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COMMENT

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September 7, 2006

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

RE: Conflict of Interest in Self-Regulation and Self-Regulatory Organizations; Proposed Rule (71 F.R. 130, July 7, 2006)

Dear Ms. Donovan:

The National Grain Trade Council (NGTC) welcomes the opportunity to respond to the Commodity Futures Trading Commission's (CFTC or Commission) request for comments on the Proposed Acceptable Practices for safe harbor compliance with Core Principle 15 of the Commodity Exchange Act.

The NGTC is an association whose membership brings together commodity futures exchanges and boards of trade with their industry counterparts including agricultural merchandisers, processors, and refiners; futures commission merchants; food and beverage manufacturers; railroads; and banks. Our member firms rely on the competitiveness and financial health of exchanges, and they have a large stake in the continued integrity of the futures markets

The shift in regulatory philosophy from prescriptive regulations to core principles brought about by the Commodity Futures Modernization Act of 2000 (CFMA) streamlined the regulatory system and thereby provided US futures exchanges greater opportunity to compete domestically and globally. We believe that these changes have strengthened US exchanges, advanced the health of the US capital markets and financial system, and benefited market users and commercial interests who rely on exchanges for price discovery and risk management. Among other things, regulatory flexibility enabled US exchanges to deliver valuable new technology, products, and services to their expanding customer bases. NGTC believes that much of the growth and prosperity of exchanges since 2000 can be attributed to the enlightened regulatory approach adopted under the CFMA. We therefore encourage the CFTC to continue to ensure that any additions or changes to existing regulations are consistent with that Act. From this perspective, we offer our comments on the Commission's Proposed Acceptable Practices.

Board Composition: "Public" Director Defined

The proposed Board Composition Acceptable Practice provides that exchanges should elect governing boards composed of at least 50 percent public directors and that half of the executive committee should also be public members. Because this proposal is highly prescriptive and substantially more restrictive than prior rules, NGTC urges the CFTC to rescind it.

For all US exchanges, the implementation of this proposal would be a significant departure from the philosophy of the core principles of the CFMA. The futures industry, the public and the CFTC have long known about the potential conflict between an exchange's dual role as a business and as a regulator. Structures and policies to handle such issues have been in place for decades, and while periodically modified, this system has proven successful. In contrast to the viewpoint expressed in the Commission's release, NGTC believes that one of the most powerful deterrents to improper behavior, such as favoring a given firm, is the presence of many different industry participants on key exchange committees and panels and in the boardroom. From our experience, no firm or group of firms will tolerate favoritism, rule bending or rule breaking because each firm knows the consequences of disclosure to their own professional reputations, their regulatory status, and their business prospects. Commercial and futures industry firms are also very conscious and supportive of regulatory duties of exchanges, as they ensure fairness and market integrity. NGTC believes exchange governance is strengthened, not weakened, by the presence of experienced futures industry and commercial interests in the boardroom.

NGTC is not aware of any history of board conflicts and improprieties related to any exchange's SRO powers. Even if such a risk exists, the CFTC now has sufficient authority to review the regulatory program of exchanges and to move against any party involved in a transgression.

Moreover, NGTC believes that demutualized exchanges have a greater, not lesser, incentive to prevent conflicts and to treat their SRO status with utmost care and respect. The CFTC, the public, as well as industry need look no further than the stunning collapse of Refco for an example of the penalties markets impose on a firm that commits improprieties and loses the confidence of the exchange community and its customer base. In Refco's case, one impropriety brought about its dissolution and the loss of billions in market capitalization in mere days. While the CFTC's subsequent actions against Refco were significant and important, the actions taken and penalties imposed by the markets were even swifter and more severe. The SROs deftly executed their role as the first line of defense. For example, the Chicago Mercantile Exchange has $15 billion market capitalization to protect. The Chicago Board of Trade has $6 billion market capitalization to protect. Revelation of any impropriety at the board of directors' level, or the committee level, would be catastrophic financially to any publicly traded exchange. These exchanges fully appreciate the value of public and industry confidence as well as the personal liabilities exchange officers, directors, and committee members could face from allowing improprieties to take place.

The Commission's proposed Acceptable Practice would also limit an exchange's flexibility to select board members based on the competitive needs of the exchange at

a given moment. Today, exchanges are technology companies, providers of increasingly sophisticated, leading-edge risk-management instruments, international marketers and competitors interfacing with customer bases and regulators across the globe. Technology issues such as programming of matching algorithms are not general information technology challenges, but instead are complex and very specific to the futures business. Similarly, new product invention and marketing in today's sophisticated risk-management environment requires deep levels of industry experience and constant contact with a global customer base. Knowledge about futures-specific issues that are critical to the success of an exchange's business may simply not exist within the talent pool of otherwise qualified public directors. That does not mean exchanges should not choose public directors without industry experience. Instead, it means that CEOs and boards of directors should have the freedom to select directors from the large pool of futures industry participants if that knowledge is what they believe they need in their boardroom at a given time.

NGTC does not believe it is accurate to presume that an individual or firm active in the futures industry is inherently biased. Just as exchanges compete with one another, firms within the industry compete with one another. No firm's board representative will tolerate favoritism or rule bending for a competing firm. No firm's representative will risk personal reputation, business reputation, regulatory registration, or personal and business liabilities by participating in an illegal or inappropriate decision. No exchange executive will do so either. The legal staffs of the exchanges and outside counsel to the boards, knowing the personal, legal and career consequences, will not countenance inappropriate behavior by a board. As a further check, CFTC has complete audit and review powers to discover, dissect, and sanction any impropriety.

In the case of mutually-owned exchanges such as the Kansas City Board of Trade and the Minneapolis Grain Exchange, this requirement contradicts Core Principle 16 which states that a "board of trade shall ensure that the composition of the governing board reflects market participants." While public directors constitute one of the categories of board membership, it would be a hardship and counter-productive for such exchanges to try to increase the number of public directors on their boards. These exchanges would have to sacrifice diversity of board membership, which nearly all participants in the CFTC's SRO review found to be a critical component of good governance. Indeed, the participation of a variety of market users and commercial interests on the board provides the well-rounded expertise needed to protect market integrity.

Moreover, it would be difficult to attract additional, qualified public directors. In today's environment, public directors are more attuned to time demands and possible liabilities associated with their service. In the post-Enron, Sarbanes-Oxley environment, board service is no longer an honorarium, and public directors will justifiably demand more compensation than participants who already make their living on the exchange and in the futures industry. Some exchanges, such as the New York Board of Trade, provide board members with only modest per diem allowances and exchanges with small revenue bases will likely encounter greater difficulty and more expense recruiting public directors.

NGTC is not aware of any history of improprieties that warrants such significant changes in board composition. In the case of mutually-owned exchanges, the business environment has not changed in a way that creates greater risk of improprieties or conflicts than in the past. The current model of self-regulation by mutually-owned exchanges has proven successful and it would be inappropriate to impose this new board composition rule on these exchanges.

NGTC believes that a general requirement for including public directors on boards should exist in the Commission's regulations, but there should be no numeric requirement and the CFTC should allow exchanges to decide whether such persons will be appointed by the board or placed before the shareholders or the membership for a vote. There should be no requirement for public members to serve on executive committees. We do not believe that in today's competitive environment a prescriptive board composition rule serves the public, the exchanges, the community of exchange users, or the CFTC well.

Regulatory Oversight Committee

NGTC agrees with the CFTC that the establishment of a Regulatory Oversight Committee (ROC) to advise the exchange board will help maintain the integrity of futures self-regulation, effectively manage conflicts of interests within SRO governance, and support full consideration of the public interest in decisions of regulatory consequence. NGTC is concerned that some public directors may lack a strong working knowledge of the intricacies of an exchange's self-regulatory processes and therefore the inclusion of other board members with a better understanding of the system could improve the ability of the ROC to carry out its duties. NGTC therefore recommends that this Acceptable Practice be revised to give an exchange flexibility to include board members other than public members on its ROC.

NGTC also believes that the ROC should function within an exchange's existing management framework. Based on our interpretation of the CFTC's proposal, the powers vested in the ROC to supervise the compliance staff would create a second chain of management, disrupting long-established management prerogatives and undercutting the authority of the CEO and the board of directors. NGTC recommends that these supervisory powers and other indications of direct management authority be removed from the duties of the ROC. Assuring that the ROC has full access to regulatory staff and all aspects of the compliance and market surveillance programs is sufficient to assure effective and independent oversight of core regulatory functions without creating unintended problems within the exchange's management structure.

Disciplinary Panels

NGTC has fewer concerns with the CFTC's proposal that exchange disciplinary committees include one public member. NGTC believes that most public members will initially lack familiarity with exchange SRO processes, including market and firm surveillance, investigations, audits, examinations, and rule interpretation and enforcement. However, exposure to these areas of exchange operations as a member of a disciplinary committee could become a valuable training ground for future public director candidates. NGTC also agrees that having a public director on

disciplinary committees is an effective tool for minimizing conflict of interest concerns and reinforces confidence that the public interest is represented and protected.

Conclusion

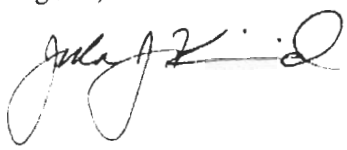
The CFTC already has virtually unlimited oversight and audit powers over the operations of every US exchange, and the Commission and its staff regularly exercise these powers. For example, the current regulatory structure allows individuals and firms to appeal any exchange judgment or action to the CFTC, and exchange directors as well as exchange staff to report to the CFTC any perceived incident of misconduct or other impropriety in an exchange disciplinary committee, exchange proceeding, or regulatory action.

The CFTC has all the authority it needs to rigorously investigate and deal with any reported impropriety.

NGTC believes that the fundamental goals of the regulatory structure are best accomplished by vesting immediate responsibility with exchanges, while simultaneously providing the necessary tools for meaningful oversight by the CFTC. NGTC encourages the Commission to take into account the past success of the CFMA. While exchanges could be found in compliance with Core Principle 15 without adhering to Acceptable Practices adopted by the CFTC, it is inappropriate to list as Acceptable Practices rules that appear to have marginal, if any, real benefits or that are too formulaic and prescriptive to be consistent with the spirit and philosophy of the CFMA.

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.

Regards,



JULA J. KINNAIRD
President