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secretary

From: Michael George [michael.george@gewarren.com]
Sent: Wednesday, July 26, 2006 1:46 PM
To: secretary
Subject: What Constitutes a Board of Trade Located Outside of the United States

COMMENT

To Whom It May Concern:

As a long-standing member of the New York Mercantile Exchange (NYMEX), I am writing to express my concern about the CFTC's no-action letters allowing ICE Futures (ICE) to launch NYMEX look-alike contracts. The CFTC has inadvertently created a regulatory environment that provides a competitive advantage to a foreign-regulated exchange conducting trade in U.S. oil and natural gas markets.

With the blessing of the CFTC's no-action letters, ICE has now launched contracts for NYMEX markets in crude oil, heating oil, gasoline, natural gas, and others. These are contracts for strategic, American-produced commodities and are identical to the NYMEX contracts in all respects except delivery. Indeed, without compensation, NYMEX is even compelled by a US court decision to provide its settlement prices to ICE. Everything about these markets is American, from their production to their price discovery to their consumption, yet they are regulated by the UK's less-stringent Financial Services Authority. In similar fashion, the UK is also wrestling with this issue. The quote below is from the Financial Times, 6/19/06, about the potential U.S. regulation of the UK stock market:

"For good reasons, therefore, the British parliament has decided that an authority it has created, rather than one established by the US Congress, should regulate the UK's stock market...any shift might have a negative impact on British investors and recognizably British companies. The pursuit of shareholder value should not be allowed to eliminate national regulation where such oversight is deemed in the national interest. If this requires changes in the law, so be it."

What the UK is concerned about has happened here. The ICE no-action letter can and will continue to have a negative impact on American investors and American companies. ICE has targeted NYMEX customers and grabbed market share at least partially with their ability to play by a different set of rules.

There is no valid argument to allow American energy contracts to be regulated by two countries and two sets of regulations. As more and more American futures business is seized by competitors operating under a foreign regulator, the more likely it will be that NYMEX and perhaps others will be forced to shop for an advantageous regulatory environment and move their operations offshore.

While the notion of regulatory arbitrage is a scenario starting to play for other exchanges around the globe, it is a very real threat to NYMEX and U.S. energy markets. We do not have time for studies or to see "how things will play out."

Remedy: It is time for a decision now. The CFTC must level the playing field in American energy markets. The ICE no-action letter was approved by the CFTC presumably because the CFTC believes the level of regulation by the UK's Financial Services Authority (FSA) is sufficient for these markets. To correct the regulatory imbalance between NYMEX and ICE, the CFTC must grant immediate relief to NYMEX by allowing NYMEX to follow the same regulations as ICE. If, on the other hand, the CFTC does not believe the FSA provides sufficient regulation for the American energy market, they should take immediate action and subject the ICE contracts to the same regulations as NYMEX contracts.

I do not request the stifling of competition. I am only asking that the U.S. government do what it is supposed to do and level the competitive playing field in a volatile business. The U.S. must provide immediate relief to NYMEX by applying the FSA rules across the board or beginning CFTC regulation of the ICE contracts. Either way, this will guarantee fairness for NYMEX and ensure the continued presence of orderly markets in the U.S. for these nationally-important strategic commodities.

Sincerely,

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