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April 25, 2007

BY E-MAIL

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

Re: Regulatory Governance – 72 Fed. Reg. 14051 (March 26, 2007)

Dear Ms. Donovan:

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") proposed amendments to the Acceptable Practices for compliance with Section 5(d)(15) ("Core Principle 15") of the Commodity Exchange Act ("CEA"). The Commission published its final Acceptable Practices on February 14, 2007. The Acceptable Practices, among other things, defined a "public director" for the purposes of describing those independent persons whom the Commission expected to serve on a designated contract market's board of directors, a Regulatory Oversight Committee and disciplinary panels. The Commission has indicated that its proposed amendments clarify the definition of public director in order to "remove potential ambiguities and correct a technical drafting error."

The CBOT continues to question the need for the Acceptable Practices in general, as discussed in detail in the Exchange's September 7, 2006 comment letter to the Commission's Federal Register release proposing the Acceptable Practices (71 Fed. Reg. 38740 (July 7, 2006), and specifically believes that the Commission's definition of a public director is overbroad. The Exchange has several comments on the proposed amendments.

Specifically, the Commission has proposed to clarify Subsection (b)(2)(ii)(B) of the Acceptable Practices, which precludes members and persons employed by or affiliated with members from meeting the definition of a public director. As currently defined, a person would be considered to be affiliated with a member if he or she were an officer or director of the member, or had ". . . any other relationship with the member such that his or her impartiality could be called into question in matters concerning the member." The proposed amendment would eliminate the reference to any other relationship, and would instead explicitly define those persons affiliated with a member as officers, directors, and partners. Given that the Commission has determined that members and persons affiliated with members may not serve as independent directors, the CBOT agrees that it is appropriate to replace the current subjective standard with a specific definition of those particular relationships which the Commission considers to be disqualifying affiliations.

The Commission's second proposed amendment relates to the $100,000 combined annual payments test for potential public directors and the firms with which they are affiliated. The amendments attempt to remove the confusion that may be caused by the multiple references to affiliations in the current language, and also specifically define the prohibited payments as "compensation for professional services."

The CBOT appreciates the Commission's efforts to specifically define the nature of the prohibited payments, and the proposed definition as compensation for professional services does remove some ambiguity. It is now clear that the Commission does not intend for an individual to be barred from service as a public director, for example, if he is an officer of an organization that receives charitable donations from an exchange or an academic whose university receives contributions from members who are alumni.

However, the Commission's definition of prohibited payments as compensation for professional services still casts the net too wide. It would presumably exclude payments that were strictly for goods, such that an exchange could tap an executive of a company that sold paper supplies to the exchange. However, it is unclear whether employees of companies that both sell equipment and service that equipment for the Exchange or its members would be disqualified as potential public directors. The analysis is further complicated by the Commission's requirement that this standard must be applied to the spouse, parents, children, and siblings of a member. Depending upon what the Commission considers to be "professional services," individuals who are themselves, or whose family members are employees, officers, directors, or partners of any of the following may be prohibited from serving as public directors if the $100,000 threshold is met:

- Any insurance company that insures exchange members
- Any bank that provides banking services to exchange members
- Any accounting firm that provides accounting services to exchange members
- Any law firm that provides legal services to exchange members
- Any technology company that provides hardware, software, and related technical support to exchange members.
- Any company that provides office equipment or communications equipment and related technical support to exchange members
- Any provider of information services to exchange members; and
- Any private school or any college or university that members' children attend

Moreover, the nature of the disqualifying employment is not defined. It can be expected that the potential director is likely to be employed at a fairly high level and in a capacity that would bring relevant experience to an exchange's board of directors. However, a family member could be employed in any capacity at all. For example, the current broad definition would disqualify a parent from serving as a public director if his or her college-age son, who does not live at home, works part-time on the night cleaning staff for a bank used by exchange members.

In order to ensure that the definition of a public director is more workable and more meaningful, the CBOT urges the Commission, at a minimum, to make several further modifications to Subsection (b)(2)(ii)(C). First, a knowledge requirement should be built into the definition. An individual should not be prohibited from serving as a public director if he does not have personal knowledge that his firm receives more than $100,000 in combined annual payments from a member or an officer or director of a member. Indeed, an employee of any major corporation is unlikely to be privy to the identities of all of its customers, and it is even more unlikely that a potential public director would know the identities of the customers of his family members' employers. In addition, such an individual and his family members (and the exchange itself) would not know the identities of all of the officers and directors of the members of the exchange, and would thus be unable to determine whether prohibited payments come from such persons. Finally, a potential director, depending on the nature of his relationships with his family members, may not know whether such family members have any of the prohibited relationships. Therefore, at a minimum, an individual should not be barred from service as a public director unless he has personal knowledge that he or a family member has any of the disqualifying relationships identified in the Acceptable Practices.[1]

Secondly, payments received from a member, or an officer or director of a member of the contract market, should be more narrowly defined. It is understandable that the independence of a potential director may be questioned if he receives significant compensation for professional services from the exchange itself or from an affiliate of the exchange. However, with respect to compensation received from a member or its officers or directors, it should be further specified that the professional services must directly relate to the business of, or the business done on, the contract market or any affiliate of the contract market. Such a qualification would appropriately exclude compensation for personal accounting, banking, insurance, or educational services or general business services that are not specific to the business of the particular exchange.

Finally, when the potential director is disqualified because he (or his family member) is simply employed by a firm that receives the prohibited payments, and he is not an officer, director or partner of the firm, there should be appropriate distinctions based on the nature of the employment. A potential public director should not be disqualified if his employment (or that of his family member) is unrelated to any professional services provided to the contract market or an affiliate of the contract market, or the business of, or the business done on, the contract market or its affiliate.

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[1] The CBOT continues to believe, as stated in its September 7, 2006 comment letter, that an individual should not be prohibited from serving as a public director based on the employment or affiliation of an immediate family member with a member firm, unless the family member is an executive officer of the member firm. Moreover, the exclusion should not apply with respect to any family members who do not reside in the same household as the director.

In sum, the CBOT appreciates the Commission's attempt to clarify the definition of a public director. However, the Exchange believes that the Commission's proposed amendments do not go far enough to ensure that exchanges will be able to obtain qualified board members that meet the Commission's definition of public directors and fulfill the percentage requirements mandated by the Commission. The CBOT looks forward to the Commission's serious consideration of the additional modifications that have been proposed by the Exchange and we would be happy to discuss any of these issues with the Commission. If you have any questions, please feel free to contact Anne Polaski, Assistant General Counsel, at (312) 435-3757 or apolaski@cbot.com.

Sincerely,

Bernard W. Dan