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COMMODITY FUTURES TRADING COMMISSION

Hearing on What Constitutes a Board of Trade

Located Outside of the United States

Under the Commodity Exchange Act Section 4(a)

Tuesday, June 27, 2006

9:00 a.m. - 4:00 p.m.

Washington, D.C.

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

## 1 C O N T E N T S

## 2 Welcome and Opening Statements

3 CHAIRMAN REUBEN JEFFERY III  
4 COMMISSIONER WALTER L. LUKKEN  
5 COMMISSIONER FRED HATFIELD  
6 COMMISSIONER MICHAEL V. DUNN

7  
8 Panel I: What makes an Exchange Foreign or  
9 Domestic?

10 ANTHONY BELCHAMBERS, The Futures and Options Association  
11 RICHARD BERLIAND, JP Morgan Securities  
12 KATHLEEN CRONIN, Chicago Mercantile Exchange  
13 JOHN FOYLE, Euronext Liffe  
14 MICHAEL GORHAM, Illinois Institute of Technology Center  
15 for Financial Markets  
16 JAMES E. NEWSOME, New York Mercantile Exchange  
17 KEVIN O'HARA, Chicago Board of Trade  
18 SIR ROBERT REID, ICE Futures  
19 PETER REITZ, Eurex Frankfurt AG  
20 VERENA ROSS, Financial Services Authority  
21 BENN STEIL, Council on Foreign Relations  
22 NICK WEINREB, Euronext

Panel II: How Should the Commission Consider a DCM (DTEF)  
Application by an FBOT Whose Contacts in the  
U.S. Implicate CFTC Oversight?

ANTHONY BELCHAMBERS, The Futures and Options Association  
RICHARD BERLIAND, JP Morgan Securities  
JEFF BILLINGS, American Public Gas Association  
PATRICK BYRNE, Industrial Energy Consumers of America  
KATHLEEN CRONIN, Chicago Mercantile Exchange  
JOHN FOYLE, Euronext Liffe  
MICHAEL GORHAM, Illinois Institute of Technology Center  
for Financial Markets  
KEVIN O'HARA, Chicago Board of Trade  
BRIAN REGAN, New York Mercantile Exchange  
SIR ROBERT REID, ICE Futures  
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1 VERENA ROSS, Financial Services Authority  
2 BENN STEIL, Council on Foreign Relations  
3 NICK WEINREB, Euronext

3

4 ALSO PRESENT:

5 RICK SHILTS, Director, Market Oversight, CFTC

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## 1 P R O C E E D I N G S

2 CHAIRMAN JEFFERY: Good morning,  
3 everybody. Thank you all for braving the elements  
4 and coming here today for today's hearing on  
5 Foreign Boards of Trade. I want to particularly  
6 thank those of you who have come from a distance,  
7 our colleagues and friends from London and the  
8 regulatory and business communities. We  
9 appreciate your being here, and anyone else who  
10 may have come from other parts of the world and  
11 other parts of the country braving  
12 these really extraordinary elements that we have  
13 had to deal with over the past couple of days.

14 I will come back to the format in a  
15 second, but I am going to start with a few  
16 opening remarks, scene-setters, if you will, for  
17 the purposes and objectives of today's hearing  
18 that will be offered by each of the four  
19 Commissioners present today. Then I will revert  
20 to the particulars about logistics and use of  
21 the mike and timing and other operational  
22 matters. Then we will move into the

1 agenda which I think you have all seen. It has  
2 been circulated in advance of this meeting and  
3 is also on the Website, and there were copies  
4 at the reception table as you all walked in. If  
5 you do not have them, we will make sure we get  
6 them around to you. As you note, there are media  
7 representatives here. There is a camera here that  
8 videos. The monitors are to the CFTC's offices  
9 around the system. Then there is also a dial-in for  
10 those interested from wherever, who want to hear  
11 what transpires over the course of today's  
12 proceedings.

13 Today's hearing, in case you are in the  
14 wrong place, is about foreign boards of  
15 trade in an era of technology and globalization.  
16 I would underscore both of those words, because  
17 these are factors that, while they have been  
18 growing and burgeoning in import over the past 10  
19 to 20 years, they are really among the dominant  
20 factors shaping the global financial capital,  
21 commodities, and futures markets around the world  
22 today.

1           To frame a contrast, on the one hand,  
2 former Federal Reserve Chairman Alan Greenspan  
3 recently noted that today, the only space  
4 left is cyberspace. He noted that  
5 humorously, obviously. On the other hand,  
6 regulators, on a more serious note, including the  
7 Commodity Futures Trading Commission, are governed  
8 by laws enacted by a single country, and also have  
9 a duty to execute those laws and to carry out the  
10 mission which the Congress has entrusted  
11 to us.

12           In an era in where almost all financial  
13 market participants are seeking to engage in fully  
14 electronic trading, we need to consider what  
15 factors render an exchange foreign or domestic  
16 for statutory and regulatory purposes. The  
17 the Commodity Exchange Act was written and  
18 designed for a set of market circumstances that  
19 have evolved significantly since it was enacted. The  
20 challenge for us today is to understand how to  
21 apply these statutory labels, like "located" when  
22 exchanges are, in many cases, no longer bricks and

1 mortar and where the internet has made physical  
2 "location" an awkward and outdated statutory  
3 concept.

4           Our authority begins with Congress.  
5 Outside the authority of the law we will not  
6 stray. Congress conferred upon the Commission the  
7 statutory duty to protect the integrity of the  
8 U.S. futures markets. This duty benefits direct  
9 participants in these markets as well as the  
10 United States economy, which relies upon the futures  
11 markets' important hedging and price discovery  
12 functions.

13           The Commission, however, strongly  
14 supports both technological advances and  
15 globalization, and views these developments as good  
16 for U.S. customers and as consistent with the  
17 CFTC's statutory mission. Globalization enables  
18 U.S. market participants to access  
19 otherwise inaccessible products, encourages  
20 competition between markets, and promotes  
21 innovation in products and services. And,  
22 competition is one of the things that has helped

1 make the American economy and the financial  
2 services sector strong throughout time.

3           It follows, therefore, that the  
4 Commission hopes to help foster a competitive  
5 level playing field, all the while avoiding  
6 interference with legitimate market forces and  
7 competition. The CFMA, at root, that is,  
8 the Commodity Futures Modernization Act which  
9 amended the Commodity Exchange Act, is grounded in  
10 the view that markets more or less work. Putting  
11 our thumb on the scale of competition on one side  
12 or the other would ultimately work to the  
13 detriment not only of U.S. market users, but also  
14 of the U.S. exchanges themselves.

15           I am hopeful that these hearings will  
16 help the Commission to move forward on these  
17 important and timely issues. With that, we look  
18 forward most importantly to hearing from all of  
19 you in this room, our distinguished panelists in  
20 particular, and I turn it over to Commissioner  
21 Walter Lukken for his opening remarks.

22           COMMISSIONER LUKKEN: Thank you, Mr.



1 Chairman. I reiterate his welcome to all of those  
2 who have come today despite the weather. I have  
3 to admit, I blame Commissioner Dunn for the bad  
4 weather. One of his legal assistants last week  
5 had a baby and they named him Noah, so I figured  
6 that was a premonition of things to come today,  
7 and with that I will return to the script.

8 (Laughter.)

9 COMMISSIONER LUKKEN: Today we will  
10 discuss when an exchange is located outside the  
11 United States. However, the policy ramifications  
12 of our dialogue far exceed this focused legal  
13 determination. Today's topic goes to the heart of  
14 how regulators will carry out their mission in the  
15 modern global marketplace.

16 Twenty-four years ago when this  
17 statutory language was adopted, it was much easier  
18 to draw such bright-line distinctions between  
19 exchanges located in the U.S. and those located  
20 outside of our borders. But regulators no longer  
21 live in this bright-line world. Determining where  
22 an exchange is located is difficult, if not

1 impossible, with its server, board of directors,  
2 customers, clearing, and self-regulators scattered  
3 around the globe. As the Chairman noted, Alan  
4 Greenspan recently noted that "organizing financial  
5 exchanges in a geographic place does not seem  
6 necessary . . . The only market out there is  
7 cyberspace."

8           How does the modern regulator, defined by  
9 the quirks of its nation's laws and history, function  
10 in an interconnected global economy? The answer  
11 is, carefully. My guidance to this question will  
12 come from the policy themes set out in the  
13 Commodity Futures Modernization Act, which in my  
14 view, is tailor made for the modern electronic  
15 global marketplace.

16           First, flexibility is paramount. The  
17 CFMA equipped our agency with a principles-based  
18 regime, one of the few in the world that enables  
19 the CFTC to adapt and tailor its regulations to  
20 identified public risks without unnecessarily  
21 harming market competition. The CFMA puts the  
22 regulatory focus on the desired outcome instead of

1 the means, allowing compliance from several  
2 different paths. Bright-line regulatory rules  
3 were replaced with risk-based approaches that  
4 temper responses based on potential harm to the  
5 public. I look forward to hearing from the  
6 panelists on where these risks may lie.

7           Second, the CFMA taught us that  
8 regulatory coordination is vital. Agencies like  
9 ours do not have the resources to sufficiently  
10 monitor the entirety of the global marketplace and  
11 its participants. We must rely on the expertise  
12 of other regulators, both domestic and foreign, in  
13 fulfilling our public mission. This does not mean  
14 that the CFTC should relinquish our duties to  
15 others. Quite the opposite, the CFTC must  
16 continue to vigorously monitor the industry's  
17 adherence to statutory core principles.

18           However, the means for accomplishing  
19 this mission may involve coordination and  
20 information sharing among those foreign regulators  
21 who abide by the highest global standards. The  
22 CFTC has long been a leader in the international

1 community with its participation in IOSCO and its  
2 early appreciation of the mutual recognition  
3 concept among foreign regulators dating back to  
4 our Part 30 regime for foreign firms in 1986. I  
5 am hopeful that our agency will continue to rely  
6 on mutual recognition as we move forward on this  
7 issue.

8 Thank you, Mr. Chairman, for organizing  
9 this hearing this morning, and I look forward to  
10 hearing from all the panelists.

11 CHAIRMAN JEFFERY: With that, why don't  
12 I turn it over to Commissioner Fred Hatfield?

13 COMMISSIONER HATFIELD: Good morning,  
14 everybody. I would like to thank Chairman Jeffery  
15 for taking up this serious matter, and acknowledge  
16 the hard work of the Commission's staff in this  
17 regard. I would also like to thank our witnesses  
18 for appearing today. Many of you have come from  
19 long distances, and we sincerely appreciate you  
20 being here. This meeting of the Commission is  
21 especially timely for me, having just recently  
22 returned from a meeting of the Futures and Options

1 Association in London where I was able to review  
2 how several of these exchanges operate. The rapid  
3 pace of technological advancement and the  
4 continued globalization of financial markets make  
5 it incumbent upon us as regulators to look  
6 carefully at issues such as the ones we are  
7 addressing today.

8           Electronic trading has blurred the once  
9 obvious question of location. I believe that  
10 because of this shift to electronic trading it has  
11 become more difficult for regulators to use  
12 location as a means for determining whether or not  
13 an exchange must register with the Commission.

14           Also, the evolving marketplace  
15 landscape, recently punctuated by the announced  
16 merger plans of the New York Stock Exchange and  
17 Euronext have forced the question of  
18 cross-jurisdictional registration. These  
19 developments raise legitimate questions, and it is  
20 therefore appropriate that the Commission review  
21 this matter.

22           How we proceed, though, hopefully you

1 will help us answer that, but I suggest that we  
2 proceed with caution. We must be mindful of the  
3 global consequences of our actions, just as we are  
4 mindful of market integrity and customer  
5 protection.

6 One recent Financial Times article  
7 referred to the Commodity Futures Trading  
8 Commission as having a "history of being a  
9 relatively level-headed organization." I like  
10 that characterization, and I sincerely hope we are  
11 able to maintain that standard through this  
12 turbulent period, and I look forward to the  
13 comments of the panelists today.

14 Again I thank our Chairman for his  
15 leadership on this important matter.

16 CHAIRMAN JEFFERY: Thank you, Fred.  
17 Commissioner Mike Dunn?

18 COMMISSIONER DUNN: Thank you, Mr.  
19 Chairman, and I thank all of you for coming today  
20 to testify, and thanks to the staff for all the  
21 hard work that they put in in making this  
22 possible. I commend you, Mr. Chairman, for

1 calling this hearing today on this important and  
2 fascinating topic.

3           With a global electronic marketplace,  
4 regulatory concerns become ever more complex.  
5 The question at the heart of this issue is: how  
6 does the Commission meet its responsibility to the  
7 public trust to ensure that contract markets  
8 operating in the U.S. are fair and transparent,  
9 wherever these markets might be nominally located?  
10 With electronic markets of global reach, physical  
11 location is essentially meaningless. The real  
12 issue is the nature of a given contract market  
13 itself.

14           The history of the CEA in the U.S. has  
15 shown that in determining the level of regulation  
16 that is appropriate for a given contract market,  
17 two of the key factors considered are the susceptibility  
18 of the market to manipulation, and the nature of the  
19 investors involved. Where a contract market  
20 involves a commodity with limited physical  
21 delivery that is open to the general public, the  
22 CFTC's public duty and regulatory interests are at

1 their zenith.

2           Before we let foreign contract markets  
3 offer contracts in the United States, the  
4 Commission needs to be confident that investors  
5 are protected, and that safeguards are in place to  
6 ensure that the foreign market is fair and  
7 transparent. We typically do this by ensuring  
8 that the foreign market rate regime that the  
9 contract market is subject to is comparable  
10 to our own. When the cash market underlying  
11 the foreign contract is intertwined with the  
12 domestic, physical and economic fabric of  
13 the United States, an additional layer of  
14 complexity is presented that is not addressed in  
15 the current equivalency framework.

16           The Commodity Exchange Act provides an  
17 array of authorities and responsibilities for the  
18 Commission when it comes to our overseeing  
19 domestic commodity markets. These authorities and  
20 responsibilities are not necessarily or readily  
21 transportable to foreign governments. For  
22 instance, the duty to ensure that price and



1 commodities of interstate commerce in the United  
2 States are not manipulated, it is not readily or  
3 perhaps practically transferred to a foreign  
4 authority, no matter how competent that authority  
5 might be. The question before us, therefore,  
6 is how does the Commission ensure it is  
7 meeting its obligations to the public trust in  
8 protecting investors and ensuring fair and  
9 transparent marketplaces?

10 Finally, Mr. Chairman, I wish to also  
11 note that the situation we find ourselves in today  
12 demonstrates the danger of setting major policy  
13 through the issuance of no-action letters. The  
14 types of major policy decisions involved in  
15 granting access to the U.S. market by foreign  
16 boards of trade should be made by the Commission  
17 through an open and transparent public process  
18 such as this hearing today, not ad-hoc staff  
19 letters.

20 No-action relief should be reserved for  
21 emergencies and extraordinary circumstances and  
22 should not be used routinely as a matter of

1 regulatory or industry convenience. Globalization  
2 and technology has led to a dynamic marketplace.  
3 Our challenge at the Commission is to promulgate  
4 regulations that address that marketplace.

5 Thank you, Mr. Chairman.

6 CHAIRMAN JEFFERY: Thank you,  
7 Commissioner Dunn.

8 Before we begin, let me establish a few  
9 ground rules. First, I would like to  
10 go around our morning panelists and have everybody  
11 introduce themselves, name, rank, serial number,  
12 anything else you want to say about yourself, but  
13 hold on to your prepared comments until we get into  
14 the specifics of the agenda. In terms of the  
15 mikes, they are pretty self-explanatory,  
16 you just speak and they pick it up. You should  
17 also note that the mikes around the room are  
18 generally activated, so if you speak even  
19 privately to your neighbor, they may pick it up.  
20 So take that into account.

21 I also would ask you, our panelists  
22 and anybody from the audience who wishes to

1 speak, to identify yourself and your organization  
2 so we have a proper transcript of the proceedings  
3 for the record. One other thing I should say,  
4 because we all understand the broader topic and it  
5 is very easy, as one gets into any discussion on  
6 the broader topic of what constitutes a foreign  
7 board of trade, to mix up a lot of the specific  
8 subissues, which are admittedly overlapping in  
9 nature. It is the natural course of any  
10 discussion, and certainly the ones we have had  
11 internally at the Commission, that they tend to  
12 wander all over the place in terms of mixing and  
13 matching various issues depending on the point any  
14 given person or interlocutor wants to stress.

15 We have gone to great pains,  
16 perhaps overly so, but we want to try to stick to  
17 the format to break down as best is possible a lot  
18 of the subissues. When we get into a specific  
19 question, I will define the question and we will  
20 try to confine the dialogue to that specific  
21 question as best as possible. I will try to be  
22 reasonably rigorous in maintaining that separation

1 of the different questions and issues sets even  
2 though I recognize, and you all recognize, that  
3 these issues are in many cases interrelated and  
4 overlapping, but that is for purposes of trying to  
5 discipline the discussion and focus it as best as  
6 possible over the course of the morning and the  
7 afternoon.

8 We will now turn to the individual  
9 panelists and their introductions, and  
10 then I will make some comments about our first  
11 question and then will go into panelist  
12 discussions.

13 MR. BELCHAMBERS: Anthony Belchambers,  
14 Chief Executive of The Futures and Options  
15 Association which is a London-based European  
16 derivatives association of about 170 members,  
17 including exchanges and market participants.

18 MR. REITZ: I am Peter Reitz, member of  
19 the board of Eurex, the derivatives exchange  
20 based in Frankfurt.

21 MR. NEWSOME: I am Jim Newsome. I am  
22 President and Chief Executive of the New York

1 Mercantile Exchange.

2 MR. GORHAM: Mike Gorham, Director of the  
3 Illinois Institute of Technology's Center for  
4 Financial Markets.

5 MS. ROSS: Verena Ross, Head of Market  
6 Infrastructure Supervision at the Financial  
7 Services Authority in the U.K.

8 MS. CRONIN: Kathleen Cronin, the  
9 Managing Director and General Counsel at the  
10 Chicago Mercantile Exchange.

11 MR. REID: Bob Reid, Chairman of ICE  
12 Futures.

13 MR. BERLIAND: I'm Richard Berliand,  
14 Chairman of the Futures Industry Association, the  
15 trade association for FCMS based here in the  
16 United States, and also Chairman of the FCM for JP  
17 Morgan.

18 MR. O'HARA: Kevin O'Hara. I am Chief  
19 Strategy Officer and Chief Administrative Officer  
20 for the Chicago Board of Trade where I just  
21 started a couple of months ago. Previous to that  
22 I was at New York NYSE Group, Inc. And prior to

1 that, Archipelago, and moved over to New York via  
2 the transaction.

3 MR. WEINREB: Nick Weinreb, Head of  
4 Regulation for Euronext.

5 MR. FOYLE: John Foyle, Deputy Chief  
6 Executive, Euronext Liffe which is the derivative  
7 markets division of the Euronext Group and  
8 includes the Liffe Market in London, Euronext  
9 Paris, Euronext Brussels, Euronext Amsterdam, and [INAUDIBLE]

10 CHAIRMAN JEFFERY: Again, thank you all  
11 for taking the time to be here.

12 Just a small introduction for the  
13 first issue to be discussed under the topic,  
14 what makes an exchange foreign or domestic?  
15 We are here, as I should stress, as a  
16 commission to listen and learn from the expertise  
17 assembled in this room. As I alluded to a moment  
18 ago, we have had no shortage of internal,  
19 hallway and other discussions on these various  
20 subjects. While those discussions were  
21 interesting and provocative and somewhat  
22 informative, we realized that they were not

1 dispositive and that it was absolutely imperative that  
2 we reach out to all of you in the futures community,  
3 those who are users of the markets, those who are  
4 operators of the markets, those who in one way or  
5 another run your businesses based on the integrity  
6 of those markets.

7           Again, I cannot stress enough the  
8 importance of all of you being here today and the  
9 contribution that you will make over the course of  
10 the proceedings. And also, in the written  
11 submission process, I should have mentioned, at the  
12 outset, that there is a formal process of written  
13 submissions. The comment period is open through,  
14 I believe, July 12th. If there is anything you  
15 do not get on the table today, you will have  
16 the opportunity to submit something to us in  
17 writing in the following 2 weeks.

18           The first question is the broadest  
19 question and the hardest to get one's mind  
20 around, and that is, what are the policy  
21 implications that the CFTC should consider  
22 if it were to establish a policy

1 regarding when a foreign board of trade is no  
2 longer considered outside the U.S. for purposes of  
3 Section 4(a) of the Commodity Exchange Act?

4 With that as background, we will turn to  
5 the specific question which is, what factors  
6 should be considered when determining whether a  
7 foreign board of trade permitting direct access has a  
8 level of contacts with the U.S. that make it subject to  
9 Section 4(a) and the requirement to register as a  
10 U.S. exchange? That is a very open-ended series  
11 of questions. Benn, since you just  
12 arrived, you get the first question.

13 (Laughter.)

14 CHAIRMAN JEFFERY: Catch your breath,  
15 and maybe we will start with Anthony. Do you mind  
16 if we start with you, and we'll give Benn a pass  
17 and we'll pick him up. Thank you very much for  
18 being here, Benn.

19 MR. BELCHAMBERS: If I could turn the  
20 question around slightly and put it a slightly  
21 different way which is, is the operational mind of  
22 the organization in the U.S.? Is its governing



1 board in the U.S.? Is the main engine of its  
2 business in the U.S.?

3 Those sorts of questions, it seems to me,  
4 if you answer no to those questions, it is  
5 very hard to actually turn around and say its  
6 location is therefore in the U.S. for the purposes  
7 of the legislation it seems to me. So if you  
8 reverse those questions, I think you come up with  
9 a slightly different sort of nuance to the  
10 argument.

11 I think the second point is that the  
12 reference to contact within the U.S. is an  
13 interesting one, and I suspect, I cannot answer  
14 this, that many around the table would share the  
15 concern that may be generated by additional  
16 contacts in the U.S., but I personally believe  
17 that that does not change the location. What it  
18 does do is it raises issues about improved  
19 information sharing, additional notification  
20 requirements, possibly, and obviously perhaps even  
21 a higher level of due diligence on the overseas  
22 market to make sure that it is properly regulated

1 by its natural home state regulator. So I would  
2 indicate those are the criteria. Obviously we  
3 will address later on those other levels of  
4 contacts.

5 MR. REITZ: I think if we look at the  
6 current situation, the Commission should be  
7 congratulated by establishing a method or a policy  
8 through the placement of foreign terminals we  
9 have, and that is accepted globally. I think the  
10 Commission has set the standard here that has been  
11 the approach for many regulators around the world  
12 after this. I think it should be proud that this  
13 model has been widely followed by other regulators,  
14 but it also raises the point that we should be  
15 aware that because of this leadership role, any  
16 major change to the approach is likely to cause  
17 changes by other regulators as well. So, anything  
18 we do here might have bigger implications beyond  
19 what we are talking about just focused on the U.S.

20 CHAIRMAN JEFFERY: Chairman Newsome?

21 MR. NEWSOME: Thank you, Mr. Chairman.  
22 The NYMEX welcomes the opportunity to participate

1 in what I think is a very important public hearing  
2 on this topic, and certainly as well as anyone  
3 here, I am under no illusion with regard to the  
4 difficulty and complexity of this topic.

5 In fact, I think it was the first  
6 primary topic that the Commission was dealing with  
7 when I came to the Commission in the late-1990s.  
8 I do believe that the foreign no-action letter  
9 process has generally worked very, very well to  
10 address the problem. But I think as time goes on,  
11 the issues are only going to get more complex and  
12 more difficult to deal with as all of our markets  
13 become more global, as the marketplace becomes  
14 more global, it certainly is a difficult issue to  
15 deal with. I think in terms of taking the  
16 approach of looking at the location, looking where  
17 the board is, looking at the level of contacts,  
18 it is pretty easy to tear holes into any of those  
19 individual approaches. We have to take probably a  
20 broader approach to look at the entire context.

21 Of course, that has its difficulties as  
22 well, because when you start looking at the

1 broader approach and trying to define all the  
2 components that go into the broader approach,  
3 again, it becomes very easy to tear holes into  
4 them. I think the exchanges and marketplace are  
5 going to continue to evolve. Many of the  
6 exchanges have evolved to a point currently that  
7 no one would have dreamed when the no-action  
8 letters were being issued in the late-1990s, and,  
9 therefore, the difficulty that we are in today.

10 I guess the bottom line is if you take  
11 that approach, it gets to trying to measure a  
12 level of intent, what is the intent of the  
13 facility? Is it to circumvent the CFTC rules with  
14 access to U.S. customers? Again, that would be  
15 extremely difficult to measure and look at the  
16 intent.

17 I think when we look at the complexity  
18 of this topic, the issue really gets boiled down  
19 to one thing, and that is the exchanges having the  
20 ability to compete on a level playing field  
21 regardless of where they are housed, the U.S.,  
22 Europe, or anywhere else, and I think that that is

1 the real issue that has brought us to this table  
2 today.

3 From my standpoint and from the NYMEX  
4 standpoint, we have not had, nor do we have, any  
5 interest in limiting the competition, whether it be  
6 from the U.S. or other global exchanges. We  
7 certainly have no interest in limiting market  
8 flexibility that was created by the Commodity  
9 Futures Modernization Act.

10 I think at least in my simple mind as I  
11 look at it today, we have two potential solutions.  
12 One of those solutions is to set standards  
13 requiring at some point U.S. registration. I do  
14 not believe that that is the correct solution, Mr.  
15 Chairman. I think a better solution would be  
16 somewhat of a two-step process, for the Commission  
17 to undertake ongoing and formal reviews of the  
18 foreign board of trade no-action letters. Then if  
19 the Commission develops comfort with the rules  
20 based upon those no-action letters, that the  
21 Commission then give the U.S. exchanges the  
22 flexibility to operate under the same or similar

1 rules.

2 I think if the Commission has comfort  
3 with one set of standards for foreign exchanges,  
4 then that comfort should then be given to the U.S.  
5 exchanges so that we can operate on a truly level  
6 playing field.

7 CHAIRMAN JEFFERY: Thank you, Jim. Mike  
8 Gorham?

9 MR. GORHAM: Three quick points. The  
10 first one is I love the fact that the CFTC and  
11 Congress behind that has really focused on  
12 creating competition. I was very proud of the fact  
13 the way the CFTC handled the Eurex application and  
14 treated that in a country-blind fashion.

15 The second point is I think that it is  
16 very important that the Commission is fair in  
17 dealing with these issues of competition, and  
18 right now I believe that we do have a situation  
19 where there is a regulatory imbalance in the sense  
20 that while the Commission does not give a  
21 no-action letter to an exchange that they do not feel  
22 is properly regulated, there is absolutely a big

1 difference between the Foreign Boards of Trade and  
2 the DCMs in the sense of large trader reporting and  
3 position limits, which are two very, very important  
4 tools, and I think that is a little bit more for the  
5 discussion after the break.

6           The third that I will make is that this  
7 whole issue is incredibly messy. In the two years  
8 that I was here, in fact, on my very first day on  
9 the job, I think it was Ken Raisler, but whoever  
10 came in representing ICE, came in and they said we  
11 have to tell you about the material changes that  
12 take place as proper under the no-action letter.  
13 One change is that our owners are now in Atlanta.  
14 Secondly, we are going to become a cyber-exchange.  
15 It hit me for the first time that this is really  
16 both intellectually interesting to figure this  
17 whole thing out, but really messy, and in the 2  
18 years that I was here, we did not figure it out.  
19 So it would be nice if we figured it out today.

20   (Laughter.)

21           CHAIRMAN JEFFERY: Thank you for those  
22 words of encouragement. Verena?

1                   MS. ROSS: First of all, thank you very  
2 much, Mr. Chairman, Commissioners, and CFTC staff  
3 members for giving me the opportunity to be here  
4 today. Certainly, we at the FSA applaud the  
5 CFTC's proactively tackling the mitigation of  
6 regulatory risks in the ever-developing and  
7 growing more international derivatives markets.  
8 We accept the CFTC's concerns and appreciate the  
9 Commission's open and inclusive approach of  
10 discussing these issues and accepting input from  
11 across the industry and the regulatory  
12 community.

13                   I should also say that I very much value  
14 the close working relationship and cooperation  
15 that we have with the CFTC, and I think that is a  
16 very good basis to continue to working together on  
17 making sure that overall there is sufficient  
18 regulatory strength in the global derivatives  
19 markets. In terms of the issues posed today, our  
20 view is certainly that the current regulatory  
21 process, including the current no-action letter  
22 regime and associated strong regulatory



1 cooperation, provides for effective and efficient  
2 oversight of financial markets.

3           Such an approach to our mind is  
4 essentially determined by two factors to work out  
5 where the lead regulation of an exchange and its  
6 traded contract lies. That is, firstly, the  
7 location of the exchange's head office, and,  
8 therefore, where the strategic direction is set.  
9 Secondly, the home regulator's regime being of a  
10 comparable standard to that of the host. If these  
11 criteria are satisfied, then the current accepted  
12 practice of the host regulator applying a  
13 light-touch approach to the relevant market and  
14 relying on close supervision of activities by the  
15 home supervisor, has consistently proven effective  
16 in our view. This is the current process through  
17 which U.S. and other overseas exchanges gain  
18 access to the U.K. market, and one which we at the  
19 FSA strongly support and advocate.

20           It is our belief that the current  
21 approach of trust and mutual understanding between  
22 regulators has created an effective, orderly,

1 fair, and competitive marketplace to the benefit  
2 of all concerned. At the FSA we are conscious  
3 that even the smallest change to regulatory  
4 practice can have a real impact on the regulated  
5 markets. We need to be careful that we consider  
6 that, and I understand that is also a big  
7 objective for the CFTC in looking at these issues.  
8 Where any new issues will arise, a new risk will  
9 arise. We believe that further cooperative action  
10 amongst the regulatory community and, in  
11 particular, between the FSA and the CFTC in some  
12 of the cases that have arisen, are able to deal  
13 with the valid concerns that are being raised. We  
14 believe that the most appropriate action lies with  
15 greater flexibility and cooperation within the  
16 regulatory community rather than increasing  
17 oversight of the markets by the host regulator.

18 This is the current approach being taken  
19 with developments in the WTI market, and will  
20 allow regulators to respond most appropriately as  
21 future issues arise. We do not know what those  
22 future issues exactly might be. Any new concerns

1 will most likely require equally flexible  
2 responses, therefore, and we would therefore  
3 advise against any moves which could negatively  
4 impact on the adaptability of our collective  
5 regulatory response and strategy.

6 CHAIRMAN JEFFERY: Thank you very much,  
7 Verena. I should also add, from my personal and  
8 professional perspectives, that the CFTC and the  
9 FSA have enjoyed a long-standing, close, and very  
10 constructive working relationship that works both  
11 on a formal and an informal basis, and it is one  
12 that we greatly value at the CFTC. I think it has  
13 enabled us and the FSA, if I could speak on their  
14 behalf, to actually get a lot of things done in a  
15 reasonably efficient-market and public-sensitive  
16 kind of manner.

17 And I ditto those comments for any  
18 number of other regulatory authorities around the  
19 world with whom we have the opportunity, and we  
20 have increasing opportunities as the nature of the  
21 business has evolved, to interact in the normal  
22 course of our business. Again, thank you, Verena,

1 and your colleagues for your participation in  
2 these proceedings.

3 CHAIRMAN JEFFERY: Kathleen, welcome.

4 MS. CRONIN: I want to echo the other  
5 panelists' thanks for allowing me this opportunity  
6 and the CME this opportunity to comment on  
7 obviously a very important issue to us and to the  
8 industry. I think in order to answer your  
9 question it is important for us to focus on what  
10 is permissible under the existing statutory  
11 regime, and that statutory authority hinges on the  
12 term "location." Although there is no doubt that  
13 Congress did not accurately envision the  
14 dematerialization of exchanges that has taken  
15 place since this legislation as enacted, it is  
16 clear that they did consider location versus  
17 another term such as "doing business," and  
18 determined that location was the appropriate test.

19 What constitutes located in the United  
20 States or located outside the United States? To  
21 us that determination is really based on where the  
22 exchange's infrastructure is located, and to that

1 extent, I think you need to look at where the  
2 decision-making authority resides, where its  
3 employees are located, and where its headquarters  
4 are. To expand the inquiry to look at something  
5 more broad like contacts with the jurisdiction  
6 takes you down a very dangerous path and  
7 effectively penalizes an organization for the  
8 structure of its operations, for example, locating  
9 its management in a particular place, or its  
10 clearing in a particular place, and also opens up  
11 exchanges to duplicative and inconsistent  
12 regulatory regimes.

13 I believe if you focus on the true  
14 location of an exchange, the exchange's  
15 infrastructure leads you to a single primary  
16 regulator. Recognizing the Commission's concern  
17 with protecting the integrity of United States  
18 markets, I echo some of the panelists' comments  
19 that the appropriate avenue for addressing those  
20 concerns is through extensive information sharing,  
21 regulatory cooperation, and regulatory  
22 harmonization. Thank you.

1                   CHAIRMAN JEFFERY: Thank you, Kathleen.  
2                   Sir Bob?

3                   MR. REID: Thank you, and thank you for  
4                   the invitation to be here with you today and to  
5                   discuss this important topic. Firstly, let me be  
6                   quite clear. Our view is an exchange is foreign  
7                   when it has its principal offices, its management,  
8                   and its board of directors in a non-U.S.  
9                   jurisdiction.

10                          Secondly, that it is subject to a  
11                   comprehensive regulatory regime under the laws of  
12                   that jurisdiction which the Commission has found  
13                   to be comparable to the regime administered by the  
14                   Commission itself. Finally, is subject to  
15                   appropriate information-sharing arrangements  
16                   between regulators. Let me make one misconception  
17                   and put that right. The use of the words "light  
18                   touch" is misconceived. If I am subject to light  
19                   touch, I hope never to be subject to heavy touch.

20    (Laughter.)

21                   MR. REID: The second point I would make  
22                   is that in its original no-action letter, the CFTC

1 noted that ICE Futures was required to retain  
2 specified financial resources, operate its market  
3 with due heed to the protection of investors, to  
4 ensure that trading is conducted in an orderly and  
5 fair manner, maintain suitable arrangements for  
6 trades reporting, maintain suitable arrangements  
7 for the clearing and settlement of contracts,  
8 monitor compliance with its rules, enforce its  
9 rules, investigate complaints with respect to its  
10 business, maintain rules to deal with the default  
11 of its members, cooperate with other regulatory  
12 bodies through the sharing of information, or  
13 otherwise maintain high standards of integrity and  
14 fair dealing and prevent abuse.

15 This is a very comprehensive list, Mr.  
16 Chairman. It is a comprehensive list which we  
17 observe. It is the basis of our arrangement for  
18 operation within the United States. And it is the  
19 basis on which the FSA looks at our operation and  
20 agrees that we are in fact complying. It is a  
21 stable position which has been strengthened by  
22 experience and practice. The links are there, and

