



Commodity Futures Trading Commission

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Remarks

Remarks by Commissioner Bart Chilton

“Dark Markets”

**Hearing to Examine Trading on Regulated Exchanges
and Exempt Commercial Markets**

Commodity Futures Trading Commission Headquarters

Washington, DC

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I applaud Chairman Lukken’s efforts to convene today’s public hearing on this important issue, which affects every sector of the American economy. This hearing comes at a critical time: since enactment of the CFMA in 2000, we have watched the development of these markets, and market changes and events in recent years have shown that now is a propitious time to review the statutory and regulatory structure governing exempt energy markets. These markets have operated pursuant to exemptive relief that has allowed trading to occur largely outside of the regulatory authority of the CFTC. To a great extent, however, this trading is very similar to the energy trading that occurs on the highly regulated environment of the NYMEX.

The Commission needs to review the current oversight of exempt commercial energy markets, for two reasons. First, common sense dictates that dissimilarity in regulatory treatment of similar markets should be addressed. Second, there have been market events—the Amaranth melt-down, for example—that indicate we need to take a closer look at this issue.

Senators Feinstein, Levin, and Coleman’s efforts have been very helpful and significant in the arena of exempt energy markets. The Amaranth case and the Senate report show clearly how inextricably intertwined off-exchange and on-exchange energy markets are. Today’s hearing can help to add to the information that has already been obtained regarding these markets.

Congress intends that the CFTC have oversight of risk management markets in order to meet the CEA’s objectives of protecting price discovery, guarding against manipulation, and ensuring that the futures and options markets remain effective tools for hedgers and consumers. By allowing these look-alike energy markets to operate without any of the same types of regulatory oversight that the on-exchange energy markets are subject to, not only are similar markets being treated in a dissimilar fashion, but more importantly, this ultimately makes it quite difficult, if not impossible for the CFTC to meet its core objectives.

I don't believe the "good government" response to this is to wait for greater calamity to occur in order to force action, but rather to recognize the warning signs that we've already seen, and respond appropriately. I believe there is a way to close the "Enron Loophole," while still providing for the innovation and competition that was the hallmark of the CFMA. We have an impressive list of witnesses today, representing all sides of this debate, and I look forward to hearing their views toward development of a rational, reasonable solution to this issue. Just as the CFTC has been able to provide leadership on issues relating to other areas affecting its responsibilities—jurisdictional issues, foreign exchange contracts, foreign access—I believe, with the help of the information gathered today, the Commission will be able to provide significant benefit to this debate towards developing a resolution.