

CFE Received CFTC
Records Section
2/20/09
CBOE FUTURES EXCHANGE

COMMENT

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February 20, 2009

Via Electronic Mail

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comment Letter on Regulatory Governance
Proposed Amendments to Public Director Definition
74 FR 3475 (January 21, 2009)

Dear Mr. Stawick:

CBOE Futures Exchange, LLC ("CFE") supports the above-referenced proposal by the Commodity Futures Trading Commission ("CFTC") to proceed with the implementation of the Acceptable Practices relating to futures exchange governance and minimizing conflicts of interest in futures exchange decision-making. As we have stated in our previous comment letters relating to the Acceptable Practices dated September 7, 2006 and April 25, 2007, CFE believes that the Acceptable practices will have a positive impact in both of these areas and will serve to enhance the self-regulatory process.

CFE is also in agreement with all but one of the proposed changes to the definition of public director set forth in the CFTC's proposal. In particular, CFE supports the changes to that definition in the CFTC's proposal that were suggested by CFE in its April 25, 2007 comment letter which clarify (i) the types of payments that would disqualify a person from serving as a public director, (ii) that a person who serves as a director of a futures exchange affiliate is not disqualified from serving as a public director of the futures exchange if the person otherwise qualifies to serve in that capacity, and (iii) that receipt of director compensation from a futures exchange affiliate does not disqualify the recipient from serving as a public director of the futures exchange if the person otherwise qualifies to serve in that capacity. These changes make clear that a public director of the National Futures Association ("NFA") is not disqualified from serving as a public director of CFE because NFA provides regulatory services to CFE and that public directors of CFE affiliate Chicago Board Options Exchange may also serve as public directors of CFE. These changes are beneficial to futures exchange governance because they enable the governing boards of CFE and other futures exchanges to include individuals of this kind as public directors and thus to receive the benefit of their experience, expertise, and public perspective.

CFE is not, however, in agreement with the elimination by the CFTC's proposal of the previous disqualification of an employee of a member of a futures exchange from serving as a public director of that futures exchange. The currently proposed definition of public director retains the previous disqualification of a futures exchange member and an officer or director of a futures exchange member from serving as a public director of that exchange. The CFTC has

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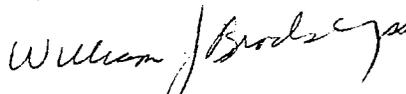
Mr. David Stawick

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stated that one of the primary objectives of the Acceptable Practices is to insulate the regulatory functions of a futures exchange via public directors who are not conflicted by industry ties and that the most significant contribution made by public directors to future exchange decision-making is precisely their outside, non-industry perspective. Permitting a member employee to serve as a futures exchange public director, and allowing for the possibility that all 35% of the public directors of a futures exchange could be member employees, is inconsistent with that goal. In CFE's view, an employee of a member has just as much unity of interest with the member as an officer or director of the member given that the employee is under the control of the member and likely receives most, if not all, of the employee's compensation from the member. For these reasons, CFE strongly believes that an employee of a member of a futures exchange should be disqualified in all instances from serving as a public director of that exchange and thus that the CFTC should revise the definition of public director to add back that disqualification.

CFE is available to provide any further input desired by the CFTC regarding these issues. 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