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Opening Statement of Michael V. Dunn
Commissioner
Commodity Futures Trading Commission

CFTC hearing into Foreign Boards of Trade (FBOT)

June 27, 2006

Thank you, Mr. Chairman. I commend you for calling today's hearing on this important and fascinating topic. With global, electronic marketplaces, regulatory concerns become ever more complex. The question at the heart of this issue is how does the Commission meet its responsibility to the public trust to ensure that contract markets operating in the U.S. are fair and transparent—wherever those markets might be nominally located.

With electronic markets of global reach, physical location is essentially meaningless. The real issue is the nature of a given contract market itself. The history of the CEA in the U.S. has shown that in determining the level of regulation that is appropriate for a given contract market, two of the key factors are the susceptibility of that market to manipulation and the nature of the investors involved. Where a contract market involves a commodity with limited physical delivery which is open to the general public, the CFTC's public duty and regulatory interest are at their zenith.

Before we let a foreign contract market offer contracts in the United States, the Commission needs to be confident that investors are protected and safeguards are in place to ensure that the foreign market is fair and transparent. We typically do this by ensuring that the foreign regulatory regime the contract market is subject to is "comparable" to our own.

When the cash market underlying that foreign contract is intertwined in the domestic political, physical, and economic fabric of the United States, an additional layer of complexity is presented that is not addressed in the current equivalency framework. The Commodity Exchange Act provides an array of authorities and responsibilities to the Commission when it comes to protecting domestic commodity markets. These authorities and responsibilities are not necessarily or readily transferable to a foreign government.

For instance, the duty to ensure that prices for commodities in interstate commerce in the United States are not manipulated is not readily or, perhaps, practicably transferred to a foreign authority, no matter how competent that authority might be.

The question before us, therefore, is how the Commission ensures it is meeting its obligation to the public trust in protecting investors and ensuring fair and transparent markets.

I wish to also note that the situation we find ourselves in today demonstrates the danger of setting major policy through the issuance of "no-action" letters. The types of major policy decisions involved in granting access to U.S. markets by foreign boards of trade should be made by the Commission through an open and transparent public process, not ad-hoc staff letters. No-action relief should be reserved for emergency or extraordinary circumstances. It should not be used routinely as a matter of regulatory or industry convenience.

I welcome our witnesses' comments and perspectives.