



**KANSAS CITY
BOARD OF TRADE**

March 7, 2011

SENT VIA AGENCY WEBSITE

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

Re: Governance Requirements for Derivatives Clearing Organizations,
Designated Contract Markets and Swap Execution Facilities; Additional
Requirements Regarding the Mitigation of Conflicts of Interest RIN 3038-
AD01

Dear Mr. Stawick:

In response to the Commission's request for public comment on Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets and Swap Execution Facilities and Additional Requirements Regarding the Mitigation of Conflicts of Interest, the Kansas City Board of Trade ("KCBT" or "Exchange") and its wholly-owned subsidiary, Kansas City Board of Trade Clearing Corporation ("KCC") offer the following:

KCBT previously submitted comment letters to the Commission regarding conflicts of interest in April 2007 and November 2010. During that time, KCBT offered extensive comments warning the Commission of the negative effects of increasing participation of one particular interest (namely public representation) at the expense of other critical and necessary interests. We make those same points and objections to the Commission's January 6, 2011 proposal and ask that the Commission review and consider our prior comments in conjunction with the comments offered herein.

Mitigation of Conflicts of Interest:

Reporting Requirements:

The Commission is proposing to mandate that each DCO and DCM submit to the Commission within 30 days after election of its Board of Directors a list of the members of the Board of Directors, each committee with a composition requirement and each other committee that has the authority to amend or

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constrain the action of the Board. The proposal also requires a description of the relationship between such directors and the registered entity, information on how a director qualifies as a public director and a description of how the composition of the Board of Directors and committees allows the registered entity to comply with applicable core principles, regulations and rules of the registered entity.

KCBT & KCC find these requirements far too prescriptive. KCBT and KCC each have rules and procedures in place to ensure that composition requirements of the Board of Directors and committees are met. A list of the members of the Board of Directors and committees are made available to the CFTC through exchange circulars. To qualify as a public director, an individual must be found by the Board of Directors, on the record, to have no material relationship with the exchange. The exchange's definition of material relationship is consistent with the Commission's Core Principle 15 guidelines (see KCBT Rule 230.05). To reinforce the importance of any material relationship, public directors are required to sign an annual declaration form declaring any material relationship. The declaration form contains the definition of material relationship as set forth in Rule 230.05. KCBT and KCC both exercise care to ensure that fitness and conflict of interest standards are being met. Due to the adequacy of rules and procedures currently in place, we question the necessity of the level of detail and volume of reports required to be submitted to the Commission as proposed in this rulemaking.

The Commission is proposing that each DCO have a Risk Management Committee ("RMC") or Board of Directors with at least 35 percent public directors and 10 percent customer representatives. We question the necessity of these composition requirements for a derivatives clearing organization that is a wholly-owned subsidiary of a designated contract market. Although KCC was established as a wholly-owned subsidiary for purposes of limiting liability, the practical reality is that KCC operates like a department of KCBT. Given that KCC is 100% owned by KCBT, any significant decisions made at KCC are subject to the approval of the KCBT Board of Directors. KCBT already adheres to the Commission's safe-harbor acceptable practice guidelines by having at least 35 percent public director representation on its board. Consequently, KCC indirectly has 35 percent public representation at its ultimate decision making level.

KCBT has great concerns with the 10 percent customer representation requirement. Unlike public directors, customers are market users. And unlike members, customers have no vested interest in the exchange or clearing organization. As a result, we have serious concerns that customer participation in the governance process could **increase** the likelihood of conflicts. Clearing

member FCM representatives on KCC's board already represent the interests of a wide cross-section of customers, eliminating the necessity for customer-specific representation. Having "skin in the game" so to speak, provides a strong incentive for members to do what is in the best interest of KCBT and KCC versus their own personal or a particular customer's interests. In addition, members provide a level of expertise and efficiency that customers are not able to provide.

The Commission requests comment on situations where a central counterparty can't manage through structural or substantive governance arrangements, conflicts of interest that may disadvantage a specific member or customer. The central counterparty is then required to disclose to that member the general nature or sources of such conflicts. KCBT and KCC feel it unnecessary for the CFTC to consider imposing a similar requirement on DCOs and DCMs. Both KCBT and KCC rules minimize personal conflicts of interest through the establishment and enforcement of rules that cover exchange employees, board members and committee members who either: 1) possess material non-public information gained by virtue of their service as an employee, director or committee member, or 2) in the case of a director or committee member, have a personal or financial interest in the outcome of an exchange decision or action. Directors and committee members are prohibited from using or disclosing material, non-public information obtained as a result of participation as a director or committee member. Exchange members that have disciplinary records are prohibited from serving on the exchange board of directors or any disciplinary committee.

Members of the exchange board of directors and disciplinary committees must abstain from deliberations and voting on any significant matters before such board or committee if any such members disclose or are found to have a personal or financial interest in the matter. The procedures for determining if a member has a personal or financial interest are set forth in KCBT and KCC rules. KCBT minimizes structural conflicts of interest in the conduct of its self-regulatory responsibilities by voluntarily adhering to the Commission's safe-harbor acceptable practice guidelines set forth in Core Principle 15. Furthermore, prior to any committee (including executive committee) or board of directors meeting the KCBT Chief Regulatory Officer reviews the proposed meeting agenda for any potential conflicts of interest. Thus both KCBT and KCC fitness and conflicts of interest standards, which are publicly available, are consistent with application guidance and acceptable practices of the core principles. KCBT and KCC have more than adequate rules and procedures in place to avoid being unable to manage conflicts of interest. KCBT and KCC both exercise care to ensure that fitness and conflict of interest standards are being met.

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Regulatory Programs:

Both KCBT and KCC have rules to monitor existing and potential conflicts of interest on an ongoing basis. Further, we each have recusal procedures to make fair and non-biased decisions in the event of a conflict of interest. For further detail, see KCBT and KCC response above in Mitigation of Conflicts of Interest, Reporting Requirements.

Transparency Requirements:

The Commission proposes to require each DCO and DCM to make available certain information to the public and relevant authorities and to ensure that the information made available is current, accurate, clear and readily accessible and disclose summaries of certain significant decisions. The information that the Commission proposes to be communicated to the public is either available on our website, reflected in our rule book (also available on our website), or disclosed in the form of exchange circulars or press releases. KCBT disciplinary actions are made available to the public thru the NFA's BASIC system disciplinary database. Regarding significant decisions relating to access, membership approvals are disclosed via exchange circular and denials reported to the Commission. With respect to the finding of products acceptable (or not acceptable) for clearing, given the KCBT determines what products will be traded or cleared, and given further that KCBT develops rules to be submitted for any new products and communicates such via circulars or press releases, we question the relevance of public communication of confidential internal discussions where a product is considered for trading or clearing but ultimately rejected. In fact, the consideration of some products involves outside parties who require the execution of a non-disclosure agreement, precluding the dissemination of information relating to such product being considered. The disclosure of such discussions and information should be left solely to the discretion of each DCM or DCO.

Limitations on Use or Disclosure of Non-Public Information:

KCBT and KCC both have rules and procedures in place prohibiting directors and committee members from using or disclosing material non-public information obtained through board or committee participation.

Regulations Implementing Governance Core Principles:

Governance Fitness Standards:

KCBT and KCC each have rules and procedures in place to ensure that fitness standards of the Board of Directors and committees are met. Before a member is considered for a board or committee position, both KCBT and KCC exercise

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extreme care to ensure the member meets the appropriate fitness standard. Therefore we feel it is unnecessary and duplicative to collect and verify information that supports compliance with the standards and submit it to the Commission annually.

The Commission proposes to mandate that members and certain other persons must agree to become subject to the jurisdiction of the DCM or DCO, as a condition of access. KCBT agrees in theory that if a market participant is granted the privilege of trading on a DCM or DCO, the participant should not only abide by the DCM's or DCO's rules, but should also be subject to their jurisdiction and investigatory and disciplinary process. However, KCBT and KCC rules apply exclusively to members so we question our jurisdictions over non-members. Even if a non-member market participant consents to KCBT's jurisdiction and process, but later fails to abide by such consent, KCBT's only recourse would be to revoke such participant's market access. Given this practical reality, we question the benefit of implementing this proposed regulation and posit that the current process provides adequate incentive for voluntary cooperation by market participants.

Due to the adequacy of rules and procedures currently in place we do not see any benefit to certify to the Commission on an annual basis that we are in compliance with the governance fitness standards.

Transparency Requirements:

The Commission is proposing to require each DCO to make available to the public, as well as relevant authorities, a description of the manner in which its governance arrangements permit the consideration of the views of owners (whether voting or non-voting) and its participants, including, without limitation, clearing members and customers. We feel strongly that such a mandate is unwarranted, in that many times proposed rules or changes are insignificant and do not warrant public input. Further, when circumstances do warrant such, the process should be left to the discretion of the DCO, whose committees and governing board are in the best position to gauge whether such input is necessary or could be beneficial. The creation of a one-size-fits-all description or process is constraining and may not fit all circumstances, particularly as mentioned earlier, those circumstances where disclosure is prohibited by non-disclosure agreements.

The Commission also proposes to require each DCM to design and institute a process for considering the range of opinions that market participants hold with respect to the functioning of an existing market and new rules or rule

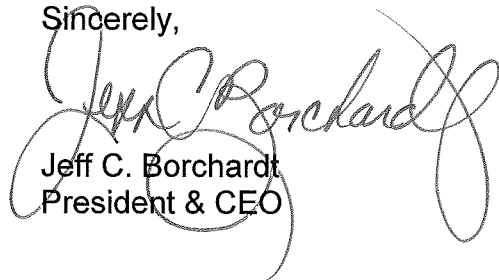
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amendments. DCMs must make a description of such process available to the public and to relevant authorities. Please refer to our earlier comments to similar proposed requirements for DCOs which apply equally here.

In closing, as front line regulators, Commission core principles require us to have adequate rules and procedures in place to address much of what is being proposed in this rulemaking, including the mitigation of conflicts of interest. As stated above, KCBT & KCC have rules and procedures in place to address these areas. As with prior comments we have submitted regarding Commission proposed rulemaking, we question the Commission's need for the level of prescriptiveness proposed in this rulemaking. The Commission, as an oversight agency, should review registrant rules and procedures actively as part of the normal rule enforcement review and oversight process. The requirement of submitting prescriptive, voluminous and detailed information ignores the basic principles of self-regulation and thrusts the Commission into the role of a front line regulator. Given Commission concerns about funding and resources, we respectfully ask, would it not make more sense to place some level of trust in a self-regulatory structure that has performed well for over 150 years? After all, this structure has performed stellar through some of the most extreme market conditions (i.e., stock market crash of 1987, the commodity price volatility of early 2008 and the financial market crisis of 2008). That way, Commission funds and resources could be directed to enhancing technology to more efficiently support the Commission's oversight function.

Kansas City Board of Trade and Kansas City Board of Trade Clearing Corporation appreciate the opportunity to comment on the proposed Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest. If you have any questions please feel free to contact me or our chief regulatory officer Joe Ott at 816-753-7500.

Sincerely,



Jeff C. Borchardt
President & CEO