New York Mercantile Exchange

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07-8 (6)

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July 23, 2007

Ms. Eileen Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St. N.W.
Washington, D.C. 20581

COMMENT

Re: Regulation 18.05

Dear Ms. Donovan:

The New York Mercantile Exchange, Inc. (NYMEX or Exchange) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC) Federal Register Release (Release) dated June 22, 2007. The CFTC requested comment on proposed amendments to CFTC Rule 18.05 (Maintenance of Books and Records). NYMEX is a for-profit corporation organized under the laws of the State of Delaware and is fully regulated by the CFTC as a designated contract market and as a registered derivatives clearing organization. It is the chief operating subsidiary of NYMEX Holdings, Inc. (NYMEX Holdings). NYMEX is the largest exchange in the world for trading futures and options contracts on energy and metals commodities.

The CFTC is proposing to amend Rule 18.05 to provide that every trader holding or controlling a reportable futures or option position will be required to keep books and records concerning all positions and transactions in the same commodity on all reporting markets, exempt commercial markets, exempt boards of trade, foreign boards of trade as well as on over-the-counter transactions undertaken pursuant to the exclusions or exemptions set forth in Sections 2(d), 2(g) or 2(h)(1)-(2) of the Commodity Exchange Act or under Part 35 of the CFTC's rules. The CFTC is also proposing to amend this rule to clarify that every reportable trader must keep books and records for "commercial activities" that the trader hedges with the reportable futures and options positions.

As an overview, while this proposed rulemaking is well-intentioned, by its terms, it is only triggered by reportable levels on a regulated exchange. Consequently, if implemented, this proposal would tip an already un-level playing field in the direction of unregulated trading venues by creating an additional incentive for market participants either to do all of their trading in unregulated venues or to trade at a level below the reportable level on the regulated exchange. Thus, it is quite clear that the proposal would not only impose serious costs on regulated exchanges but also raise public policy concerns by shifting more trading activity away from transparent and regulated venues. On the other hand, this proposal is limited in its effectiveness because of the

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acknowledged infrequent use by the CFTC of the special call procedure. In view of the substantial costs and limited utility of this proposal, NYMEX recommends that the Commission defer this proposed rule-making in favor of a more comprehensive legislative approach.

Turning to the rulemaking proposal in the Release, in support of the proposed amendments, the CFTC notes that "[t]here is a close relationship among transactions conducted on reporting markets and non-reporting transactions." (72 Fed. Reg. 34413, 34414 (2007) (to be codified at 17 C.F.R. Part 18) (proposed June 22, 2007). Indeed, in recent legislative testimony, the CFTC has confirmed its view that certain reporting and non-reporting trading venues are essentially linked. The Commission additionally observed in the Release that it was crucial for the CFTC to assess a reportable trader's overall position in the same commodity in non-reporting transactions:

> "... in order to see the complete picture of the reportable trader's positions in the commodity. This is particularly important in light of the growing volume of trading on, and participation in, the non-reporting markets, the close relationship among the various products and markets, the increasing globalization of the futures markets, and the growth of trading on electronic exchanges and on foreign boards of trade." (ibid.)

As examples of the close relationships among the various products, the CFTC relied upon two examples focusing upon non-reporting products related to NYMEX products: (1) the "virtually identical" natural gas contracts listed on the Intercontinental Exchange (ICE); and the West Texas Intermediate crude oil futures contract that is listed for trading on ICE Futures, a foreign board of trade.

NYMEX is very supportive of the principal intention underlying these proposed amendments, which is to enhance the Commission's ability to deter and to prevent price manipulation or any other disruptions to the integrity of the regulated futures markets. We also note that the CFTC characterized this proposed rule-making as "making explicit" the scope of the CFTC's current authority to obtain this information. Nonetheless, the cost-benefit analysis section of the Release did not give any consideration or analysis to the cost impact of this rule-making on regulated exchanges with reportable position requirements. As discussed below, the costs associated with this proposed rulemaking to the regulated exchanges vastly outweighs the benefits. We find this to be a major flaw in the proposal, which necessitates a different course of action.

NYMEX's own recent experiences with a compliance advisory issued earlier this year confirm that traders are hesitant for purely commercial reasons for anyone, including but not limited to regulatory staff, to have access to their complete book of proprietary trading positions. However, the expansive scope of the information that can be obtained (from a trader with a reportable position) would not be triggered by Rule 18.05 if the trader either stayed below the reportable position level on the regulated exchange or conducted all of its trading in non-reportable transactions.

Thus, Rule 18.05 as amended would simply add yet another incentive for market participants to shift their trading activity from regulated and transparent venues to unregulated and non-transparent venues. While this would be an unintended consequence of the proposed rule-making, it would nonetheless impose a very real cost on regulated exchanges and also would have adverse public policy consequences. Our review of the cost-benefit analysis section also raises an issue as to the extent of the benefits to be obtained from these amendments in light of the CFTC's own acknowledgement that special calls for information on non-reporting transactions "would continue to be made on an infrequent basis." (72 Fed. Reg. 34413, 34416 (2007) (to be codified at 17 C.F.R. Part 18) (proposed June 22, 2007) The avoidance of these reporting requirements by those who would choose instead to leave the regulated exchanges contradicts the intent and purpose of the proposed rule and can be remedied only by imposing identical requirements on linked trading facilities meeting specified criteria.

In our view, the logic of the CFTC's analysis of the evolution of the markets leads in the direction of legislative change resulting in the implementation of reportable requirements on organized trading facilities that have triggered specified criteria. We strongly believe that such a comprehensive approach will provide a more effective solution than the enactment of a stop-gap rule change with seemingly limited effectiveness and with real costs that exceed the anticipated benefits. Consequently, NYMEX respectfully suggests that the Commission defer this proposed rule-making in favor of legislative change. We believe that the flight to non-transparent, unregulated trading facilities to avoid reporting of OTC positions will be swift and will have dire consequences for the regulated exchanges.

Should you require any additional information or have any comments or questions regarding this comment letter, please do not hesitate to contact me at any time.

Very truly yours,

James Newsome /ckb

James E. Newsome
President and Chief Executive Officers

cc: Walt Lukken, Acting Chairman
Michael Dunn, Commissioner