03-11
(6)

Heitman, Donald H.

From: Raisler, Kenneth [Raislerk@sullcrom.com]
Sent: Monday, April 19, 2004 9:20 AM
To: Heitman, Donald H.
Cc: Chuck Vice; David Goone
Subject: RE: ICE Response to proposed 2(h)(3) rule amendments

COMMENT

Don,

Thanks very much for your e-mail. We appreciate the work that you have done in moving this project forward. We have the following responses to your questions.

1. DMO uses the term "block trades" to mean large transactions
negotiated off of a trading facility and then executed on the facility, pursuant to the facility's block trade rule. What does ICE mean by that term? How are block trades negotiated and executed on ICE? More importantly, what is the rationale for excluding block trades from the information access/reporting rules (i.e., what would prevent a block trade from figuring in a manipulation scheme)?

Our use of the term "block trades" may be confusing. The trades in question have nothing to do with the ECM. They are trades that are negotiated bilaterally OTC then submitted to the LCH for clearing. They are executed outside of the ECM and are never recorded as trades on the ECM.

2. Likewise for options - what would prevent options from being
part of a manipulation scheme and, therefore, what would be the rationale for excluding them from any information access/reporting requirements? Would the less than five trades per day limitation have the effect of excluding option transactions?

We agree that options can use the same five trades per day standard. Our option markets are just starting, but if they reach that level we would report them for transactions subject to CFTC jurisdiction.

3. What is ICE's basis for limiting reports to "financial gas
and power market" transactions? As a general matter, the Commission could not embrace any standard that limited information access to particular commodities. (For example, what if some ECM started trading oil or steel?) What other markets does ICE currently operate and aren't those markets equally susceptible to manipulation? Again, would the five trades per day rule have the effect of limiting reports to financial and gas and power markets?

You are correct that currently the five trade per day rule has the effect of limiting reports to gas and power markets. If oil or steel or any other commodity, where the contract is subject to CFTC jurisdiction, meets the reporting threshold, we agree that it should be reported.

I trust that these answers are responsive to your questions. Please let me know if you need anything additional.

Ken

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-----Original Message-----
From: Heitman, Donald H. [mailto:dheitman@CFTC.gov]
Sent: Wednesday, April 07, 2004 10:18 AM
To: Raisler, Kenneth

Subject: ICE Response to proposed 2(h)(3) rule amendments

Ken,

With the concurrence of OGC, your March 31 e-mail, suggesting an alternative information access proposal and an alternative second prong to the price discovery test, has been added to the public comment file. On reviewing the suggestions in that e-mail, DMO staff has some further questions about the information access proposal.

At the outset, I would note that staff has no problem with excluding spot transactions and thinly traded markets as you propose. The former are clearly outside CFTC's exclusive jurisdiction and the latter are likely to generate many "false positives" and few, if any, clues to potential manipulations.

Therefore, we envision adding language to section 36.3(b)(1)(ii) - the section that requires an ECM to identify those transactions with respect to which it intends to rely on the exemption in section 2(h)(3) - whereby the identification requirement (and hence, the reporting or information access requirements that follow) would not apply to: (1) spot (same day/next day) transactions; or (2) markets that averaged less than 5 trades per day over the preceding calendar quarter, as determined at the end of such quarter.

We are, however, still left with the following questions:

1. DMO uses the term "block trades" to mean large transactions negotiated off of a trading facility and then executed on the facility, pursuant to the facility's block trade rule. What does ICE mean by that term? How are block trades negotiated and executed on ICE? More importantly, what is the rationale for excluding block trades from the information access/reporting rules (i.e., what would prevent a block trade from figuring in a manipulation scheme)?

2. Likewise for options - what would prevent options from being part of a manipulation scheme and, therefore, what would be the rationale for excluding them from any information access/reporting requirements? Would the less than five trades per day limitation have the effect of excluding option transactions?

3. What is ICE's basis for limiting reports to "financial gas and power market" transactions? As a general matter, the Commission could not embrace any standard that limited information access to particular commodities. (For example, what if some ECM started trading oil or steel?) What other markets does ICE currently operate and aren't those markets equally susceptible to manipulation? Again, would the five trades per day rule have the effect of limiting reports to financial and gas and power markets?

With respect to the second prong of the price discovery test, DMO staff found your suggested language to constitute a reasonable alternative test

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