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COMMITTEES:
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United States Senate

WASHINGTON, DC 20510

January 26, 2006

The Honorable Reuben Jeffery III
Chairman
Commodity Futures Trading Commission
1155 21st St., N.W.
Washington, D.C. 20581

Dear Chairman Jeffery:

I write to express my grave concern about an imminent development that will have wide-spread implications for U.S. consumers and companies who use any oil-based energy products in their daily activities. I also request that this matter be given urgent consideration by the full Commodity Futures Trading Commission (CFTC).

As you know, the Intercontinental Exchange, Inc., (ICE) recently announced plans to list, starting on February 3, 2006, for electronic trading a West Texas Intermediate (WTI) crude oil futures contract in the U.S. ICE is a U.S. corporation which owns and operates an electronic trading system based in Atlanta, Georgia. Based on a CFTC no-action letter, ICE operates its trading system as an "exempt commercial market", which exempts ICE from virtually all CFTC regulation and the need to assume any self-regulatory obligations. At the time it obtained the no-action letter, ICE Futures, formerly known as the International Petroleum Exchange Ltd. (IPE), expressed the intent to only set up foreign terminals in the U.S. to list and trade foreign contracts.

As a result of this no-action relief, the ICE (formerly IPE) was freed from the responsibility to register with the CFTC as a futures exchange (or designated contract market) and thereby avoid direct oversight by a U.S. regulator. This approach may have seemed appropriate at the time based upon the applicable facts. In particular, as I understand it, at the time of this approval, the ICE (formerly IPE) maintained an open outcry trading floor in London and did not list any US-based futures contracts. Instead, all of its products had an underlying physical commodity involving energy markets either in the United Kingdom or in Northern Europe. Subsequent to that letter, the ICE (formerly IPE) shut down its trading floor in London and shifted all trading to the Atlanta-based system.

As noted, ICE now intends to list this Texas crude oil contract as part of its foreign product slate, even though it is a U.S. product only deliverable in the U.S. Consequently, WTI futures contracts would be permitted to be traded from within the U.S. without being subject to any federal oversight by U.S. regulators. It is evident that the no-action letter was never approved with the intent to give ICE permission to trade U.S. contracts in the U.S. without

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having to comply with U.S. regulation. The approval was solely given to give U.S. traders access to foreign futures contracts on foreign terminal located in the U.S.

The core regulatory policy question here is whether the WTI crude oil futures contract is, in fact, a foreign contract or a U.S. futures contract. If it is a U.S. futures contract, ICE Futures would need to become a U.S. designated contract market in order to list WTI crude oil futures contracts for trading within the U.S. Given the great importance of U.S. crude oil products to every facet of the U.S. economy and the change in the underlying factual circumstances in the last several years, this issue clearly deserves the attention and engagement of the full Commission.

In today's high priced energy environment, it is imperative that these WTI crude oil futures contracts be traded in an environment with proper protections. We must have strong reporting requirements and position accountability to avoid creating an environment for speculators to purchase unlimited crude contracts potentially driving up the price of oil up to $100 / barrel or higher.

It is my understanding that the CFTC has not addressed which factors should be considered in determining whether a futures contract is domestic (requiring CFTC designation) or foreign (subject to foreign regulatory authority). This may be the first instance since foreign terminals have been permitted here under CFTC staff no-action relief that the product offered on the foreign terminal is not a foreign product, but is instead a U.S. product that directly involves physical energy markets in the U.S. Given the announced plans that ICE will list a U.S. product on its foreign terminal in the very near future without the benefit of any CFTC oversight or review, it would seem that the time is now to consider this issue.

Additional questions exist about whether a level playing field could truly be said to exist where various markets offer the same product and one market is subject to direct CFTC oversight, which is generally recognized globally as the gold standard for futures regulation, and another market is subject to other standards. If ICE is allowed to operate in this manner we may be in danger of U.S. exchanges quickly establishing affiliates in other markets and moving their U.S. products overseas so as to exploit the regulatory gap created by the current status quo under CFTC regulatory practice.

I hope that the CFTC would never lose sight of the trust placed by the American public in adequate and effective oversight by federal regulators of markets that affect the lives of our consumers every day. This is particularly important for energy products we depend on everyday, whether it be in commuting to and from work or in heating their homes. The absence of any CFTC oversight and regulations may be perceived as unnecessarily increasing the risk of harm to U.S. consumers and indeed to the U.S. economy.

In the interest of ensuring that CFTC rules continue to be enforced for all U.S. futures contracts, including US-based futures contract that may happen to be listed for trading on foreign terminals located in the U.S., I am respectfully requesting that the CFTC commissioners carefully consider the regulatory and other policy implications of the ICE proposal.

I urge the CFTC to rescind the no-action relief previously granted to ICE prior to the February 3rd listing of the WTI crude oil futures contracts so the CFTC can properly investigate and analyze the complexities of the ICE proposal and its broader impact on the U.S. economy.

I look forward to hearing from you on this very important issue.

Sincerely,

Charles E Schumer
United States Senator