Commodity Futures Trading Commission
Office of External Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
202.418.5080

Remarks

A Better Understanding: Current Issues with SEC; Exempt Commercial Market Regulation

Remarks by Commissioner Bart Chilton
United States Commodity Futures Trading Commission
before the
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I am pleased to participate in this panel today with Bill Brodsky and Charley Carey. And I'm sure that John will keep the discussion lively.

SEC Issues

First, I want to comment on some current issues relating to the CFTC's oversight of certain "cross-jurisdictional" products over which the SEC has indicated it may have some regulatory interest. I believe that the competitiveness of the domestic commodity and security sectors would be greatly improved with increased coordination and communication between the CFTC and the SEC regarding these products.

The agencies' response to regulatory oversight of these products brings up another issue: recent efforts by the Department of Treasury to reform domestic financial market oversight, and specifically, merger of the SEC and CFTC. On November 21st, Treasury closed a 40-day comment period on the streamlining effort, and Secretary Paulsen has indicated that Treasury will issue a report on this by early next year, so it's particularly timely for us to look at this issue.

Of particular concern for me is the specific question in Treasury's proposal relating to merger of the CFTC and SEC, ostensibly as part of an effort to modernize the regulatory structure for all financial services. Rather than overreact and jump to merger, however, the two agencies should make concrete efforts now to harmonize the approval processes for cross-jurisdictional products in order to avoid months-long waits that decrease the competitiveness of our domestic market

participants. For example, it took the SEC and the CFTC over six months to finally approve credit event options earlier this year. That was an unconscionable period of time for the government to take to act upon a request by market participants, and unfortunately, it fueled the pro-merger fires. Another example is the lack of movement on foreign security index products. There is simply no reason that our two agencies cannot move forward, as we were instructed to do seven years ago in the CFMA, to come up with joint rules to permit US investors the access they desire to futures products on foreign security indexes, whether as broad-based indexes on futures exchanges in the US, as security futures products, or as futures on foreign security indexes and single foreign securities traded on a foreign board of trade.

Given there are novel issues raised by some of these new products, we need a memorandum of understanding for approving cross-jurisdictional products and other products, such as futures on foreign security indexes. In addition, the agencies should have in place a permanent regulatory liaison structure to facilitate communication and coordination efforts, and the Commissions should be required to hold "public accountability" sessions, so that market participants are can know whether or not we're making progress in areas of common concern. In short, we need a willingness from both agencies to work better together. I hope that time will be spent on resolving actual problems created by the two agencies' different statutes and mandates, not merely putting those problems under one roof. The focus of the conversation should be on how to improve our lines of communication, not advocating how to fix a regulatory oversight system that isn't broken by calling for a merger.

I think it's illustrative to look at the experiences in other countries. In 2000, the United Kingdom effected a merger that brought the regulators for derivatives and securities under a single entity. However, it is not certain that any efficiencies were gained as a result of that merger. Just because our system differs from others around the world, doesn't make it inferior, and it certainly doesn't mean that we should conform to European or Asian models of regulation.

The argument of those who suggest that merging the CFTC and the SEC will create economies of scale is intellectually lazy; there needs to be tangible competitive reasons to undertake such a merger. We should only consider merging the two agencies if it means a competitive advantage for the industry and our nation. The CFTC's principles-based regulation is looked to as the gold standard of regulation in this country and around the world; merging that system with one that is fundamentally different in purpose and theory, with no proven tangible benefits, is an essentially flawed concept.

Exempt Commercial Markets Regulation

I'd like to mention briefly the Commission's recent efforts relating to the Exempt Commercial Markets provision in the CEA. The agency has requested additional statutory authorities to address the "Enron Loophole." While I agree that exempt commercial markets have increased competition and market innovation, the provision has resulted in some significant unintended consequences that require statutory amendments to address regulatory oversight concerns.

Specifically, the Commission has requested that Congress enact legislative changes in four areas to address the problems faced in regulating "dark" markets: 1) large trader reporting; 2) position limits or levels; 3) self-regulatory oversight; and 4) emergency authority. These are measured suggestions to address "look-alike" markets, which are essentially operating in competition with regulated markets like NYMEX, but without the regulatory burdens or benefits. I believe that

the “good government” approach is not to wait for another economic calamity like Amaranth to occur, but for Congress to address the Enron loophole as quickly as possible.

Thank you for the opportunity to be with you today, and I’d be happy to answer any questions.