98-26

Chicago Board of Trade

(1)

Thomas R. Donovan
President and
Chief Executive Officer

June 30, 1998

COMMENT

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

Re: **Application of Cantor Financial Futures Exchange, Inc. as a Contract Market in U.S. Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts, June 25, 1998**

Dear Ms. Webb:

The Chicago Board of Trade respectfully submits this comment letter in response to the Commission's June 25, 1998, notice providing for a second public comment period on the application of the Cantor Financial Futures Exchange, Inc. ("Cantor Exchange")[1] for designation as a contract market for various U.S. Treasury futures. The New York Cotton Exchange ("NYCE"), working in conjunction with the Cantor Group,[2] filed the application with the Commission on January 6, 1998. The Commission first published notice of the application on February 3, 1998, and provided for public comment on the application through April 6, 1998, which it later extended through April 27, 1998. The Board of Trade filed a comprehensive, 48-page letter with the Commission on April 27, 1998, opposing the application on multiple grounds. The supplemental application materials that the Cantor Exchange filed by letters dated May 21 and June 18, 1998, confirm that the application is still materially deficient, legally flawed and should be disapproved.

Even on the basis of an incomplete and ever changing record, several fundamental legal flaws stand out, among numerous others. The Cantor Exchange, NYCE and Cantor Group propose willfully to violate federal law in five areas: qualifications for exchange board members, proscriptions against non-competitive trading, granting monopoly power over trade execution to the Cantor Group, fixing prices for the Cantor Group's floor brokerage, and disregard of the Commodity Exchange Act's central requirement that all futures must be executed by contract market members. For the Commission to approve such a legally flawed application would undermine the Commission's credibility with all market participants as an agency devoted to enforcing the law, and would constitute arbitrary and capricious agency action.

---

[1] Although the sponsors use the acronym "CFFE" as the short-hand name for its proposed exchange, to avoid confusion over the exchange's relationship to CFFE, LLC, which is wholly-owned by Cantor Fitzgerald, LP and not a part of the exchange's ownership structure even though it controls the new exchange through appointing 8 of 13 members of the Cantor Exchange board, we use the term "Cantor Exchange" in lieu of CFFE.

[2] The term "Cantor Group" is used in this letter to refer generically to Cantor Fitzgerald, L.P. and related companies under its common control. These related entities include four subsidiaries of Cantor Fitzgerald, LP which have roles in the proposed venture, including CFFE, LLC, whose role in the venture is not clearly stated.

LaSalle at Jackson
Chicago, Illinois 60604-2994
312 435-3602
FAX 312 341-3392

I. PROBLEMS WITH THE PUBLIC COMMENT PROCESS

Before turning to the legal deficiencies with the Cantor Exchange application, we have several objections to raise concerning the comment process. First, although we agree with the Commission that further public comment is needed, we believe that it is premature to republish the application at this time, when the Cantor Exchange, NYCE and Cantor Group have yet to provide the Commission with complete and unambiguous descriptions and explanations of the new exchange.

Second, the Commission provides a misleading description of the Cantor Exchange proposal in its June 25 notice republishing the application, perhaps reflecting just how difficult it is to piece together a coherent picture of the Cantor Exchange from the incomplete, vague and often contradictory record that the applicant has provided. For example, the Commission mischaracterizes the Cantor Exchange as an electronic exchange when it states that "CFFE's contracts would trade over a computer-based trading system maintained by CFS [i.e., Cantor Fitzgerald Securities] (the 'Cantor System')." The role of the Terminal Operators in executing orders and the fact that they will now register as floor brokers at the Commission's insistence certainly contradict this statement. In fact, as we describe at length in our April 27, 1998 letter, trading on the Cantor Exchange will occur through the Cantor Groups' existing voice broker structure, facilitated by the Cantor System as an electronic bulletin board.[3] Indeed, the Cantor Group itself, in pending litigation, is seeking to convince the Delaware Chancery Court that it ***does not*** offer computerized trading.[4]

Third, we are puzzled why the Commission is republishing the Cantor Exchange application without offering any explanation of the Commission's legal analysis or raising any of the significant legal issues that exist for public discussion. If the public comment process is to have any value, the Commission should identify what it believes to be the relevant issues that interested parties should address. Why is the Commission not doing so in this case, as it has in other contexts? The CFTC, for instance, has deferred consideration of the New York Mercantile Exchange's and Board of Trade's separate proposals regarding, respectively, exchange of futures for swaps and exchange of agricultural futures for OTC agricultural options, pending the Commission's examination of various issues it has identified as part of a broader policy review of the "Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of Contract Market."[5] Similarly, after the Board of Trade filed our ProMarket exemptive petition and the Chicago Mercantile Exchange filed its Rolling Spot exemptive petition in 1993, the Commission raised approximately 100 specific public

---

[3] The notice contains other inaccuracies. For example, it states that the public directors the Cantor Group will appoint to the Cantor Exchange board "could not be affiliated with the CFFE [i.e., the Cantor Exchange], NYCE or Cantor. This is not true. Proposed CFFE Rule 35(a)(5(iv) expressly allows the Cantor Group to appoint its own directors as public directors on the Cantor Exchange Board.

[4] Cantor Fitzgerald, L.P. v. Iris Cantor, et al., C.A. No. 16297 (Del. Chancery Ct.).

[5] The Commission's Concept Release is published at 63 Federal Register 3708 (January 26, 1998).

policy questions on the petitions for public debate and held a round table discussion on the petitions' policy implications.

Fourth, we question why the Commission is offering such a truncated comment period. Fifteen days is simply not reasonable, especially when it straddles the Fourth of July holiday and especially when the Commission expects the public to obtain and review the available materials, rather than synthesizing those materials for the public in a comprehensive manner, including the identification of special issues the public should address. At the very least, the Commission should extend the comment period to 60 to 90 days.

Fifth, the Commission's process of granting private extensions is inefficient. On May 29, 1998, the Board of Trade requested the Commission to reopen the public comment process in light of the May 21 supplemental filing and fundamental changes the sponsors had made to the application. The Commission responded by granting the Board of Trade a private extension to supplement our comments by June 22, 1998, in light of additional application materials that Cantor had filed. Subsequently, the Commission granted a similar private extension to the American Stock Exchange, through June 26, 1998. Those extensions, however, became mooted by the Commission's decision to republish the Cantor Exchange application, which we first learned of on June 22. It is inefficient and a drain on resources to try to offer effective comments under such shifting conditions.

Finally, the piecemeal availability of relevant materials for timely public analysis has further hindered meaningful public participation in the review process. On January 9, 1998, the Board of Trade filed a Freedom of Information Act ("FOIA") request with the Commission seeking various previously unreleased materials on the Cantor Exchange application. Responses were provided through the end of February, 1998. The Board of Trade filed a renewed FOIA request on May 29, 1998. We did not receive a response until June 19, 1998,[6] when the Commission finally provided the Board of Trade with 498 pages of materials pertaining to the Cantor Exchange application. (The Commission's transmittal letter also identifies various documents on the Cantor Exchange application which the Commission decided to withhold, including 193 pages of CFTC staff attorneys' notes.) Although much of the material was duplicative of documents we had already received, it also included some new documents that described important changes or provided missing information on the Cantor Exchange venture that are relevant to our analysis.[7] It is extremely

---

[6] This was only one business day before the private extension deadline the Commission set for us.

[7] For example, the FOIA materials included a June 4, 1998 letter from the law firm Mound, Cotton & Wollan to Alan Seifert, Deputy Director, CFTC Division of Trading and Markets, which states that the Terminal Operators-"may have their right to operate on the CFFE [i.e., the Cantor Exchange] suspended or terminated by NYCE." This represents a significant change from the Cantor Exchange's response to question 51 in the May 21 Q&A, which states that "Once a TO is registered as a Floor Broker, CFFE [i.e., the Cantor Exchange], in its capacity as the self-regulatory organization, has the responsibility to remove TOs that do not meet its continuing standards." The Cantor Exchange's more recent June 18 submission materials do not clearly resolve the issue of whether NYCE can discipline

frustrating to learn that the Commission is in possession of other relevant information, after spending considerable time and effort trying to piece together an accurate understanding of the Cantor Exchange on which to base our analysis from the disparate and incomplete information that is available.

II. THE CANTOR EXCHANGE APPLICATION IS MATERIALLY DEFICIENT AND SHOULD BE STAYED

On May 6, 1998, shortly after the close of the first public comment period, the Commission notified the Cantor Exchange that it was staying further review of the application as materially incomplete. The Commission's letter identified over 100 areas where the exchange and its sponsors needed to provide further information and analysis, covering many areas of deficiency identified by the Commission staff, as well as by the Board of Trade and other commentators. The Cantor Exchange filed the May 21 materials in response to this May 6 letter. Those materials included written responses to the Commission's questions in "Q&A" form along with seven attached schedules and a revised set of Cantor Exchange By-Laws and Rules. On June 11, 1998, the Commission posed an additional set of 37 questions to the Cantor Exchange, based on its on-going review of the application, although inexplicably the Commission did not suspend the application.[8] The Cantor Exchange responded to that letter with its June 18 filing, which also included written responses in "Q&A" form, along with several schedules, and a further revised set of By-Laws and Rules.

The Cantor Exchange application is still missing critical information on which to base a complete legal analysis. The May 21 and June 18 submissions compound the material deficiencies of the record by providing ambiguous and non-responsive answers to the Commission's many questions (which total nearly 150, not counting subparts). Again and again, the applicant refuses to answer the question as asked by the Commission. The Commission should remit both submissions and demand greater responsiveness from the Cantor Exchange and its sponsors by insisting on more complete and candid answers to the Commission's questions.

The Cantor Exchange's lack of candor is exemplified by its attempts to downplay a significant change, namely, that Terminal Operators ***will no longer be jointly employed by the exchange***, as

---

Terminal Operators.

[8] The Commission's questions cover a wide range of important issues relating to, among other topics: jurisdiction and "membership" (see questions 1, 10, 11 and 14); employment and compensation of the Cantor Group Terminal Operators who are the only ones allowed to execute trades on the Cantor Exchange (see questions 19 and 21); the Cantor Group error account and Cantor Exchange's trade error correction procedures (see questions 8 and 23); Terminal Operator trading standards (see questions 19 and 20); restrictions against Terminal Operator mis-use of material non-public information (see questions 2, 16, 17 and 21); and safeguards to protect against potential Cantor Group abuses given the Cantor Group's integral role in operating the exchange while also being allowed to trade on the exchange (see questions 6 and 9). On the basis of those questions alone, the Commission should have suspended its review of the application as materially incomplete.

originally represented in the January 8 application materials. This change undermines the Cantor Exchange's justification for granting the Cantor Group a monopoly on trade execution through assigning its brokers as Terminal Operators, and for shielding the Terminal Operators and the Cantor Group from clearly prescribed trading standards set out in the Cantor Exchange rules. It hinges upon the fiction that the exchange, and not the Cantor Group, will "provide" the Terminal Operators "to perform services for" Clearing Members and Screen Based Traders. Yet, the Cantor Exchange response merely notes in the May 21 submission that Terminal Operators will "be dual employees of CFFE, LLC [a wholly-owned subsidiary of Cantor Fitzgerald, L.P.] and Cantor Fitzgerald Securities," without emphasis or explanation and without any analysis of the implications of this change.[9] (See May 21 Q&A, response to question 18.) The Cantor Exchange responses contain a corresponding passing mention that the Terminal Operator Supervisors also will no longer be jointly employed by the exchange in a similar downplayed fashion. (See May 21 Q&A, response to question 49.a.)

We plan to provide a more detailed analysis of the many deficiencies in the record, including in the May 21 and June 18 application materials. The Commission should suspend the application until the Cantor Exchange, NYCE and Cantor Group provide complete information and analysis on the proposal, including in the many areas of deficiency the Commission has identified to date, and do so in a clear, unambiguous and forthright manner which they have yet to display.

III. THE CANTOR EXCHANGE APPLICATION IS LEGALLY FLAWED AND SHOULD BE DENIED

Although our understanding of the Cantor Exchange structure and operations is incomplete due to the deficiencies of the record, there are certain uncontested facts that demonstrate that the application is legally flawed in five key areas, as described below. The application should be denied on any of the following grounds (and others we have cited in prior letters to the Commission).

A. Disciplinary Offenses

In January 1997, the CFTC fined Cantor Fitzgerald & Co. $500,000 and imposed various sanctions on the firm in settling charges filed in 1994 by the Commission against the firm for participating in a fraudulent money management scheme.[10] Under CFTC Rule 1.63 (b) (1), every contract market must adopt rules making "a person ineligible" to serve on the contract market's board of directors who "was found within the prior three years by a final decision of . . .the Commission to have

---

[9] The Cantor Exchange has, apparently, changed the Terminal Operators' employment status yet again. The June 18 submission, again without explanation or fanfare, indicates that the Terminal Operators will be employed solely by Cantor Fitzgerald Securities, LLC or another Cantor Group company. See June 18 Q&A, response to question 21.a.

[10] CFTC News Release No. 3987-97 (Jan. 28, 1997).

committed a disciplinary offense." The same bar applies if the person entered into a "settlement agreement within the three prior years in which any of the findings or . . . any of the acts charged included a disciplinary offense." CFTC Rule 1.63(b)(2). The term "disciplinary offense" means any proceeding brought by the Commission charging violations of the Act or the Commission's rules. The CFTC's 1997 order against Cantor Fitzgerald & Co. plainly involved a "disciplinary offense" which would render the Cantor Group ineligible to serve on the Cantor Exchange's governing board or disciplinary committees. These facts and legal conclusions should be undisputed.

The Cantor Exchange is structured purposefully to violate CFTC Rule 1.63. One of the Cantor Exchange's cornerstone elements is that the Cantor Group will pick 8 out of 13 members of the Board of Directors. Stretching form over substance, the Cantor Exchange must respond to its Rule 1.63 deficiency by asserting that controlling an exchange board is not the same thing as serving on an exchange's board. That is right. Allowing a party that has committed a disciplinary offense to control a majority of an exchange's board is much worse than serving as a single director on an exchange board. It makes no sense to read the Commission's rules to prohibit the more modest infraction while leaving parties who have been disciplined to exercise a puppeteer's control over an entire exchange board.

Unless the Commission has decided to allow deliberate violations of its rules by new contract markets, the Commission must advise the Cantor Exchange immediately that its application is contrary to Commission rules and could not be approved until January 2000. No exercise of Commission discretion is involved and no public comment is needed on this issue. The only question is whether the Commission intends to enforce the law or render the requirements of CFTC Rule 1.63 a complete sham.

B. NonCompetitive Trading

CFTC Rule 1.38 requires that all futures contracts must be executed "openly and competitively." Noncompetitive trading on a contract market is barred unless contract market rules expressly allow certain types of such trading and provide a means for identifying such trades as noncompetitive. The Cantor Exchange regularly would allow for noncompetitive trading by permitting two traders to maintain a private auction freezing out all other traders including those that might offer to buy or sell at that moment at a better price. The Cantor Exchange's rules even spell this out in detail: Cantor Exchange Rule 303 (b)(1) expressly reads that a trader with exclusive rights during exclusive time "will retain such rights even if a bid or offer superior to such trader's bid or offer would otherwise be available." The Cantor Exchange thus would regularly violate CFTC Rule 1.38 and would not comply with the requirements applicable to boards of trade under the Act. See 7 U.S.C.§ 5(6).

C. Monopoly

The Cantor Exchange would grant the Cantor Group and its Terminal Operators a monopoly on all floor brokerage executions on the Cantor Exchange. Indeed, the recently announced changes to the application confirm that the Terminal Operators will be engaged in floor brokerage for which registration is required. Approval of a floor brokerage monopoly contravenes the Commission's obligations under CEA § 15. Surely the Commission would not approve a Board of Trade rule that allowed only floor broker employees of Merrill Lynch to execute customer orders in the Treasury Bond pit or floor broker employees of Cargill to execute customer orders in the soybean pit. Yet that is just what the Cantor Exchange is doing for the Cantor Group. Even if the Cantor Group did not have a dominant position in the underlying cash market (the Cantor Group concedes it is the dominant brokerage firm for cash government securities), the Commission would not allow any other exchange to grant this kind of monopoly to a firm and its floor brokers. No basis exists to treat the Cantor Exchange any differently, especially given the Cantor Group's admitted market dominance in the cash market and disciplinary history.

D. Price Fixing

In 1974, the Justice Department and Chicago Board of Trade agreed to a consent decree that enjoins the Board of Trade from "directly or indirectly fixing . . . or suggesting" any commission rate or floor brokerage rate for members or nonmembers of the exchange.[11] In the past, the Commission has applied the provisions and underlying purpose of that decree to prevent the Board of Trade from in any way "limiting free competition in setting floor brokerage rates."[12] That antitrust policy is not unique to the Board of Trade; no exchange has been permitted by the Commission to set floor brokerage rates.

The Cantor Exchange intends to fix, directly or indirectly, floor brokerage commission rates. The fees to be charged for floor brokerage activities, that is, order executions by Terminal Operators, are called Transaction Fees and will be set by the Cantor Exchange by rule or behind-the-scenes by the Cantor Group in accordance with the Cantor Exchange's rules. In either event, an exchange rule that allows for fixing the rates to be charged customers for the services of floor brokerage is incompatible with the antitrust laws as reflected in the Consent Decree. No basis exists for barring the Board of Trade from fixing commission rates to attract market participants while allowing its competitor, the Cantor Exchange, to do just that.

---

[11] See United States v. Board of Trade of the City of Chicago, Civ. Action No. 71 C 2875 (June 28, 1974), a copy of which is attached.

[12] 48 Federal Register 3395, 3399 (Jan. 25, 1983).

Section 15 of the Act requires the Commission to "take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anti-competitive means of achieving the objectives of the Act . . . ." Like the Cantor Group's floor brokerage monopoly, any scheme for fixing floor brokerage commissions on an exchange must be found to run afoul of Section 15's mandate. If the Commission is unsure of the extent to which the antitrust laws are implicated by this application, perhaps the Commission should refer it to the Department of Justice for its views before acting on the application.

E. Trades Must Be Executed By Members

Unless otherwise exempted, Section 4(a) of the Act requires any futures contract to be conducted on a designated contract market and "executed or consummated by or through a member of such contract market." 7 U.S.C. § 6(a)(2). On the Cantor Exchange, contracts will be executed or consummated by or through Terminal Operators who will be employees of the Cantor Group, ***not members of the Cantor Exchange***. In fact, no members of the Cantor Exchange could execute or consummate a futures contract on the exchange because the Cantor Group and its Terminal Operators would exercise a monopoly on all trade executions. As a result, the Cantor Exchange is structured to violate Section 4(a) of the Act and should not be approved as a matter of law.

IV. CONCLUSION

The Cantor Exchange application is legally flawed and should not be approved. At the very least, it raises significant legal and policy issues which require the Commission's careful thought and deliberation. The Commission should resist the Cantor Exchange's efforts to rush the application through to a hasty decision made on the basis of an incomplete factual record and incomplete legal analysis.

This letter highlights five key areas where the Cantor Exchange application is contrary to the Commodity Exchange Act and CFTC Rules. There are numerous other legal deficiencies, as well, many of which we discuss at length in our April 27 comment letter. Commission approval of such a legally flawed application would constitute an improper exercise of the Commission's exemptive authority under Section 4(c) of the CEA. The Commission cannot exempt the Cantor Exchange from the many requirements it so stringently applies to other contract markets unless it first determines that "the exemption would be consistent with the public interest." CEA Section 4(c). Yet, the Commission has performed no such "public interest" analysis, nor even acknowledged that the Cantor Exchange, as proposed, is incompatible with the CEA and requires exemptive action to be approved.

The Commission should not be fashioning an exemptive framework for the Cantor Exchange under the guise of a normal contract market approval. Moreover, it would also be patently unfair for the

Commission to provide more far reaching exemptive relief selectively to a brand new exchange, with no track record, than it has seen fit to provide to existing exchanges, especially given the exchanges' long and tortured struggle to receive the unworkable Part 36 relief which is available. The Commission should either disapprove the Cantor Exchange application as contrary to federal law or defer acting upon the application until it develops a more meaningful exemptive framework that would be available equally to all exchanges.

Apart from the known legal flaws, the record is marred by numerous omissions and deficiences. Thus, we also urge the Commission to stay its review of the application until the Cantor Exchange, NYCE and Cantor Group cure those deficiencies. The Commission should republish the application for a 60-90 day public comment period, but only after it has a complete record and has performed its own legal analysis.

The Board of Trade plans to submit a more detailed analysis of the Cantor Exchange application at the end of the current, foreshortened comment process.

Sincerely,

Thomas R. Donovan

cc: The Honorable Brooksley Born, Esq.
The Honorable John E. Tull, Jr.
The Honorable Barbara Pedersen Holum
The Honorable David D. Spears
I. Michael Greenberger, Esq., Director, Division of Trading and Markets

[¶ 75,071] **United States v. Board of Trade of the City of Chicago, Inc.**

U. S. District Court, Northern District of Illinois, Eastern Division. Civil Action No. 71 C 2875. Filed, but not entered, May 28, 1974. Entered June 28, 1974

Case No. 2199, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Commodity Exchange Commissions and Floor Brokerage Rates—Members and Nonmembers Consent Decree.—A commodity exchange would be required by a consent decree to phase out fixed nonmember commission rates over a four-year period (according to a schedule of transactions by size) and, after the four-year period, from fixing member or nonmember commission rates or floor brokerage rates for commodity transactions or from otherwise restricting the right of any member or of any nonmember broker to agree with his customer on any commission or fee on any commodity transaction. See ¶ 4650.10.

Department of Justice Enforcement and Procedure—Injunctive Relief—Commodity Exchange—Consent Decree—Application for Relief.—A consent decree permitted a commodity exchange to petition the court for relief from the injunction, which could be granted on the defendant's establishment by a preponderance of the evidence that (1) relief was essential to continued functioning as a commodity futures trading market, and (2) the relief represented the least restrictive way in time and scope of preserving it as a commodity futures trading market. If the relief was granted, the government at any later time would

obtain modification or elimination of the relief upon a showing by a preponderance of the evidence that the relief was no longer required pursuant to such standards. See ¶ 8840.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Hugh P. Morrison, Jr., Daniel R. Hunter, Phillip L. Verveer, and Ronald J. Silverman, Attys., Dept. of Justice. **For defendant:** William R. Jentes, of Kirkland & Ellis, Chicago, Ill.

Proposed Final Judgment

[*Proposed final judgment*]: Plaintiff, United States of America, having filed its Complaint herein on December 1, 1971, and Plaintiff and Defendant by their respective attorneys, having consented to the making and entry of this Final Judgment, without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, without a trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. Sec. 1), commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

A. "Board" shall mean the defendant, Board of Trade of the City of Chicago;

B. "Contract" shall mean: (1) a commodity futures contract made on the Board for the purchase or sale of a unit of commodity for future delivery as specified in the Rules and Regulations of the Board, or (2) an amount of cash commodity purchased or sold on the Board equal to a single futures contract in the same commodity;

C. "Commodity Transaction" shall mean the placing of an order for the purchase or sale of one or more contracts, which order is thereafter executed;

D. "Non-Member Commission Rates" shall mean the rates of commission to be charged by the Board's members to non-members for commodity transactions;

E. "Member Commission Rates" shall mean the rates of commission to be charged by the Board's members to other members for commodity transactions;

F. "Floor Brokerage Rates" shall mean the rates of brokerage to be charged by the Board's members who are floor brokers to other members for the execution of commodity transactions on the Board's trading floor;

G. "Commission Rates" shall include any fees charged by Board members for services rendered in connection with commodity transactions on the Board and any such fees charged by the Board and distributed, in whole or in part, to the Board's members; and

H. "Person" shall mean any individual, partnership, firm, corporation or any other legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the Board shall also apply to its subsidiaries, successors, and assigns, to each of its directors, officers, agents and employees, when acting in such respective capacities, and to members when acting in concert with them, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Purpose and Effect*]

The purpose of this Judgment is to provide for an orderly transition to freely competitive commission and floor brokerage rates on the Board. The transition shall be accomplished so as to minimize the disruption of commodity futures trading, giving due regard to the interest of the public in maintaining a sound, viable, and competitive commodity futures trading market.

V

[*Commissions*]

(A) The Board is enjoined and restrained from, directly or indirectly fixing, establishing, determining, recommending, suggesting

or adhering to, from and after each below-specified date, any non-member commission rate on that portion of each commodity transaction exceeding the number of contracts appearing opposite the specified date:

Schedule of Dates	*That Portion of Each Transaction Exceeding*
The date of entry of this Final Judgment	24 Contracts
September 4, 1974	19 Contracts
September 4, 1975	14 Contracts
September 4, 1976	9 Contracts
September 4, 1977	4 Contracts

(B) From and after March 4, 1978, the Board is permanently enjoined and restrained from directly or indirectly fixing, establishing, determining, recommending, suggesting, or adhering to any member or non-member commission rate or floor brokerage rate for commodity transactions on the Board, or from taking any other action restricting, directly or indirectly, the right of any member or of any non-member broker to agree with his customer on any commission or fee on any commodity transaction.

(C) Nothing contained herein shall prevent the Board from phasing out fixed rates in a lesser period of time than that provided for by this Judgment.

(D) Nothing contained herein shall prohibit the Board from levying or imposing any fee, charge, or assessment to be used by the Board solely to meet its current and future financial needs.

VI

[Rules, Regulations and By-laws]

Within ninety (90) days from the date of entry of this Final Judgment, the Board is ordered and directed to amend its rules, regulations, and by-laws by incorporating therein either the schedule set forth in Section V hereof, or any schedule which results in the elimination of the respective fixed rates in a lesser period of time, and by eliminating therefrom any provision which is inconsistent with this Final Judgment.

VII

[Notification]

The Board is ordered and directed to mail, within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members, and within one hundred and twenty (120) days from the aforesaid date of entry, to file with the Clerk of this Court, with a copy to the Plaintiff, an affidavit setting forth the fact and manner of compliance with this Section VII and Section V of this Final Judgment.

VIII

[Reports]

For a period of ten (10) years from the date of entry of this Final Judgment, the Board is ordered to file with the Plaintiff on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise its appropriate officers, directors, agents and employees of its and their obligations under this Final Judgment. The Board is also ordered to file with the Plaintiff reports on its compliance with the schedule set forth in Section V of this Final Judgment not later than ten (10) days after each date specified therein.

IX

[Relief from Secs. V and VI]

The Board may petition the Court for relief from Sections V and VI of this Judgment, and the Court shall grant such relief upon the Board's establishing, by a preponderance of the evidence, that (i) relief from those Sections is essential to the continued functioning of the Board as a commodity futures trading market, and (ii) the relief petitioned for represents the least restrictive way in time and scope, of preserving the Board as a commodity futures trading market. If the Court grants such a petition, the plaintiff shall at any future time obtain modification or elimination of such relief upon a showing, by a preponderance of the evidence, that such relief is no longer required pursuant to the standards in this Section.

X

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment:

Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Board made to its principa

office, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired:

(1) Access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of the Board relating to any matter contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Board, and without restraint or interference from it, to interview officers or employees of the Board regarding any such matters.

Upon such written request, the Board shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of Plaintiff, except in the course of legal proceedings to which the United States of America is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of the purposes and provisions of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.