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To whom it may concern

I am writing on behalf of the Futures and Options Association (FOA), which is a European industry association with over 170 international members including investment banks, brokerage houses, commodity trade houses, oil and energy companies, exchanges, clearing houses and professional service providers engaged in supporting the carrying on of exchange-traded and derivatives business, to notify the CFTC of our wish to testify at the forthcoming public hearing on the issue of what constitutes a 'Board of Trade, Exchange or Market Located Outside the United States'.

The CFTC has indicated that any individual or organisation wishing to appear before it on this issue should provide certain key information and that is set out in the attached Memorandum.

The CFTC has also indicated that its objective in holding the proposed public hearing is to provide it with an opportunity to hear the 'diverse views of various interested or potentially affected parties as it moves forward in the formal process of defining what constitutes a board of traded located outside the United States under Section 4(A) of the CEA'. The FOA believes that, as the only European industry association dedicated to representing the interests of a broad cross-section of market participants (and exchanges) engaged in the carrying on of business (or facilitating trading) in exchange traded futures and options, it is well placed to contribute to the Commission's objective in holding this hearing.

In the circumstances and pursuant to the attached summary of our views, we hope that the CFTC will afford the FOA with an opportunity to testify at the forthcoming public hearing.

Yours sincerely

Anthony Belchambers

Chief Executive

Futures and Options Association

PS We realise that we are submitting this slightly later than the June 12 deadline but were given permission to do this by Bruce Fekrat. This allows for the time difference between the UK/US.

2 attachments

<<Memo CFTC 120606 v2.doc>> <<Annex A.pdf>>

International Derivatives Week 2006
FIA/FOA @ the QEII

Wednesday 21 June and Thursday 22 June 2006

For Programme details and to register please visit www.futuresindustry.org/london or www.foa.co.uk

If you do not wish to receive electronic communications from the FOA in future, please email our database administrator (briggsf@foa.co.uk) with the word "REMOVE" in the subject field.



The Futures and Options Association

CFTC HEARING ON FOREIGN BOARDS OF TRADE

Memorandum of Information

12 June 2006

Applicant Organisation

The Futures and Options Association (FOA) is the industry association for 160 international firms and institutions which engage in the carrying on of derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, as well as a number of firms and organisations supplying services into the futures and options sector.

For further information, please see Annex A which comprises a short introductory flyer. Additional information, including our Report on Activities, can be found on our website, www.foa.co.uk.

Applicant Witness

The FOA proposes that its Chief Executive Officer, Anthony Belchambers, whose details are set out below, would serve as its representative for the purpose of giving evidence at the proposed public hearing.

Anthony Belchambers is a barrister and currently Chief Executive of the FOA. Previously he served as General Counsel for the UK Joint Exchanges Committee (JEC) where his responsibilities included co-ordinating exchange activities and lobbying on behalf of the London-based derivatives markets in relation to international, EU and UK regulation and taxation issues. Prior to joining the JEC, he held the position of Company Secretary and General Counsel to the Association of Futures Brokers and Dealers (AFBD), where he played a major role in securing the licensing of the first UK regulatory authority to cover derivatives and drafting the UK regulations for derivatives.

He is also Chair of MiFID Connect, a member of the Court of the Guild of International Bankers (GIB) and a co-founder, in their original forms, of both the Alternative Investment Management Association (AIMA) and the European Parliamentary Financial Services Forum (EPFSF). He initiated the establishment of the UK Parliament's Associate Parliamentary Group on Wholesale Financial Markets and Services and the EU/US Coalition on Financial Services.

Summary of Statement by the Futures and Options Association

1. The Futures and Options Association (FOA) recognises the critical importance of Boards of Trade, Exchanges and Markets engaged in facilitating the trading of futures, options and other derivatives being licensed and regulated according to internationally accepted standards in order to meet the public good need for market integrity, high standards in governance, effective management of conflicts of interest and fair and open trading practices and procedures. It is the primacy of the need to fulfil these standards that governs the submission of the FOA.
2. United States regulation of derivatives Boards of Trade and Exchanges is the responsibility of the Commodity Futures Trading Commission (CFTC), pursuant to the Commodity Exchange Act (CEA) and the Commodity Futures Modernisation Act (CFMA) on the basis of core principles, which take into account the nature and risk of the market, the products traded on it and the types of market participant engaged in trading them.
3. The FOA is strongly supportive of the current policy of the CFTC, which enables a Foreign Board of Trade (FBOT) to make its products available for trading in the US by permitting direct access to its electronic trading system from the US (direct access) through the use of terminal placement no-action letters. Such letters are conditional upon the provision of certain critical information by the FBOT regarding its membership criteria, its automated trading and order-matching systems, its settlement and clearing arrangements, the applicable regulatory regime and on the range and extent of information-sharing agreements in force that cover its market; and on continued compliance with any conditions that may be attached to the letter.
4. The FOA believes the terminal placement no-action letters have worked well (with no evidence of any consequential market failure), is consistent with the evolution of an increasingly international marketplace and has worked to the general good of market participants and their customers in the US and elsewhere.
5. Following the successful launching by ICE Futures of its cash-settled WTI futures contract on 3rd February – which is founded on a product traded principally in the US and priced off a NYMEX settlement price – the CFTC now wishes to determine the criteria by which a FBOT which makes its products available for trading in the US via a terminal placement no-action letter should be treated as not being 'located outside the US'.
6. The FOA believes that this review poses two questions, namely:
 - (a) Are there appropriate (and measurable/workable) criteria by which a FBOT may be deemed to be no longer 'located outside the US'?
 - (b) If it is deemed to be 'located' inside the US, is it regulated by its natural home state authority to a standard which would be sufficient for the purposes of unilateral or mutual regulatory recognition and, if not, would any perceived essential deficiency be capable of being cured by a more comprehensive information-sharing arrangement or by the mandated or voluntary observance of 'top up' requirements – avoiding the damaging introduction of burdensome and costly additional tiers of regulation (see para 9).

7. With reference to paragraph 6(b) above, it is a critical part of the submission of the FOA that, where the rules and guidance which govern the licensing and regulation of Boards of Trade and Exchanges located outside the US by their licensing authorities conform to internationally accepted standards and, even though not necessarily being the same as those prevailing in the US, are comparable in terms of overall output (and are supported by comprehensive Memoranda of Understanding), mutual recognition should prevail for the purpose of avoiding unnecessary regulatory duplication and conflict.
8. In terms of defining the location of a Board of Trade, Exchange or Market the primary purpose must be to determine its natural home state regulatory authority. A parallel but secondary purpose is then whether it has a sufficiently extensive commercial 'reach' into another jurisdiction that would justify the exercise of further due diligence (along the lines indicated in para 6(b)) by another regulatory authority. For this purpose, the primary tests for determining the natural home state regulatory authority would be the location of the relevant Market's headquarters, the location of its core 'business practise' and the location of the corporate 'mind' of the Market.

Secondary factors might include the location of 'screens' but should not include the outsourcing of administration or process functions or the location of servers, which are designed to sustain the Market's international competitiveness.

9. In its Request for Comment, the CFTC in Section II, the CFTC states that the *"Commission recognises that cross-border trading is a growing segment of the trading volume for all futures exchanges, both foreign and domestic. Accordingly, in formulating its regulatory approach the Commission will strive to ensure that that it neither inhibits cross-border trading nor imposes unnecessary regulatory burdens"*. It states further, on page 14 that it *"would seek to avoid any measures"* that have these consequences. The FOA wholly supports these laudable objectives and believe that they should govern the CFTC's approach when determining whether or not an FBOT should be deemed to be a US market.
10. For the reasons set out below, the FOA does not believe that such criteria as source of trade volume/location of users, the nature of an exchange contract or the use of electronic order routing systems are appropriate (or even workable) for the purpose of defining the location of an exchange.
11. The CFTC questions whether the US location of the users of an FBOT or trade volume that is sourced from within the US is relevant in assessing whether a Board of Trade's contacts in the US are so extensive that the FBOT should be required to be registered as a DCM. At the same time, the CFTC recognises that in a globalised market place, increasing numbers of exchanges will be looking to internationalise the spread of contracts that may be traded on their market and that, inevitably, will generate significant business flows from outside the immediate jurisdiction of the exchange.

For example, EUREX Frankfurt AG is, without doubt, a German licensed and regulated market, yet a major proportion of its volume is generated out of the UK, albeit by international investment banks and proprietary traders (some of which may originate from the US). It is not suggested that it should therefore become a UK Recognised Investment Exchange (RIE). Euronext.liffe, for its part, has a broad spread of international contracts and, as the CFTC will know, at one point, was the leading exchange for the trading of German Bunds and enjoyed significant consequential volume sourced out of

Germany, yet it was not suggested that it should become a German licensed exchange.

Indeed, trading volume of most of the major exchanges originates from a large number of jurisdictions generated largely by the increasingly international rights of trading access (not dependent on location) afforded by exchanges. Aside from internationalising business flows, it is anticipated that the US, because of the sheer size of its economy, will be sourcing large amounts of liquidity volume across a broad cross-section of exchanges around the world. The FOA does not believe therefore that trading volume is an appropriate or even a workable measure in a globalised international market place for determining the location of an exchange for regulatory purposes, particularly since the source of that volume will vary from year to year (for example, driven by national economic pressures/priorities).

12. The CFTC also questions whether or not the nature of an exchange contract should be used as a criterion for determining whether or not an FBOT should be deemed to be located in the US (i.e. where it has a significant economic effect in the US). The listing of such contracts may justify additional "top up" information disclosure requirements and additional due diligence on whether the home state regulatory authority has adequate powers to take action in relation to those contracts, but the FOA does not believe that it is an appropriate test for determining the "location" of an exchange.

The FOA would reiterate its view that in a globalised trading environment where exchanges are competing for volume and liquidity, the larger markets will inevitably list contracts, which have an economic impact in countries outside the jurisdiction of the exchange. In the case of specially designed contracts with multi-jurisdictional impact or where an exchange lists several contracts, each of which may have an economic impact in another jurisdiction, regulatory reliance on the nature of those contracts for determining the issue of "location" will generate the unworkable consequence of multi-jurisdictional regulation (in whole or in part) of a significant number of exchanges around the world (including in the US) and, through those exchanges, their market participants.

13. The CFTC also poses the question as to exactly what is meant by providing direct access to an electronic trading system from the US. The FOA believes that, while the location of trading screens of FBOTs in the US have sometimes been traditionally regarded as 'extending the trading floor' into another jurisdiction, orders transmitted via electronic order routing systems from the US to firms located outside the US for entry into the trading system of a FBOT, while it may be 'US generated volume', is not the consequence of the FBOT extending its 'location' into the US. The use of electronic order routing systems is merely an electronic alternative to the transmission of orders by telephone.
14. As an aside, the FOA would also emphasise that it does not believe that it is appropriate to use ownership as a criterion for determining the location of an exchange. This would not only be an unworkable rule, but it would seriously inhibit cross-border corporate activity, particularly by US enterprises.
15. As the CFTC will be aware, the FOA initiated the establishment of the EU/US Coalition on Financial Regulation to encourage the regulatory authorities to take all reasonable steps to avoid unnecessary regulatory duplication or conflict as regards the carrying on of cross-border transatlantic business. The FOA is concerned that the CFTC may, in using any of the suggested criteria

(referred to above) for asserting that a non-US located market has a location in the US:

- impair the ability of exchanges to compete with each other to the benefit of their users and customers by facilitating the trading of international or non-domestic contracts;
- by introducing regulatory duplication/conflict, exacerbate legal and regulatory uncertainty and/or increase trading costs unnecessarily to the disadvantage of market intermediaries and their customers;
- obstruct the ability of market operators in the US to expand their operations outside the US because of non-US concerns that market acquisitions by US operators will bring in train duplicative or conflicting regulation and impair the prospect of establishing an efficiently regulated market because of its transatlantic involvement;
- generate a comparable interpretation in the EU, which will "mirror" the criterion adopted by the CFTC and which will impair therefore the ability of US exchanges to internationalise their own markets and facilitate trading in non-domestic contracts.

16. In keeping with the indications set out in CFTC release #5184-06, the FOA has restricted its observations for the purpose of fulfilling the CFTC mandate for respondents to provide only 'a brief summary or abstract' of the respondent's case. The FOA confirms, however, its intention to provide a much more detailed statement of evidence in due course and hopes that it will have the opportunity of appearing at the proposed public hearing through its Chief Executive Officer to enlarge upon the points set out in their memorandum.



...representing the interests of the Derivatives Industry

What is the FOA??

The FOA is the principal European trade association for participants in the derivatives industry. Established in 1993, the FOA has an international membership drawn from a wide range of business sectors.

Who does the FOA represent??

The FOA's core international membership includes banks, brokers, fund managers, energy and power market participants, spread betters, commodity trading companies, exchanges and clearing houses. The FOA is also supported through the membership of accountancy and consultancy firms, lawyers and system vendors that service the derivatives industry.

What does the FOA do??

- Lobbies regulators and government bodies to improve the regulatory and tax environment for firms in the derivatives sector.
- Develops guidelines to help firms navigate their way successfully through their regulatory obligations.
- Provides standard industry documentation to help firms reduce costs.
- Offers a comprehensive series of complimentary forums that focus on Clearing & Settlement, Compliance, Energy, Power Trading and Prudential Regulation and Risk.
- Offers FOA members a confidential 'helpline' offering advice on regulatory matters.
- Provides a free subscription to the FOA technical journal, discounts on training, publications and other services.
- Raises parliamentary awareness and understanding of the derivatives business via a programme of briefings. The FOA is a founder member of the European Parliamentary Financial Services Forum and in the UK acts as the Secretariat to the Associate Parliamentary Group on Wholesale Financial Markets and Services.

What are the benefits of membership??

- Ability to influence legislative and regulatory change via Board, Committees and Working Party representation.
- Access to the latest industry information via the combination of FOA forums, specialist workshops, conferences, regulatory papers and publications.
- Opportunities to discuss and address business and industry issues through liaison with your counterparts in other firms.
- Allows you to keep up with industry good practice and hence match the business standards of your peers.
- Helps to reduce firms' business overheads through the delivery of pooled-cost projects.

How much is an annual membership subscription??

- Clearing firms – between £7,000 and £29,000 depending upon the volume cleared.
- Non-clearing firms – £7,000.
- Firms providing support services to the derivatives industry – £2,000.

How do I find out more information??

Address: The FOA
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Fax: +44 (0)20 7621 0223
FOA website: www.foa.co.uk

** See overleaf for the 'Who's Who of the FOA membership' **



MEMBERSHIP

FINANCIAL INSTITUTIONS

Abbey Financial Markets
ABN AMRO Futures Limited
ADM Investor Services International Ltd
AMT Futures Limited
Bache Financial Limited
Banc of America Futures, Incorporated
Banca Caboto s.p.a London Branch
Banca d'Intermediazione Mobiliare IMI SpA
Barclays Capital
Bear, Stearns International Limited
Berkeley Futures Ltd
BGC International
BNP Paribas Commodity Futures Limited
Calyon Financial SNC
Citigroup
City Index Limited
CMC Group Plc
Commerzbank AG
Credit Suisse Securities (Europe) Limited
Cube Financial Limited
Daiwa Securities SMBC Europe Limited
Deutsche Bank AG
Dresdner Kleinwort Wasserstein
FIMAT International Banque SA, UK
Branch
Fortis Bank Global Clearing - London
Branch
GFI Securities Limited
Global Trader Europe Ltd
Goldman Sachs International
Halewood International Futures Limited
HBOS Treasury Services Plc
HSBC Bank Plc
ICAP Securities Limited
IFX Markets Ltd
IG Group Holdings Plc
JP Morgan Securities Ltd
Lehman Brothers International (Europe)
Liquid Capital Markets Ltd
Macquarie Bank Limited
Mako Global Derivatives Limited
Man Financial Ltd
Marex Financial Limited
Merrill Lynch Pierce Fenner & Smith
(B&D) Limited
Mitsubishi UFL Securities International Plc
Mizuho Securities USA, Inc London
Monument Securities Limited
Morgan Stanley & Co International
Limited
Nomura International Plc
ODL Securities Limited
Rabobank International
RBS Greenwich Futures
S E B Futures
SG London
Standard Bank Plc
Starmark Trading Limited
The Bank of Nova Scotia
The Kyte Group Limited
Tullett Liberty (Securities) Ltd

UBS Limited
Wachovia Securities International Limited
WestLB AG

EXCHANGE/CLEARING HOUSES

APX Group
Chicago Board of Trade
Chicago Mercantile Exchange
Dalian Commodity Exchange
EDX London
Eurex Frankfurt AG
Euronext.liffe
FINEX Europe
ICE Futures
LCH.Clearnet Group
MEFF RV
NYMEX Europe Limited
Powernext SA
RTS Stock Exchange
Shanghai Futures Exchange
Singapore Exchange Limited
The London Metal Exchange
The South African Futures Exchange
The Tokyo Commodity Exchange
The Tokyo Grain Exchange

SPECIALIST COMMODITY HOUSES

Amalgamated Metal Trading Ltd
ED & F Man Commodity Advisers Limited
Engelhard International Limited
Glencore Commodities Ltd
Koch Metals Trading Ltd
Manro Haydan Group
Metdist Trading Limited
Mitsui Bussan Commodities Limited
Natexis Commodity Markets Limited
Phibro GMBH
Sempra Metals Limited
Sucden (UK) Ltd
Toyota Tsusho Metals Ltd
Triland Metals Ltd
TRX Futures Ltd

ENERGY COMPANIES

Accord Energy Ltd
Atel Trading AG
BP Oil International Ltd
British Energy Power and Energy Trading
Limited
British Nuclear Group
ChevronTexaco
ConocoPhillips Limited
E.ON U.K
EDF Energy
EDF Energy Merchants Ltd
Energy Data Company Ltd
Gaselys
International Power plc
Merrill Lynch Commodities (Europe) Limited

National Grid Electricity Transmission Plc
RWE Trading GMBH
Scottish Power Energy Trading Ltd
Shell International Trading & Shipping Co
Ltd
SmartestEnergy Limited
Statoil (U.K.) Limited

FUND MANAGERS

Close Fund Management
M & G Investment Management Ltd

PROFESSIONAL SERVICE COMPANIES

Ashurst
Baker & McKenzie
Barlow Lyde & Gilbert
BDO Stoy Hayward
BPP Professional Education
Cass Business School
Clifford Chance
Clyde & Co
CMS Cameron McKenna
Compinet
Deloitte
Denton Wilde Sapte
Dewey Ballantine
DLA Piper Rudnick Gray Cary UK LLP
EDS
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Eukleia Training Limited
Exchange Consulting Group Ltd
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Henry Davis York
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International Capital Market Association
JLT Risk Solutions Ltd
Katten Muchin Rosenman Cornish LLP
KPMG
Landwell
Linklaters
Morgan Lewis & Bockius LLP
Mpac Consultancy LLP
Norton Rose
Patsystems (UK) Ltd
Pekin & Pekin
Rolfe & Nolan Plc
Rostron Parry Ltd
Shearman & Sterling (London) LLP
Simmons & Simmons
SJ Berwin & Company
Stephenson Harwood
SunGard Futures Systems
Taylor Wessing
Travers Smith Braithwaite
Ubitrade - GL TRADE Group
Wilmer Cutler Pickering Hale and Dorr LLP
Wragge & Co