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April 25, 2007

Via Electronic Mail

Ms. Eileen A. Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

Re: Comment Letter on Regulatory Governance
Proposed Amendments to Public Director Definition

Dear Ms. Donovan:

CBOE Futures Exchange, LLC ("CFE") commends the Commodity Futures Trading Commission ("CFTC") for addressing the important issues of futures exchange governance and minimizing conflicts of interest in futures exchange decision making by promulgating Acceptable Practices with regard to these issues. CFE believes that the Acceptable Practices adopted by the CFTC will have a positive impact in both of these areas and will serve to enhance the self-regulatory process. We do, however, wish to convey to the CFTC comments that we have regarding three aspects of the public director qualification standards set forth in the Acceptable Practices as they were adopted by the CFTC (in 72 FR 6954 published on February 14, 2007) and as they are now proposed to be amended (in 72 FR 14051 published on March 26, 2007). Our comments are below. Additionally, as we did in our previous comment letter regarding the proposed Acceptable Practices, we note a couple factual scenarios relating specifically to CFE to illustrate our comments.

Public Director Qualification Standards Relating to Payments Received

Our first comment relates to the proposed provision of the public director qualification standards that would disqualify a person from serving as a public director of a futures exchange if the director, or a "firm" of which the director is an employee, officer, director, or partner, receives more than $100,000 in combined annual compensation for "professional services" from the futures exchange, an affiliate of the futures exchange, or a member or officer or director of a member of the futures exchange, with two exceptions for director compensation and deferred compensation. CFE requests that the CFTC clarify that this provision would not prevent a person from serving as a public director of a futures exchange and as a public director of a regulatory body that provides regulatory services to the futures exchange.

The following illustrates why the proposed provision should be clarified in this manner and how, without this clarification, the provision could be read in a manner that would run counter to the goal of improving futures exchange governance and that would detrimentally impact CFE in particular.

One of CFE's current directors is Susan Phillips. Dr. Phillips is currently Dean of The

George Washington University School of Business, and she previously served as CFTC Chairman and as a member of the Board of Governors of the Federal Reserve System. Dr. Phillips also currently serves as a public director of the National Futures Association ("NFA").

CFE does not believe that regulatory bodies such as NFA constitute "firms", or that regulatory services provided to a futures exchange by a regulatory body like NFA constitute "professional services", for purposes of the public director qualification standards. Instead, CFE believes that the term "firm" as used in this context is intended to apply to an entity such as a law firm, accounting firm, consulting firm, or other similar type of firm and that the term "professional services" as used in this context is intended to apply to services such as legal, accounting, and consulting services and other similar types of services.

However, the CFTC did not define the term "firm" or the term "professional services" in this context, and therefore CFE is concerned that it is possible one could seek to interpret those terms to encompass regulatory bodies like NFA and the provision of regulatory services to a futures exchange by such a regulatory body. If that were the case, Dr. Phillips would appear to be disqualified from serving as a public director of CFE because of the payments that CFE makes to NFA to act as a regulatory services provider. Such a result would not be consistent with the goal of improving futures exchange governance because CFE would lose the benefit of the experience and expertise that Dr. Phillips brings to its Board of Directors. Dr. Phillips' service as a public director of NFA directly benefits CFE and the self-regulatory process. Service as an NFA public director provides Dr. Phillips with exposure to the current regulatory issues in the futures industry and the approaches for addressing them and enables Dr. Phillips to apply this knowledge and experience in her service as a CFE public director. Additionally, CFE does not believe it would serve the interest of self-regulation if CFE's desire to retain Dr. Phillips as a public director were to become a deterrent to utilizing NFA to provide regulatory services given NFA's expertise in the area of futures regulation.

Therefore, CFE believes that it is important that the CFTC provide appropriate clarification with regard to this issue.

Public Director Qualification Standards Relating to Overlapping Public Directors

CFE's second comment relates to a provision of the Acceptable Practices as adopted by the CFTC which the CFTC is not currently proposing to revise or clarify. Nevertheless, for the reasons stated below, CFE believes that the CFTC should readdress this provision.

In CFE's previous comment letter regarding the proposed Acceptable Practices, CFE commented that the Acceptable Practices should permit a public director of a futures exchange to also serve as a director of an affiliate of the futures exchange if the individual otherwise meets the qualification standards for a public director. The CFTC partially addressed this comment by including a provision in the Acceptable Practices that permits a public director of a futures exchange to also serve as a director of the parent company of the futures exchange if the individual otherwise meets the qualification standards of a public director. However, CFE does not believe that this change fully addressed the issue. The following illustrates why this is the case, again using CFE as an example.

Chicago Board Options Exchange, Incorporated ("CBOE"), the parent company of CFE, currently has eleven public directors. At various points in time, one or more of these CBOE public directors have served as CFE directors. Pursuant to the provision of the Acceptable Practices noted in the paragraph above, an individual is able to serve as a public director of

CBOE and still qualify as a public director of CFE under CBOE's current corporate structure. However, as many exchanges have already done, CBOE is in the process of demutualizing and converting to a holding company structure. Under the proposed CBOE restructuring transaction, CBOE and CFE will each become subsidiaries of a holding company called CBOE Holdings, Inc. CFE does not believe any regulatory purpose is served by precluding a CBOE public director from qualifying as a public director of CFE when CBOE and CFE each become subsidiaries of a common parent, especially given that a CBOE public director may qualify to serve as a CFE public director today under CBOE's current corporate structure. There is no material difference between the two corporate structures from a regulatory perspective and not permitting a CBOE public director to serve as a public director of CFE because of a non-material change in that structure would not further the interest of improving futures exchange governance. Specifically, such a result would cause CFE to lose the benefit of the experience and expertise that a CBOE public director brings to CFE's Board of Directors.

Additionally, CFE expects that this issue will become more and more prevalent as exchanges continue the current trend toward implementing holding company structures and seeking to broaden their product lines to encompass both futures and securities products which necessitates having both a futures exchange affiliate and a securities exchange affiliate. This trend mirrors the general trend that has already occurred in the financial services industry toward holding company structures in which various affiliates offer different products and services.

Accordingly, CFE requests that the CFTC readdress this issue, and not draw an artificial distinction between parent companies and other affiliates in this context, by amending the Acceptable Practices to permit a public director of a futures exchange to also serve as a director of an affiliate of the futures exchange if the individual otherwise meets the qualification standards for a public director.

Public Director Qualification Standards Relating to Compensation for Director Services

Finally, CFE requests that the CFTC broaden the proposed exception to the provision regarding director payments which provides that compensation for services as a director of a futures exchange does not count toward the $100,000 payment limit referenced in our first comment above.

The CFTC has already recognized that a public director of a futures exchange may also serve as a director of the parent company of the futures exchange if the individual otherwise meets the qualification standards of a public director. Accordingly, the CFTC should revise the exception to the $100,000 payment limit so that the exception applies not only to compensation for services as a director of a futures exchange but also to compensation for services as a director of the parent company of the futures exchange in these situations. This is particularly the case since a director may be more likely to receive a greater amount of compensation for acting as a director of the holding company of a futures exchange than for acting as a director of the futures exchange itself.

Similarly, the CFTC should also revise the exception to the $100,000 payment limit so that the exception applies to compensation for services as a director of any other affiliate of a futures exchange besides its parent company. For the reasons described in our prior comment above, a public director of a futures exchange should be permitted to serve as a director of an affiliate of the futures exchange if the individual otherwise meets the qualification standards for a public director. Therefore, compensation for services as a director of a futures exchange affiliate in those situations should not be counted toward the $100,000 payment limit.

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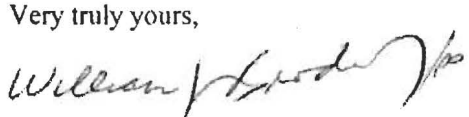
CFE is available to provide any further input desired by the CFTC regarding these issues and to work cooperatively with the CFTC to address them. Please contact Arthur Reinstein in our Legal Division at (312) 786-7570 if you have any questions regarding our comments.

Very truly yours,



William J. Brodsky
Chairman of the Board
CBOE Futures Exchange, LLC