

SULLIVAN & CROMWELL

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

RECEIVED
C.F.T.C.

'01 APR 9 PM 12 36
OFFICE OF THE SECRETARIAT

01-03
4
125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE

RECEIVED C.F.T.C.
RECORDS SECTION

01 APR 9 PM 2 09

RECEIVED
C.F.T.C.

April 6, 2001

COMMENT

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: New Regulatory Framework for Trading Facilities, Intermediaries
And Clearing Organizations, 66 Fed. Reg. 14262 (March 9, 2001)

Dear Ms. Webb:

As counsel for the entities identified in Appendix A attached hereto (such entities collectively, the "Energy Group"), we are pleased to respond to the request of the Commodity Futures Trading Commission (the "Commission") for comments regarding the above referenced rulemaking (the "Proposed Rules"). We applaud the Commission's efforts in implementing the provisions of the Commodity Futures Modernization Act of 2000 (the "CFMA"). We support the Commission's timely response to the mandate of Congress in the CFMA.

The Energy Group consists of major oil and gas producers, refiners, processors and marketers, as well as electric utilities and marketers of electricity. Members of the Energy Group are active participants in the principal domestic and international physical, futures and over-the-counter ("OTC") derivatives markets for energy products, including oil, natural gas and electricity. Many members of the Energy Group have been active with respect to Commission reauthorizations and exemptive actions for more than a decade. Among other things, Energy Group members were actively involved in the development of the CFMA and testified and provided written comments on the CFMA as it developed. The Energy Group's particular focus was on greater legal certainty for OTC and electronic trading facilities transacting in exempt commodities ("exempt electronic trading facility").

Subject to the specific comments in this letter, we support the Proposed Rules. We endorse the Commission's efforts to provide guidance regarding compliance with the core principles for contract markets and derivatives transaction execution facilities ("DTFs"). The "fast-track" review procedures for registration of DTFs and contract markets are strongly

welcomed and will serve the public interest. We applaud the Commission for offering DTFs the opportunity to self-certify their compliance with core principles.

We strongly support the Commission's efforts to address the procedures applicable to exempt electronic trading facilities. The CFMA requires that these facilities provide the Commission with access to trading protocols and electronic access to the facility's transactions. In the Proposed Rules, the Commission provides two methods of complying with this informational requirement. We believe that the alternative second method the Commission suggests goes beyond what the CFMA requires. We suggest that what the CFMA requires is that the facility respond to the Commission's specific and occasional inquiries regarding transactions conducted on the facility, not provide the information and disclosure this Rule would require as a matter of regular course. In particular, the focus on meeting "large trader" requirements is unnecessary for the Commission to fulfill its responsibilities under the CFMA.

We also believe that the requirement that an exempt electronic trading facility have a reasonable basis for believing that its authorized participants are "eligible commercial entities" and require such participants to comply with all applicable laws also exceeds the CFMA requirements and puts a burden on the facility that as a practical matter it cannot fulfill. We suggest instead that the Commission consider adopting a rule requiring a facility to obtain from each of its participants a representation that the participant is an eligible commercial entity and that it complies with all applicable laws, which would protect the facility against liability provided that it does not know and does not have any reason to know that these representations are not accurate. Such a rule could reiterate a facility's responsibility to monitor activity and investigate suspicious activity.

The Commission also requested comment on the issue of whether the Commission should require that exempt commercial markets be required to affirmatively disclose to traders that trading on the facility is not regulated or approved by the Commission. In our view, such a requirement both exceeds the CFMA and is unnecessary. An exempt commercial market is open only to sophisticated market participants who are familiar with distinctions among the different facilities. Such participants would have no reason to believe such a facility is regulated, and the facility is prohibited from representing that it is regulated. A representation affirming that the facility is not regulated may cause confusion. In addition to violating the bounds of authority Congress set in the CFMA, such a requirement would not serve the public interest.

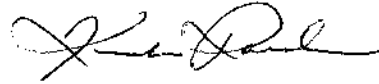
We support the Commission's expansion of the definition of eligible commercial entity to include floor brokers and floor traders. We suggest that the Commission consider clarifying the definition of principal for the purposes of principal-to-principal transactions to include eligible commercial entities entering into transactions on behalf of other eligible commercial entities.

Ms. Jean A. Webb

-3-

In sum, we endorse the Commission's proposed rulemaking, which should provide significant and useful guidance for trading facilities operating under the CFMA. We appreciate this opportunity to provide comments and stand ready to provide any further assistance that may be helpful to the Commission in its consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Raisler", written in a cursive style.

Kenneth M. Raisler

Ms. Jean A. Webb

-4-

Appendix A

BP Amoco
Enron Wholesale Services
Goldman, Sachs & Co.
Koch Industries, Inc.
Morgan Stanley Dean Witter
Phibro Inc.