



National Grain Trade Council

1300 L Street, N.W., Ste 1020
Washington, D.C. 20005
Tel (202) 842-0400
Fax (202) 789-7223
www.ngtc.org

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January 23, 2006

Ms. Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Self-Regulation and Self-Regulatory Organizations In The Futures Industry (70 F.R. 226 (November 25, 2005)).

Dear Ms. Webb:

The National Grain Trade Council (NGTC) welcomes the opportunity to respond to the Commodity Futures Trading Commission's (CFTC or Commission) request for additional comments on self-regulation and self-regulatory organizations (SROs) as part of the CFTC's ongoing review of SROs in the US futures industry (SRO Study).

NGTC is a North American trade association whose membership brings together grain futures exchanges, boards of trade and national grain marketing organizations, with their grain industry counterparts including grain companies, futures commission merchants, millers and processors, railroads and banks. The businesses of all of our member firms depend on the smooth functioning of the risk management instruments traded on the US exchanges regulated by the CFTC. We have a large stake in the continued competitiveness and favorable cost-structures of US futures exchanges.

The passage of the Commodity Futures Modernization Act of 2000 (CFMA) shifted the regulatory philosophy from prescriptive regulations to core principles in order to provide the futures exchanges with the flexibility needed to offer competitive products and services to their customer bases – in some cases new or modified products within short response timeframes – and to compete both domestically with US regulated exchanges and globally with non-US exchanges. Since that time, the industry has prospered and evolved. As the Commission noted in its *Federal Register* announcement, exchanges have demutualized and new exchanges have entered the market. NGTC believes that without this shift to core principles such changes would not have occurred as efficiently or as rapidly.

NGTC recognizes the need for regulation, which is essential to maintain market integrity, protect customers and keep the trust of the trading public. We believe that the best-structured regulation fosters market efficiency and allows exchanges to provide competitive, low-cost and effective risk management tools for users. The current self-regulation framework has been shown to be effective, both before and since the recent trend toward for-profit

exchanges. Rather than diminish incentives to operate responsibly and in strict compliance with applicable law and regulation, the current competitive environment has created an even more acute incentive for SROs, demutualized or not, to avoid improprieties or even the appearance of impropriety. We need to look no further than the stunning dissolution of Refco for evidence of the immediate and heavy consequences levied by the market upon disclosure of wrongdoing by an organization whose existence depends on its reputation and the trust of its customers and counterparties.

It is from this perspective that NGTC offers its response to some of the questions posed by the CFTC.

1. Is the present system of self-regulation an effective regulatory model for the futures industry?

NGTC strongly believes that the present system of self-regulation, historically, as well as currently, has proven to be an effective regulatory model for the futures industry. NGTC recognizes that at some point in the future, SROs may consider consolidating regulatory efforts in order to reduce cost, but we believe each organization must have the flexibility to come to decisions of this nature.

2. As the futures industry adapts to increased competition, new ownership structures and for-profit models, what conflicts of interest could arise between: (i) an SRO's self-regulatory responsibilities and the interest of its members, shareholders, and other stakeholders; and (ii) an SRO's self-regulatory responsibilities and its commercial interests?

The competitiveness of the current market and the imperative that an exchange maintain its reputation for integrity with its customers, makes it vital business practice for a publicly-traded, for-profit SRO to vigilantly self-regulate. The business sanctions for impropriety are more onerous financially and more immediate than regulatory sanctions. They impose a burden on an exchange's management and board of directors that requires constant, diligent attention.

3. Given the ongoing industry changes cited above, please describe how self-regulation can continue to operate effectively. What measures have SROs taken thus far, and what additional measures are needed to ensure fair, vigorous, and effective self-regulation by competitive, publicly-traded, for profit SROs?

Based on our previous responses, NGTC believes that self-regulation currently operates effectively and will continue to operate effectively regardless of the business model. The fundamental goals of the regulatory structure are best accomplished by vesting immediate responsibility with exchanges, while simultaneously providing the CFTC with the necessary tools for oversight authority and meaningful regulation. Core Principles 14, 15, and 16, which address governance fitness standards, conflicts of interest, and composition of boards of mutually owned contract markets, are key elements in a well-designed existing framework for effective federal regulation of for-profit exchanges. Any additions to existing regulations should take into account the past success of, and be consistent with the core principles embraced by the CFMA.

4. What is the appropriate composition of SROs' boards of directors to ensure the fairness and effectiveness of their self-regulatory programs?

Given today's competitive environment, SRO Boards of Directors need flexibility to determine the qualifications of Board members depending on the business challenges they face. Any additional measures by the CFTC to further define board composition may result in unintended consequences. For example, Board composition imposed by regulation might realistically hurt an exchange's business by mandating service by individuals whose expertise does not fit the needs of the organization at that moment; just as realistically, individuals whose expertise makes them valuable may be excluded from Board service. Moreover, mandated Board composition that works for a publicly-traded, for-profit SRO may not be appropriate or effective for a mutually-owned SRO.

5. Should SROs' boards include independent directors, and, if so, what level of representation should they have? What factors are relevant to determining a director's independence?

Please reference our response to question 4. In keeping with the spirit of the CFMA, an SRO board of directors should include qualified independent directors, but the level of representation and the definition of "independence" should be left to the individual SRO, which, in the case of publicly traded exchanges, must take into account overlapping Securities Exchange Commission and possibly stock-exchange requirements as well.

6. Should self-regulation be overseen by an independent entity within an SRO? If so, what functions and authority should be vested in such an entity? At least two futures exchanges have implemented board-level regulatory oversight committees ("ROCs") to oversee their regulatory functions in an advisory capacity. Commenters are invited to address any strengths or weaknesses in this approach.

Please reference our response to question 3. Given the success of self-regulation, NGTC does not believe it is either necessary or in the best interest of the futures industry to require SROs to create an independent entity to oversee self-regulation. Under the core principles, the CFTC has the authority to and does conduct periodic rule enforcement reviews to ensure exchanges are in compliance with the principles. The CFTC also has the authority to review and reverse or amend the actions of an exchange. This oversight authority coupled with the market-based incentives for SROs to avoid improprieties are the underlying reasons self-regulation has proven successful and will continue to do so in the future.

8. What is the appropriate composition of SROs' disciplinary committees to ensure both expertise and impartiality in decision-making? Should a majority of committee members be independent? Should the composition of SROs' disciplinary committees reflect the diversity of the constituency? Should similar safeguards apply to other key committees and if so, which committees? Should SRO disciplinary committees report to the board of directors, an independent internal body, or an outside body?

If an SRO uses a committee to enforce its disciplinary measures, the committee's composition should reflect the issue or issues involved in order to ensure that the committee has the expertise necessary to render appropriate and impartial decisions.

9. **What information should SROs make available to the public to increase transparency (e.g., governance, compensation structure, regulatory programs and other related matters)? Are the disclosure requirements applicable to publicly traded companies adequate for SROs?**

With the strong SRO structure currently in place, the oversight authority of the CFTC to ensure compliance, and pressures of a competitive marketplace, NGTC believes that there is no need to adopt additional disclosure requirements.

Thank you for the opportunity to comment on these questions related to self regulation and self regulatory organizations in the futures industry. Please contact me at (202) 842-0400 if you have questions or would like to discuss these comments.

Regards,

JULA J. KINNAIRD
President