

COMMENT

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Ms. Eileen A. Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW,  
Washington, DC 20581

Re: Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations;  
CFTC Proposed Acceptable Practices, 71 FR 38740 (July 7, 2006)

Dear Ms. Donovan:

We submit these comments as public members of the Board of Governors of the Board of Trade of the City of New York, Inc. (NYBOT®), in response to the "Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations Proposal" (the "Conflicts Proposal") published by the Commodity Futures Trading Commission (CFTC) in the Federal Register on July 7, 2006. We strongly support the continued ability of exchanges to have a diversity of contract market interests represented on their boards as an effective means of protecting market integrity and the public interest. Requiring at least half of the board to be public members may create an outward appearance of impartiality, but in reality it will just hamper the ability of boards to receive input from a variety of market participants and to have the informed give-and-take among diverse members that is a hallmark of sound decision-making. We respectfully recommend that the CFTC delete the board composition provision from the Conflicts Proposal.

The Commodity Futures Modernization Act of 2000 (CFMA) amended the Commodity Exchange Act (CEA) to move away from prescriptive regulations and to give exchanges flexibility to develop rules that meet "Core Principles" for good governance and compliance with self-regulatory duties. In Appendix B to Part 38 of the CFTC Regulations [17 C.F.R. Part 38, App. B.] the CFTC provides guidance to exchanges for meeting the 18 Core Principles listed in the CEA. For some principles, "acceptable practices" are described. While not the exclusive means for meeting a particular principle, an exchange that complies with acceptable practices will be considered by the CFTC and the public to be in compliance with the relevant principle. Logically, such practices should be widely recognized as fulfilling the intent of the relevant Core Principle and limited to those practices deemed necessary to accomplish the regulatory goal embodied in the Core Principle. However, the proposed acceptable practice for governing board composition is not used by any exchange and was not highly recommended during the CFTC's self-regulatory organization (SRO) study as a means of minimizing conflicts of interest.

The 50 percent public member requirement is more restrictive than the board composition rule that was in place prior to enactment of the CFMA. At that time, the CFTC required exchange boards to include representatives from diverse groups of market participants (such as agricultural or other commercial firms that produce, sell or use the products traded on the exchange, futures commissions merchants, and floor brokers) and at least 20% non-members.

NYBOT currently meets the previous board composition requirements. We find that this allows the board to be well balanced and to have expertise from a variety of perspectives. To meet the proposed 50% public member requirement without reducing existing positions on the board, NYBOT would have to increase the size of its board from 25 to 40 members by adding 15 new, public directors, which is simply not viable.

As NYBOT public members, we vote on board decisions, serve on disciplinary committees and comprise a regulatory oversight committee that reviews and makes recommendations regarding the Exchange's self-regulatory operations. NYBOT also has an effective conflict of interest rule for board members, which precludes a member from voting on certain decisions where the member or the member's firm may have a material interest. These direct means of avoiding conflicts and including public participation are sufficient and more effective than the proposed board composition requirement.

We therefore urge the CFTC not to adopt the proposed board composition requirement as an acceptable practice for avoiding conflicts of interest.

Respectfully submitted,

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cc: Chairman Reuben Jeffery III  
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Commissioner Fred Hatfield