

**COMMENT****United States Senate**

WASHINGTON, DC 20510

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09/08/06

Mr. Reuben Jeffery III  
Chairman  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Dear Chairman Jeffery:

We write to express our concern with the Commission's proposed rule regarding acceptable practices for safe harbor compliance with Core Principal 15 of the Commodity Exchange Act (CEA). We appreciate the Commission's efforts to set out acceptable practices to guard against conflicts of interest. However, we encourage the Commission to give careful consideration to an important provision in the proposed rule that requires an exchange's board of directors to be comprised of at least 50 percent public directors.

Under the proposed rule, the Commission establishes acceptable practices for Core Principle 15 that governs conflicts of interest for exchanges. We understand that the Commission's intent is to proactively address potential conflicts before they arise, and that the acceptable practices are not intended to be the exclusive means for compliance with Core Principle 15. However, we believe that a bright-line test requiring 50 percent public directors will become the de facto requirement for all exchanges.

This provision is of particular concern to us because the Kansas City Board of Trade (KCBT), one of the nation's oldest exchanges, is impacted by this guidance. We believe that the proposed acceptable practices should not be applied to mutually-owned exchanges such as the KCBT, which has not undergone the types of changes or challenges that the Commission cites in proposing the rule. Applying acceptable practices to a mutually-owned exchange would present a significant burden in efficient exchange operations that cannot be justified as necessary or appropriate to effectuate the purposes of the CEA. In addition, the proposal is contrary to the governance standards of Core Principle 16 that applies to the KCBT as a mutually-owned exchange. We encourage the Commission to make clear that compliance for Core Principle 15 is not applicable to mutually-owned exchanges.

By requiring that a predetermined percentage of directors to be public, the exchange would lose the experience of qualified individuals who would otherwise be eligible to serve as directors. Exchanges would be required to reconfigure their boards, most likely by expanding the size of the board, to meet the 50 percent requirement, while still operating under the proposed rule's requirement that directors have "no material relationship with the exchange". The KCBT tells us that it is already difficult, with a 20 percent board requirement, to find qualified individuals who are willing to serve as public directors. Raising the percentage of public directors makes it more difficult and puts less emphasis on director knowledge and market expertise, ultimately undermining the efforts most boards are taking to guard against conflicts of interest. We note that under the CEA, exchanges are required to "minimize", not eliminate, conflicts of interest. This proposed rule appears to take a step beyond what

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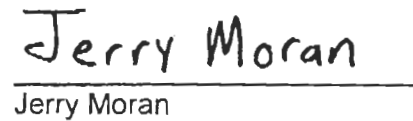
Congress intended, which was to give these self-regulatory organizations the flexibility to determine how best to guard against conflicts of interest.

We urge you to reconsider this proposed rule. The impact of this requirement would restrict the ability of the exchanges to select those board members who are the most qualified to represent the public interest. This proposal is not warranted, as there have been no situations at futures exchanges which would require such a drastic new rule, especially with non-public exchanges such as the Kansas City Board of Trade.

Sincerely,



Pat Roberts



Jerry Moran