



Received CFTC  
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August 20, 2007

**Via Electronic Mail**

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

**COMMENT**

Re: Comment Letter on Proposal to Amend Procedures for  
Confidential Treatment Requests, 72 FR 39764 (July 20, 2007)

Dear Ms. Donovan:

CBOE Futures Exchange, LLC ("CFE") appreciates the opportunity to provide its comments with respect to the above-referenced release ("Release") regarding confidential treatment requests in the context of product and rule submissions. CFE generally supports the proposal, with one enhancement that CFE believes should be incorporated as described below, and commends the Commodity Futures Trading Commission ("CFTC") for addressing this important issue.

In the Release, the CFTC has proposed a rule making that would provide the exclusive means of requesting confidential treatment for product and rule submissions filed under parts 40 and 41 of the CFTC's regulations. The proposed rule making would also codify that requests for confidential treatment for filings regarding (1) a product's terms and conditions and (2) the mechanisms for executing transactions on or through the facilities of a contract market, made at the time of the submission, would be automatically denied.

As background in the Release, the CFTC specifically cites to the increase in requests for confidential treatment over the past two years and notes that these requests were mostly made in connection with market maker incentive plans ("MMPs").<sup>1</sup> By highlighting MMPs, CFE has inferred that a primary impetus for the current rule making proposal stems from this category of requests for confidential treatment. For the reasons set forth below, CFE believes that requests for confidential treatment regarding MMPs and other compensation and incentive plans should also be automatically denied and that their terms should be disclosed in the publicly submitted rule submissions.

As CFE previously noted in connection with a Freedom of Information Act ("FOIA") request made by CFE related to an MMP, filings regarding MMPs should be not be afforded

<sup>1</sup> The CFTC described the type of information contained in MMPs for which registered entities have requested confidential treatment, e.g., the name of the market makers, the compensation provided by the registered entity to the market makers, trade priorities (i.e., percentage of the order flow), and the bid/ask spread level. 72 FR at 39765.

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confidential treatment and such information should be made public because MMPs and other compensation and incentive plans are "rules" as defined in CFTC Rule 40.1. MMPs and other compensation and incentive plans are rules because they govern the conduct, and entail enhanced obligations in exchange for compensation, of certain market participants that chose to participate in those programs. Additionally, full disclosure of incentive payment information is essential because incentive payment programs may have terms and conditions that could affect the contract prices that are received in the market offered by the futures exchange implementing the program. Incentive plans to market makers are a core element in reviewing the overall market quality offered by a contract market and should be disclosed so that public customers and other market participants can review the incentive payment program terms.

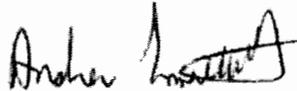
In connection with the above-referenced FOIA request by CFE related to an MMP, the CFTC's Office of General Counsel upheld the denial of a request for confidential treatment on the grounds that MMPs and other compensation and incentive plans should not be afforded confidential treatment and that such information should be made public.<sup>2</sup> In affirming an earlier denial of confidential treatment with respect to the MMP, the CFTC's Office of General Counsel noted:

MMPs are considered "rules" under Commission regulations and presumptively public. The Division of Market Oversight believes that market participants should have the opportunity to evaluate the payment structures of MMPs, since they may affect the quality of price quotations provided by market makers. Accordingly, compensation and incentive information related to other programs has been made available on the Commission's website.

For the reasons set forth above, CFE supports the proposed rule making and also urges the CFTC to adopt a rule provision codifying that requests for confidential treatment for filings regarding MMPs and other compensation and incentive plans be automatically denied.

Please feel free to contact Arthur Reinstein in our Legal Division at (312) 786-7570 or Jennifer Klebes at (312) 786-7466 if you have any questions regarding our comments.

Very truly yours,



Andrew Lowenthal  
Managing Director  
CBOE Futures Exchange, LLC

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<sup>2</sup> See October 27, 2005 letter from CFTC's Office of General Counsel regarding Confidential Treatment for Freedom of Information Act Nos. 05-0138 and 05-0139.