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Remarks

Remarks of Acting Chairman Walter L. Lukken

Hearing to Examine Trading on Regulated Exchanges and Exempt Commercial Markets
September 18, 2007

It is a great pleasure for me and my fellow Commissioners to welcome you to today's hearing on Exempt Commercial Markets (ECMs). I would like to thank all of the distinguished panelists for being here to share their views and expertise with the Commission.

The proper regulation of the nation's energy markets is one of the most significant issues facing this Commission. Energy prices discovered on these markets greatly impact our economy and every American—ranging from residential consumers to main street businesses to Wall Street firms.

It is this Commission's mandate to ensure that our energy markets remain free of price distortions and fraud. Recent hearings before Congress have highlighted concerns that these markets are subject to abuse and not adequately reflecting the fundamentals of supply and demand. Whether this perception has a basis in fact is the subject of today's hearing but regardless, this doubt is troublesome because it could keep potential users from managing risk or benchmarking prices in these markets. This should be of primary concern as we scrutinize the regulatory framework of these markets today.

In 2000, Congress created a tiered regulatory structure for the futures markets with the passage of the Commodity Futures Modernization Act (CFMA), which attempted to tailor regulatory requirements to the specific risks of the marketplace. This calibrated structure has provided regulators with the proper flexibility and focus as we strive to keep pace with this industry's global growth. One cannot argue with the success of the U.S. futures industry—as demonstrated by its fourfold volume growth since the CFMA's passage, as well as its growing global market share.

Within this tiered design, Congress created a light touch regulatory category called Exempt Commercial Markets or ECMs, on which certain commodities, such as energy, could be traded by institutional participants. Due to the non-retail nature of these markets and their modest beginnings, policymakers believed the risks associated with these institutional exchanges to be low.

However, the energy markets have changed dramatically in these seven years and the Commission's regulation of these markets should evolve in kind. Although these exempt markets have increased competition and lowered costs for derivatives trading, certain ECMs now function as virtual substitutes to regulated exchanges with tight correlation and linking of prices.

Today, the Commission will re-examine the legal and regulatory structure of these markets—noting meaningful similarities and distinctions. In addition to the testimony of affected groups, we will first hear from CFTC staff who will report on their extensive interviews with market participants and their economic analysis on the price discovery functions of ECMs. This broad range of discussions will be valuable as the Commission aims to complete the evidentiary record and provide timely findings to Congress.

In doing so, we must remain true to the risk-based philosophy of the CFMA and be mindful of the potential impact any changes would have on the competitiveness of these global electronic markets. But the heart of the debate will turn on whether the Commission has the proper tools to uphold its core mission – to ensure that these markets are fair, open and transparent, free from manipulation and fraud. This will be our primary focus today.

We look forward to hearing from our distinguished witnesses and I now turn to Commissioner Dunn for his opening remarks.