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United States Senate

Washington, DC 20510-1391

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CFTC

June 29, 1998

RICHARD J. DURBIN
ILLINOIS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON
GOVERNMENTAL AFFAIRS
COMMITTEE ON THE BUDGET

The Honorable Brooksley Born
Chairperson
The Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

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COMMODITY FUTURES
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Dear Chairperson Born:

We understand that the Commodity Futures Trading Commission has lifted its stay on consideration of Cantor Fitzgerald's application to form a new proprietary futures exchange, called the Cantor Financial Futures Exchange. As you continue to consider the CFFE proposal, we would like to express two major concerns we have about the role of public comment in regard to this application.

First, the substance and number of questions posed by your staff when the application was stayed demonstrates the degree of incompleteness of the application when it was initially published in the Federal Register for public comment. We also understand that your agency recently corresponded again with CFFE, posing yet more questions about its structure, and suggesting once again that the application is incomplete. Will your agency at some time issue a determination that the application is complete? Once that determination is made, will the public be given an opportunity to comment on the complete structure of CFFE? We believe the public should be given the benefit of information you and your staff have collected and any information you will continue to collect in the future.

Secondly, the original publication for public comment only requested general comment on "all aspects of CFFE's application for designation as a new contract market, as well as NYBOC's proposal to serve as CFFE's clearing organization" rather than identifying the novel issues such a proprietary exchange raises. Will the public comment process ever be used to explore the broad and controversial legal and policy issues implicit in the Cantor application which have been recognized to some extent by the CFTC staff questions? For example, is the Commission looking into the unprecedented nature of the structure of the CFFE? Can the Commission's current rules be effectively and appropriately applied to such a structure? The Commission staff's subsequent questions seem intended to shed additional light on the detail of the proposed CFFE structure, but, in our view, broad issue concerns seem more significant to the industry and the public, yet these questions remain unanswered.

Past precedent with CFTC activity has indicated an interest in thorough public disclosure of issues with broad market impact, and we would expect the CFTC to follow its own precedent in this case. We urge you to consider an additional opportunity for public comment once you have determined that a complete application can be published in the Federal Register.

Further, we encourage you to consider identifying in that release the broader issues this application raises. Finally, we urge you to apply a comment period that is long enough to allow for serious review of the complete application and the broad policy issues surrounding it.

We look forward to learning more about the process which the CFTC is using to examine these important issues.

Sincerely,



Richard J. Durbin
U.S. Senator



Carol Moseley-Braun
U.S. Senator