

COMMODITY FUTURES  
TRADING COMMISSION  
RECEIVED  
OFFICE OF THE  
SECRETARY



Chicago Board of Trade

98-26  
NLS

Thomas R. Donovan  
President and  
Chief Executive Officer

JUL 23 3 17 PM '98 July 23, 1998

CFTC

COMMENT

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

COMMODITY FUTURES  
TRADING COMMISSION  
RECEIVED FOR  
PUBLIC RECORD  
JUL 24 11 20 AM '98

Re: Application of Cantor Financial Futures Exchange; Petition  
for Materially Incomplete Determination, Hearing on the Record or  
Public Hearing

Dear Ms. Webb:

The Board of Trade of the City of Chicago formally petitions the Commodity Futures Trading Commission to declare the pending contract market designation application of the Cantor Financial Futures Exchange, Inc. to be materially incomplete as submitted and to suspend all consideration of the application until those deficiencies have been rectified. CEA § 6(a). In the alternative, if the Commission denies that request, the Board of Trade petitions the Commission to hold a hearing "on the record" or a public hearing on the application.

The Board of Trade has filed four comment letters on the CFFE designation application. Each letter has pointed out a panoply of legal deficiencies and policy issues raised by the CFFE application. (In the most recent letter, July 16, 1998, the Board of Trade's Exhibit A summarized 36 areas of legal deficiency in the CFFE application.) The American Stock Exchange's July 15, 1998, letter offers its own legal critique of the CFFE application and finds the application should "not be approved as submitted" since "the CFFE is a virtual shell" with a structure that "creates a regulatory blind spot." Separately, or in combination, the legal deficiencies identified by the Board of Trade and Amex constitute sufficient grounds for the Commission to exercise its authority to declare the designation application now to be "materially incomplete" and suspend further consideration until the deficiencies have been corrected. CEA § 6(a). The Board of Trade petitions the Commission to make that determination at this time.

If the Commission declines to find the CFFE application to be materially incomplete, the Commission should commence a hearing on the record on the application. A hearing on the record is precisely the procedure CEA § 6(a) contemplates for contested designation applications. Although the statute explicitly would call for that procedure when the Commission has preliminarily decided to reject a designation application,<sup>1</sup> nothing in the statute would preclude following that same procedure when third parties raise legitimate, fundamental issues concerning a designation application. That practice would be especially appropriate where, as here, a board of trade like the CFFE that has never before been designated as a contract market is seeking designation under controversial circumstances.

<sup>1</sup> In light of the legal deficiencies demonstrated in the comment letters filed by the Board of Trade and Amex, the Commission also has more than ample justification now to make a preliminary determination to deny the CFFE application thereby triggering the express hearing on the record provisions in CEA § 6(a).

In this case, a hearing on the record would serve the salutary purpose of "filling in the gaps" in the existing record. Despite the Commission staff's repeated attempts to obtain clarification from CFFE, many areas of its application and proposed method of operations are complete mysteries. CFFE has engaged in a seemingly deliberate campaign of obfuscation and distortion as described in considerable detail in the Board of Trade's July 16 letter filing. In this unique context, the Commission should allow a hearing on the record to proceed so that the established methods of fact-finding, including compulsory document production and cross-examination of witnesses may be applied in an effort to illuminate the true facts of CFFE's application. That proceeding could be held on an expedited basis to ensure that no party would be prejudiced and that the Commission is able to decide this matter on the merits based on all the relevant facts.

If the Commission determines not to require a hearing on the record, the Commission should, at the least, hold a public hearing on the CFFE application. At that hearing, Commission could hear directly from CFFE's sponsors and other interested parties on the plethora of issues raised in the comment letters to date. That kind of dialogue has been useful for the Commission in the past year in the context of grain delivery points and audit trail/dual trading issues. It would certainly assist the Commission in assessing the merits of CFFE's application and the legal objections that have been raised to its approval.

The Board of Trade appreciates the Commission's interest in the significant issues the CFFE application has raised. We look forward to the Commission's expeditious action on this petition.

Sincerely,



Thomas R. Donovan

cc: Chairperson Brooksley Born  
Commissioner Barbara Holum  
Commissioner David Spears  
Commissioner John Tull  
I. Michael Greenberger, Director of Trading and Markets  
Daniel Waldman, General Counsel