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Chicago Board of Trade

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Ms. Jean Webb
Secretariat
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581

COMMENT

Re: Proposed Rules for Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market
69 F.R. 53367 (September 1, 2004)

Dear Ms. Webb:

The Board of Trade of the City of Chicago, Inc. ("CBOT®" or "Exchange") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposal to revise its rules governing application procedures for designation as a contract market ("DCM") and for registration as a derivatives transaction execution facility ("DTEF").

In the proposed changes to Regulations 37.5 and 38.3, the Commission proposes to eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that applications will be reviewed pursuant to statutory procedures and their related 180-day timeframe. In lieu of the automatic fast-track review, the Commission proposes to allow applicants to request expedited review and to be registered as a DTEF or designated as a DCM not later than 90 days after receipt of the application. (Under fast-track review, applicants were deemed to be registered as a DTEF 30 days after receipt of an application, and to be designated as a DCM 60 days after receipt of an application.) The Commission explains that this potential lengthening of the expedited review period is "necessary to ensure a comprehensive review of applications and to meet other public policy objectives."

The CBOT agrees with the Commission's assessment that longer review periods are necessary to complete comprehensive reviews of such applications. The very fact that no DCM application has yet been completed within the fast-track review timeframe supports that assertion. Also supporting the lengthened review periods is the Commission policy to post all such applications on its website for at least 15 days for public review and comment. The CBOT has filed previous comments stating its view that additional portions of those applications should be made available for public review. The CBOT further believes that the public would benefit from a lengthened opportunity for review and comment on those materials. As the Commission has noted in its proposal, such applications are voluminous and often contain regulatory and operational outsourcing agreements which require significant time to review.

The Commission further proposes to make designation as a DCM or registration as a DTEF dependent on affirmative action by the agency. Neither a DCM nor a DTEF application could be deemed approved based simply upon the passage of the expedited review timeframe. The CBOT also supports this change and believes that approval by Commission order eliminates confusion that could result from an assumed approval. Issuance of a Commission order grants both the

applicant and potential customers additional certainty regarding the status of the proposed contract market or execution facility.

The Commission also proposes to specify application content requirements. The Commission would require that application materials include copies of corporate charters and partnership agreements, any agreements or contracts intended to enable the applicant to comply with a requirement for trading or registration criterion (for DTEFs) or a designation criterion (for DCMs), a regulatory compliance chart and a manual describing how the applicant will conduct trade practice, market and financial surveillance. Further, the proposed rule change would specify that the applicant identify any item within the application that raises novel issues and include a discussion of how that item satisfies the requirements for designation as a contract market or registration as a DTEF. The CBOT supports these specifications for application content, but suggests the Commission also require submission of documents detailing applicants' plans to offer payment for order flow, or other incentives that could encourage wash trading or compromise the fiduciary responsibilities of intermediaries, as well as documentation of plans to allow or encourage trading off the centralized market. Such plans can threaten the operation of open, competitive and efficient markets and can jeopardize transparency and integrity of markets. Often, such plans have the capacity to impact multiple markets, not just that of the applicant.

The Commission's proposal would also provide that expedited review procedures may be terminated if the application is deemed materially incomplete, raises novel or complex issues, has undergone substantive amendment or supplementation during the review period, or if the applicant requests in writing that the expedited review be terminated. The CBOT supports preserving the Commission's right to terminate expedited review procedures for any of the listed reasons.

The CBOT commends the Commission's efforts to update its rules on application procedures to encourage consistency and transparency in the application process. The CBOT believes that providing more specific content guidelines, revising rules governing expedited application review, and expanding the scope of material made public would benefit applicants as well as other industry participants, customers and the public at large.

The CBOT appreciates the opportunity to comment on the proposed rules. If you have any questions regarding these comments, or wish to discuss this matter, please do not hesitate to contact us.

Sincerely,


Bernard W. Dan