May 14, 2004

BY E-MAIL AND CERTIFIED MAIL

Ms. Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: The Clearing Corporation's Request to Permit Secured Amount Funds to be Commingled with Segregated Funds in furtherance of the Implementation of Phase 1 of a Global Clearing Link

Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT®" or "Exchange") appreciates the opportunity to comment on the request of The Clearing Corporation ("CC") that the Commodity Futures Trading Commission ("Commission") take certain regulatory actions to permit implementation of the first phase of a Global Clearing Link between Eurex Clearing Frankfurt, AG ("EC") and CC ("Euro Link"). If this request were granted, CC and its clearing participants would be able to clear trades in certain Euro-denominated futures and options ("Euro contracts") that had been executed on Eurex Frankfurt, AG ("Eurex") on behalf of U.S. customers.

Specifically, CC has submitted a letter to the Commission requesting that CC "and futures commission merchants ("FCMs") be permitted to deposit and maintain variation, original and initial margin deposits for Euro Link transactions in segregated funds, rather than in separate secured amount, accounts."[1] There have been a very limited number of instances in the Commission's history when it has determined that it was sufficiently prudent and appropriate to exercise its discretionary authority under Section 4d(a)(2) of the Commodity Exchange Act ("CEA") to permit non-segregated funds, securities and property received by an FCM to be commingled in the segregated account.[2] However, the proposed Euro Link presents facts and circumstances that are materially different from those that formed the bases for the relief granted by the Commission in those

[1] Letter from Kenneth M. Rosenzweig to Jean A. Webb, April 26, 2004 ("Request Letter"), at 6. CC argues that absent such relief, CC and its FCM participants will be required to reprogram their systems and establish new banking relationships in order to maintain the separation of segregated and secured funds. However, FCMs whose customers do business on foreign exchanges already have programming in place to accommodate separate segregated and secured amounts. In addition, the Euro Link proposal already anticipates that CC participants will establish new banking relationships in Germany in order to clear Euro Link products. Programming requirements or the necessity for new banking relationships are not sufficient justification for relaxing important regulatory financial safeguards.

[2] Commission Regulation 1.20(b) makes segregation requirements applicable to all customer funds received by a clearing organization from a member to purchase, margin, guarantee or secure trades of the member's commodity or option customers.

limited instances. Therefore, the requested relief would weaken the longstanding protections set forth in the CEA and Commission regulations, which require that FCMs hold the funds of U.S. customers with respect to trading on U.S. exchanges in segregated accounts and the funds with respect to their trading on foreign boards of trade in secured amount accounts.

Background

Under the terms of the proposed Euro Link, EC will be the Primary Clearing House for trades in Euro contracts that are executed on Eurex, including with respect to trades that are cleared at CC as a Linked Clearing House. EC will also be the Home Country Clearing House for all such trades. As the Home Country Clearing House, EC will define the rules and standards and will provide the functionality regarding, among a number of other things, variation margin, pays and collects, deliveries, option exercises and assignments, settlement prices, trade management, and position management.[3] CC clearing participants will be required to establish new and separate accounts in Germany for the payment of variation margin, and for physical deliveries of the securities underlying Euro contracts. CC will have an ongoing obligation to conform its rules to the EC rules as they relate to each of these matters. All of the extensive responsibilities, which will reside with EC as the Home Country Clearing House, will be subject to the laws of the Federal Republic of Germany. Accordingly, under the Euro Link, trades will be executed in Germany, and CC clearing participants will be subject to rules promulgated by EC, required to have accounts in Germany, and be subject to German law.

Trades executed pursuant to the Euro Link would be trades executed on or subject to the rules of a foreign board of trade. As such, the secured amount provisions of Commission Regulation 30.7 would apply to funds held by FCMs to margin, guarantee, or secure open Euro Link contracts for customers located in the U.S. The secured amounts held for those customers would be required to be kept separately from segregated funds so as to constitute a separate and distinct pool in the event of a default or bankruptcy. The Commission stated at the time it enacted Regulation 30.7, that it chose that approach so as "not to promulgate rules which in any way, would diminish the pool of funds available to domestic customers trading on U.S. exchanges in the event of a firm failure and not to create biases in favor of the trading of foreign products."[4] The Commission also has required special disclosures to customers regarding foreign futures transactions, including those executed on foreign exchanges that are linked to U.S. markets. Among other things, those disclosures address lesser levels of protection for customer margin and the fact that U.S. authorities do not have the power to enforce foreign rules or laws or to regulate foreign trading or clearing activity.[5]

---

[3] A description of these arrangements is set forth in proposed chapter 9B of the CC rules.
[4] *Foreign Futures and Foreign Options Transactions*, Comm. Fut. L. Rep. (CCH) ¶23,740, at 33,925 (52 F.R. 28980, August 5, 1987).
[5] *E.g.,* Commission Regulation 1.55(b)(7).

Previous Commission Actions under Section 4d(a)(2) Permitting the Commingling of Segregated and Secured Funds

In its Request Letter, CC cites prior occasions on which the Commission exercised its discretion under Section 4d(a)(2) of the CEA to establish terms and conditions for permitting money, securities, and property of the customers of FCMs, used for trading on linked foreign boards of trade, to be commingled in the segregated account. Those prior Commission actions do not support the requested relief for the reasons discussed below.[6]

The first time the Commission acted under Section 4d(a)(2) concerning a trading link was in the case of the Chicago Mercantile Exchange (CME)-Singapore International Monetary Exchange (SIMEX) mutual offset system.[7] As part of the link agreement, SIMEX is required to maintain requirements for segregation of customer funds, which are substantially identical to those maintained by CME.[8] In compliance with that requirement, SIMEX put in place a comprehensive segregation rule.[9] Based in large part on this critical fact, the Commission acted affirmatively. In its interpretative letter the Commission concluded that, for purposes of segregation, trades executed on SIMEX and carried on CME would not be treated as foreign futures, but trades executed on CME and carried on SIMEX would be treated as foreign futures. In contrast with the circumstances of the CME-SIMEX link, Eurex represented to the Commission in writing, in connection with another matter, that "German credit institutions and financial services institutions are not required to segregate amounts required to pay claims of customers with respect to futures and options positions."[10]

Subsequently, the Commission granted similar relief with respect to the link between the Commodity Exchange, Inc. ("Comex") and the Sydney Futures Exchange Limited ("SFE").[11] Under this link, trades executed on SFE were cleared on Comex, with all funds to margin, guarantee or secure those trades for commodity customers held in segregation in the U.S. by FCMs and Comex Clearing Association, Inc. ("CCA") and subject to the rules of CCA and Comex. Accordingly, the factual basis for the granted relief was very different than the terms of the proposed Euro Link.

---

[6] CC has also referenced the fact that the Commission has exercised its exemptive authority under Regulation 30.10 to permit firms subject to regulation by the Financial Services Authority in the United Kingdom to allow certain U.S. customers trading on foreign exchanges the ability to "opt out" of U.K. segregation requirements. This exemption is inapposite here. The relief that CC seeks would essentially permit all U.S. customers trading Euro contracts on Eurex to "opt in" to segregation in order to have their trades cleared by CC. "Opting out" of segregation does not pose a risk to other customers whose funds are segregated. However, by allowing customers to "opt in" to segregation , the pool of segregated funds would potentially be diluted to the detriment of other segregated customers.

[7] *Interpretative Letter No. 84-19*, Comm. Fut. L. Rep. (CCH) ¶22,389 (August 9, 1984).

[8] Proposed Mutual Offset Agreement, August 28, 1984, Article XIV(g).

[9] Rule 917.

[10] Letter from Eurex Deutschland to the Commission, April 23, 2001.

[11] *Interpretative Letter No. 86-26*, Comm. Fut. L. Rep. (CCH) ¶23,359 (November 17, 1986).

CC relies most heavily on its interpretation of the relief that the Commission granted under Section 4d(a)(2) with respect to the link between CME and the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Variable ("MEFF").[12] MEFF was designated as a special clearing member of CME and generally required to comply with all CME rules.[13] As such, MEFF was required to open a special clearing account with CME. All aspects of the clearing of MEFF contracts under the link were subject to CME risk management procedures. The Commission's Order set forth specific terms and conditions for the granting of this relief. One of these conditions states that:

> MEFF will become and remain a special clearing member of CME subject to all of the rules and policies of CME that govern the rights and responsibilities of other clearing members at the CME including, but not limited to, meeting required security deposit requirements and being subject to CME assessment powers.[14]

Notably, in Appendix A to the Request Letter, where CC unconvincingly attempts to analogize the Euro Link, CC's response to the above condition is simply that CC and EC will become special clearing members of each other, and that they have concluded that it is unnecessary to make deposits to each other's guaranty funds or to be liable for assessments to those funds based on their financial status. Nevertheless, each Clearing House will have the right to receive distributions from the other Clearing House's guaranty funds in the event of a default by one of its clearing members.[15] It should also be noted that in the event of an EC default, CC will have the contractual right to liquidate open positions in EC's omnibus account as a Special Clearing Member of CC, and to terminate EC's authority to debit and credit CC clearing participants' settlement accounts with respect to variation margin and deliveries. However, CC will have to rely upon EC to transfer the monies and deliverable items in its possession to CC, and EC's ability to make such a transfer will be governed by German law.[16]

Another condition imposed by the Commission in connection with the relief granted with respect to the CME-MEFF link, was that:

> Upon receipt of each clearing record submission, CME will validate the transaction to ensure the trades are for [the permitted futures transactions] and for the existence of two offsetting legs with a trade price that is within a reasonable price range for the contract, and where necessary, inform MEFF as soon as

---

[12] 66 Fed. Reg. 34110 (June 27, 2001).
[13] "For example, MEFF was required to: (1) deposit with CME the initial margin equal to the account (sic) required of other CME members; (ii) comply with certain CME capital requirements; (iii) file monthly financially (sic) reports; (iv) submit an annual certified audit; and (v) provide CME with access to books and records. *Id.* at 34111, n.4.
[14] *Id.* at 34112.
[15] Link Clearing Agreement at 11.
[16] Id. at 23-24.

> practicable of any reason validation failed and return the trade to MEFF for correction or nullification.[17]

However, the Request Letter states that comparable arrangements are unnecessary with respect to the Euro Link because all trades submitted to CC will have already been matched by the Eurex trading platform, and the other referenced functions will have been performed by Eurex's Market Supervision Department.[18] CC's proposed rules state that ". . . [i]n the case of all Trades in Euro Contracts, acceptance of such Trades occurs immediately upon the acceptance of such Trades by Eurex Clearing."[19] Thus it appears that CC will be obligated to accept every Euro Link trade that a CC clearing participant designates for clearance by CC although it will have no control over the validation of the transaction.

Under the MEFF link, all original and variation margin was collected by CME, and was maintained in U.S. accounts. In contrast, CC proposes to have variation margin collected by EC for Euro contracts that CC will clear under the Euro Link. Such funds will be transferred between German bank accounts and EC. [20]

As to the other terms and conditions, CC's responses are for the most part that EC will provide the necessary performance or standard or that such performance is unnecessary.[21] Thus, there are fundamental factual differences between the CME-MEFF link and the proposed Euro Link. In the case of the CME-MEFF link, all clearing activity occurred subject to the rules and procedures of the CME. The clearing of link products at the CME was virtually indistinguishable from that for CME products. In the case of the Euro Link, EC, a foreign, unregistered clearing house, would have major control over the clearing process for all Euro Link participants, including CC clearing participants. This extra-territorial arrangement would involve far greater risk to all CC participants, whether or not they use the Euro Link.[22] In addition, since the requested relief would not extend to EC or EC's clearing members,[23] part of clearing under the Euro Link would be in segregated funds and part would not. This circumstance did not exist with respect to any

---

[17] 66 Fed. Reg. at 34112.
[18] Request Letter at A-4.
[19] Proposed CC Rule 9-301B.
[20] There are notable differences between CC's and EC's procedures in this regard, and thus increased risk,. CC performs variation marking-to-market of open positions at least twice a day. In contrast, EC does so only once as part of an end of day batch process.
[21] CC notes that, where the opposite side of the trade is being cleared by an EC member, CC will not have access to the identity of the opposite broker. Request Letter at A-4. The absence of such basic information, which CC otherwise would routinely have, could impair CC's ability to carry out effective risk management with respect to concentrations of positions.
[22] CC apparently is aware of the risk, given that it is in the process of negotiating a credit facility with EC. However, no such arrangement is likely to provide the same level of financial security and protection, particularly in times of stress, which is afforded by the highly successful laws, regulations, rules and processes followed by U.S. derivatives clearing organizations.
[23] *See* Request Letter at 9, n.16.

of the prior Commission actions relied on by CC and its implications are not discussed in the documents made available for comment.

In sum, the Commission has previously allowed secured funds to be treated as segregated funds only in several limited circumstances, and subject to reasonable conditions. By contrast, granting the relief requested by CC would be unprecedented and would pose special risks to segregated funds. If the Commission allows the commingling of segregated and secured funds in the context of the proposed Euro Link, it will open the door so wide that it will be difficult to justify requiring FCMs or derivatives clearing organizations to maintain separate segregated and secured amounts in any other circumstances, and to do so would be inequitable. The Commission has wisely determined that the protections afforded by the requirements for separate segregated and secured amounts are important, and it should not relax such protections to the point of evisceration by granting CC's request.

Bankruptcy Treatment

CC contends that Euro Link customers would be entitled to the same priority and *pro rata* distribution as other customers of a debtor commodity broker under Section 766(h) of the Bankruptcy Code ("Code").[24] This claim is based on CC's apparent conclusion that Eurex, the exchange on which Euro Link contracts would be executed, is a board of trade within the meaning of Section 761(4) of the Code.[25] That conclusion is not supported by a review of relevant provisions of the Code, the CEA and the Commission's regulations, and would nullify important regulatory differences between domestic and foreign futures.

A commodity broker is defined in Section 101(6) of the Code to include, among others, a futures commission merchant or a foreign futures commission merchant ("FFCM") with respect to which there is a customer. An FFCM is essentially defined in Section 761(12) of the Code as an entity that solicits or accepts orders for foreign futures and accepts funds and extends credit to margin, guarantee or secure the resulting trades. Foreign futures are defined in Section 761(11) of the Code as a "contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade outside the United States" (emphasis added).

---

[24] This argument is premised upon the assumption that U.S. bankruptcy law would apply. However, the Euro Link, as proposed, requires variation margin to be held in Germany, under the control of EC. As the Commission is well aware , in the international context of differing bankruptcy laws, differing rules regarding the handling of customer funds, and differing provisions regarding the rights of a clearing house, complicated and lengthy litigation may result. Some of these issues presented particularly thorny difficulties in the matter of the bankruptcy of Griffin Trading Company, a CBOT clearing member firm, with a London office, whose U.S. and U.K. customers had funds on deposit with both CC and EC.

[25] "With respect to an FCM, a commodity contract means a ´contract … on, or subject to the rules of a contract market or board of trade….' 11 U.S.C. § 761(4) (emphasis added)… Euro Link contracts, therefore, will be ´commodity contracts' within the meaning of the Bankruptcy Code." Request Letter at 8.

Section 761(4) of the Code defines commodity contract with respect to various entities, including FFCMS and FCMs. These subcategories of commodity contract form the basis for the account classes defined in Commission Regulation 190.01(a). The property of a debtor's estate must be allocated among account classes for *pro rata* distribution.[26] Pursuant to this scheme, U.S. based entities can obtain the protections of the special commodity broker provisions of the Code for foreign futures as well as domestic futures, albeit within separate account classes.[27]

With respect to an FFCM, under Section 761(4)(B), commodity contract means "foreign future." With respect to an FCM, under Section 761(4)(A), commodity contract means "a contract for the purchase or sale of a commodity for future delivery on or subject to the rules of a contract market or board of trade." If, as CC contends, board of trade as used in Section 761(4)(A) were deemed to encompass Eurex, that would result in foreign futures being included in both the foreign futures and futures account classes. That result is not supported by Section 761(4) or Commission Regulation 190.01.

The Bankruptcy Code establishes a clear distinction between the two mutually exclusive categories of foreign and domestic futures. This is wholly consistent with the treatment of those categories in the CEA and the Commission's regulations. Board of trade is defined in Section 1a(2) of the CEA as "any organized exchange or other trading facility." In contrast, in Section 4(a) of the CEA, where foreign boards of trade are excluded from the Commission's jurisdiction, they are referred to as "a board of trade, exchange or market located outside the United States" (emphasis added).[28]

Thus, CC's argument that Euro Link customers would be entitled to the same priority and *pro rata* distribution as that for other commodity contracts with respect to an FCM, based on the language of Section 761(4)(A), is incorrect. In its Request Letter, CC goes on to assume the conclusion that its request will be granted. Based upon that assumption, CC argues that since there will not be any difference in the segregation treatment of Euro Link futures cleared by CC and other futures cleared by CC, Euro Link futures should be treated for bankruptcy purposes as being within the domestic futures account class. However, for the reasons discussed above, segregation relief should be denied and, for bankruptcy purposes, Euro Link funds should be in the foreign futures account class. At the very least, if the Commission were to approve CC's request, it should require CC to disclose to its clearing participants that it is not clear that customers would have the same priority in bankruptcy with respect to Euro Link transactions as they would with respect to domestic futures transactions cleared by CC.

---

[26] Commission Regulation 190.08.
[27] *E.g.,* CFTC Interpretative Letter 86-26 at 32,991, n.9.
[28] See Commission Regulations 1.3(a) and 30.1. In addition, Section 5d of the CEA establishes a U.S. regulatory regime for "exempt boards of trade." Under CC's analysis, Eurex, as a board of trade, could potentially qualify. That result would be inconsistent with the intent and scope of the provision.

Registration of Eurex Clearing as a Derivatives Clearing Organization

Under the Euro Link, EC will be both the Primary and Home Clearing House for all transactions in Euro contracts, including those cleared by CC. CC would never accept or be required to accept a Euro Link trade as a Special Clearing Member of EC unless EC, as the Primary Clearing House, also does so.[29] With respect to the Euro contracts that CC proposes to clear, EC, as the Home Country Clearing House, will have very substantial responsibilities for the clearing of such contracts. [30] CC would be required to conform its rules to EC rules as they relate to each of EC's areas of responsibility and CC clearing participants would be required to abide by the rules of Eurex and EC to the extent applicable. [31]

Under the Euro Link, EC would have the discretion to decide how to perform the functions the parties have agreed EC is to perform. Although the documents refer to EC as being the agent and service provider of CC, CC would not supervise or oversee EC's ongoing performance. EC would independently exercise its authority in the areas assigned to it in a manner similar to how it clears contracts outside the Euro Link[32]

CEA Section 1a(9) defines a derivatives clearing organization ("DCO") to include an entity that:

> with respect to an agreement, contract, or transaction -
>
> (i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

---

[29] Letter from Dennis A. Dutterer to James L. Carley and J. Michael Gorham, April 26, 2004, at 9.

[30] EC's responsibilities include ". . . (i) the payment and collection of Variation Margin; (ii) the exercise and assignment process for option contracts; (iii) the notification and allocation process for deliveries on futures contracts; (iv) physical deliveries (including delivery default procedures and penalties); (v) give-up and take-up processing; (vi) cash payments (including fees and charges for late deliveries and Variation Margin defaults); (vii) trade and position management; (viii) position and Open Interest reporting; (ix) timelines, holiday calendars, schedules and deadlines; (x) the offsetting of Contracts between the Clearing Houses; and (x) (sic) such other matters as the Parties may agree." Link Clearing Agreement, Section 3(h), at 13. These provisions are also set forth in proposed chapter 9B of the CC Rules.

[31] Proposed CC Rule 202(a).

[32] In fact, the description of the Euro Link makes it appear more like CC is the agent of EC rather than the other way around. For example, CME cleared MEFF contracts through the mechanism of MEFF's status as a special clearing member of CME, while the Euro Link anticipates using CC's status as a special clearing member of EC to facilitate EC's performance of a significant portion of the actual clearing functions.

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

Accordingly, the functions of a DCO include credit enhancement as well as settlement or other clearing type services. Pursuant to CEA Section 5b, entities which perform any of these services must register as a DCO.[33] Section 5b and Part 39 of the Commission's Regulations set forth a comprehensive set of core principles regarding the standards, systems, procedures, and resources which an entity must demonstrate that it has in place in order to become and remain registered as a DCO.

Under the Euro Link, EC would be performing the full range of activities that fall within the scope of the DCO registration category. EC will play a critical part in the novation process as the Primary Clearing House for the Euro Link. EC will engage in multilateral netting activity, most notably, with respect to variation margin payments. EC will also perform a full range of clearing services necessary to mutualize risk among Euro Link participants. Based on these circumstances, EC should be required to be registered as a DCO.[34]

Although, as noted above, CC refers to EC alternatively as its agent or service provider, CC does not discuss why EC has not undertaken to become a registered DCO. The legal and operational relationship between CC and EC with respect to the Euro Link provides no basis for relieving EC of its obligation to become registered as a DCO.

CEA Section 5c(b) provides that a contract market or a derivatives transaction execution facility may comply with the relevant core principles through delegation to a registered futures association or another registered entity. A delegation involves the delegating

---

[33] 66 Fed. Reg. 45,604, 45,605, n.9 (August 29, 2001).

[34] The only information in the documents about EC consists of certain amendments to its rules, highly summary second-hand statements by CC and a reference to the fact that Eurex obtained relief under Commission Regulation 30.10 for its members. This very sparse amount of detail would constitute a grossly inadequate submission under CEA Section 5b.

entity conferring decisional authority upon its delegee, which is fully authorized to act on behalf of the delegating entity.[35]

EC would have essentially unfettered ongoing authority to fulfill its responsibilities as the Primary and Home Country Clearing House. This relationship between EC and CC would be consistent in scope with a delegation under Section 5c(b). However, that provision does not authorize DCOs to delegate and only authorizes delegation to registered entities and registered futures associations. Therefore, CC is barred as a matter of law from delegating its duties as a DCO to EC.

Because CC will not be retaining decisional control over the performance by EC as the Primary and Home Country Clearing House, the relationship is not one which the Commission has described as the contracting out of services. Historically, contracting out usually has been limited to the use by a registered entity of the hardware and software systems of another entity and to the performance of compliance investigations. In the latter instance, the registered entity retains full decisional authority to determine what action to take based on the information developed.

For these reasons, the Euro Link, as presently configured, should not be permitted to go into effect unless and until Eurex becomes registered as a DCO.

Eurex Link Documentation is Materially Incomplete

The documentation made available by the Commission with respect to the Euro Link is materially incomplete. The Clearing Link Agreement refers to CC and EC each establishing credit facilities that could be drawn on by the other clearing house in the event an obligation were not satisfied.[36] The amount of each credit facility is supposed to be based on specific stress test scenarios. No information is provided concerning the amount of the credit facilities or their specific terms, conditions or location(s). Similarly, no particulars are provided concerning any stress tests. Given that these credit facilities are potentially the single most significant financial protection with respect to the inter-clearing house relationship, the absence of any relevant information precludes an informed evaluation of the Euro Link. In addition, several exhibits to the Clearing Link Agreement[37] are omitted. The Commission should make a complete set of documents available for comment before taking any other action.

---

[35] 66 Fed. Reg. 42,256, 42,266 (April 10, 2001); see Staff Memorandum, Application of U.S. Futures Exchange, L.L.C. for Designation as a Contract Market Pursuant to Sections 5 and 6(a) of the Commodity Exchange Act (February 2, 2004).

[36] Link Clearing Agreement, Sections 3(b)(iii) and 7(a).

[37] Exhibit B (Form of Limited Power of Attorney from Clearing Members of the Clearing Corporation to Eurex Clearing); Exhibits D and E (not identified).

Conclusion

CC has requested that the Commission grant relief that would permit CC and FCMs to commingle secured funds and segregated funds in order to implement Phase I of the proposed Euro Link between CC and EC. As discussed above, granting such relief would expose segregated funds to far greater risks than any of the circumstances where the Commission has previously permitted such commingling. Contrary to CC's claim, such secured funds would not be entitled to the same bankruptcy treatment that would apply to segregated funds under U.S. bankruptcy law, assuming that U.S. bankruptcy law would apply to all such funds. There are risks that it might be difficult to obtain U.S. bankruptcy jurisdiction over funds in Germany. Finally, the Commission will not be in a position to fulfill its responsibilities to exercise supervisory jurisdiction over the significant clearing functions that will be performed by EC if it fails to require that EC register as a DCO. For all of these reasons, the relief requested by CC should be denied.

The CBOT appreciates the opportunity to provide comments on this matter. If you have any questions regarding these comments, or wish to discuss this matter, please feel free to call Anne Polaski, Assistant General Counsel, at (312) 435-3757.

Sincerely,

Bernard W. Dan