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AGENDA ITEM
For Meeting of: APR 20 1995

April 17, 1995

MEMORANDUM

SUBMITTED LATE

TO: The Commission
FROM: Scott E. Thomas *(Signature)*
Commissioner
SUBJECT: Draft Advisory Opinion 1995-2 (COMEX)

I tend to agree that in the unique circumstances presented, the "conferring members" of COMEX are "members" for purposes of the Act. However, I would focus the reasoning on the following points:

(1) The Membership Rules (S 2.01(a)) only provide for individuals to be members. So called "member firms" are not themselves "members" and only enjoy such "membership privileges" as are conferred upon them by individual "members." The A-B-C agreements, in essence, reflect merely the willingness of individual conferring members to contract away their rights and obligations. Though conferring members ordinarily get "member" status through their member firm, such firms cannot get even membership rights without the actions of conferring members.

(2) The membership privileges of a member firm terminate immediately upon the failure to have at least one conferring member. Membership Rules S 2.40(b) and (d). Where a conferring member "fails," the member firm's membership privileges are automatically revoked. Membership Rules S 2.43(c)(2). Thus, although a conferring member's membership status may be dependent upon the member firm to a significant extent, the converse is true as well.

(3) Although A-B-C agreements generally provide contractually for the member firm to pay for the membership of the conferring member and for fines, the Membership Rules (S 2.32(e)(ii)) provide, "A member who confers membership privileges on a member firm shall be responsible for payment of fines imposed upon such member firm." Thus, regardless of the terms of the A-B-C agreement, the individual conferring member retains a significant financial obligation vis a vis COMEX under the governing documents.

(4) Conferring members stand to lose their very livelihood if COMEX itself is not successful. Unlike those who join voluntary professional associations (such as the ABA) or voluntary trade associations or business leagues (such as the Chamber of Commerce), conferring members' jobs and means of economic survival are conditioned on COMEX remaining a viable operation. It is needed to carry on the commodities and futures business. Though this is not an ownership interest like purchasing a seat on the exchange, it reflects a strong financial attachment to the organization.

(5) Conferring members are themselves subject to the various disciplinary rules of COMEX and thereby expose themselves and their member firms to great financial risk should they be suspended. This aspect of industry self-regulation through personal responsibility of those denominated as members by the organization presents a unique financial relationship between COMEX and conferring members.

I would incorporate the foregoing into the draft by adding the following lead-in sentence after "firms." on page 7, line 7: "The Commission concludes that conferring members are 'members' under 11 CFR 55 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(i) for the following reasons:" Then the points enumerated above would be substituted for the OGC text that begins with "The Explanation . . ." on page 7, line 7, and ends with line 13 on page 11.