan".

Thomas R. Donovan