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COMMENT

August 1, 2006

Ms. Eileen A. Donovan  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**RE: Boards Of Trade Located Outside Of the United States and the Requirement To Become a Designated Contract Market Or Derivatives Transaction Execution Facility**

Dear Ms. Donovan:

The National Grain Trade Council (NGTC) welcomes the opportunity to respond to the Commodity Futures Trading Commission's (CFTC) request for additional comments on boards of trade located outside of the United States.

NGTC is a North American trade association whose membership brings together commodity futures exchanges and boards of trade with their industry counterparts including agricultural food converters, merchandisers, processors, and refiners; futures commission merchants; food and beverage manufacturers; railroads; and banks. The businesses of all of our member firms depend on the efficient functioning of the US exchange marketplaces that host the risk management instruments used by our members. We have a large stake in the continued competitiveness 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. This shift explicitly recognized the success of the self-regulatory organization (SRO) model and entrusted US exchanges with broad authority to offer products and services to expand their businesses, attract customers and compete domestically and globally. Since that time, US futures exchanges have exploded with growth, benefiting the enormous community of users of their products. US capital markets are another important beneficiary of this dynamic growth, as the success of the US futures business has helped sustain the US as the centerpiece of global risk management.

As the CFTC examines the question of regulatory jurisdiction for foreign boards of trade, NGTC encourages the Commission to continue to follow the direction set by the core principles of the CFMA.

US exchanges face significant foreign competition in their own products. Any US exchange with directly competing products listed on a foreign exchange can lose volume and open interest overnight if it makes the wrong business decision. Just as quickly, a US exchange could experience the same level of loss if a federal regulatory requirement, which is outside

the exchange's control, is seen by its customer base as too onerous or expensive. Even in the case of US exchanges which see no current threat to a product line, foreign competition can arise virtually in days.

Today's CFTC speculative position limits policy illustrates our concerns about US regulation affecting competitiveness. If a customer transaction exceeds the current position limits in a given product, the transaction must move either to the over-the-counter (OTC) market or to a foreign exchange. Either outcome reduces order flow and therefore liquidity on the US exchange, putting existing, successful markets at risk. NGTC believes the solution to this competitive dilemma is that US exchanges should have the freedom to set speculative position limits, consistent with their SRO responsibilities and authority.

In the case of position limits for unenumerated commodities, NGTC encourages the CFTC to fully embrace the core principles of the CFMA and fully vest US exchanges with the authority to set speculative position limits as they see fit. For agricultural enumerated commodities, before an increase can be implemented, US exchanges must first go through the self-regulatory process to increase limits and then petition the CFTC to modify its rules. This cumbersome procedure slows exchanges' ability to respond to competitive pressures, inviting volume to migrate to OTC markets and potentially to foreign exchange competitors. Moreover, this duplicative regulatory structure contradicts Core Principle 5(d) of the CFMA, which requires US boards of trade to adopt position limits where necessary and appropriate, subject to the oversight of the CFTC.

NGTC recognizes the need for and benefit of CFTC regulation, which is essential to maintain market integrity, protect customers and keep the trust of the trading public, but regulation should not act unnecessarily to impede or diminish the competitive position of US exchanges. The current self-regulation framework has been shown to be effective and will continue to be effective. Today's competitive environment encourages SROs to respond quickly to market demands; however, the regulatory obligations of SROs strike a balance that ensures well-researched, sound, and responsible business decisions are made. By allowing exchanges to set their own position limits, subject to CFTC oversight, the Commission would eliminate the redundant regulatory system for enumerated commodities and assist all US commodity exchanges in their efforts to remain competitive with respect to foreign counterparts. Moreover, all market participants at all levels will benefit from increasing activity and liquidity in transparent marketplaces hosted by US exchanges.

Extending this example to the broader principle, NGTC respectfully asks the Commission to remember the importance of business flexibility and operating independence to the future success of US futures exchanges as you consider the foreign boards of trade question.

Thank you for the opportunity to comment. Please contact me at (202) 842-0400 if you have questions or would like to discuss these comments.

Sincerely,

JULA J. KINNAIRD  
President