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Futures Industry Association
Prepared Statement on Foreign Board of Trade Issue
For Hearing Before the Commodity Futures Trading Commission

June 27, 2006

The Futures Industry Association looks forward to the Commission's hearing on the foreign board of trade issue. While FIA will be filing a more extensive formal comment letter with the Commission, we wanted to take this opportunity before the hearing to summarize our views.

A number of years ago, the Commission authorized a formal no-action process to address whether and how foreign boards of trade could do business in the United States. That no-action process has worked well --

to provide more trading opportunities for customers;

to facilitate innovative electronic trading techniques;

to promote competition among exchanges world-wide; and

to foster international regulatory cooperation.

While the current no-action practice has been successful, FIA supports the Commission's desire to take a fresh look at the FBOT issues raised in light of changes in the electronic trading landscape.

The starting point for any review must be the Commodity Exchange Act, which creates a special status for any "foreign board of trade" or FBOT. The statute mandates that any exchange "located outside the United States" qualifies as an FBOT and accordingly may

lawfully list most futures contracts for trading by U.S. customers without Commission approval.

When Congress enacted the FBOT test in 1982, an exchange's location was determined by looking at the location of the exchange's trading floor as well as where it was legally-organized, its self-regulation was conducted or managed and its government regulation was authorized. As electronic trading systems largely supplanted trading floors world-wide, linking an exchange's location to where its orders were matched became more problematic. However, many FBOTs still are legally organized and incorporated **outside the U.S.**, are managed by self-regulators **outside the U.S.** and are subject to meaningful government regulatory regimes **outside the U.S**. In these circumstances, FIA believes these exchanges should continue to be treated as FBOTs **"located outside" the U.S.** so long as U.S. customers trade on these markets through, or as authorized by, regulated intermediaries.[1]

Congress has never said that an FBOT must establish that its principal place of business is located outside the U.S.; Congress merely requires an FBOT to be "located outside" the U.S. As FIA reads the statute, even substantial contacts in the U.S. will not disqualify an exchange located outside the U.S. from being an FBOT.

Consistent with this statutory interpretation, when the Commission is deciding what constitutes a FBOT, FIA believes that the Commission should not consider U.S. customer volume, exchange server placement, or "nationalizing" particular futures contracts. Each of these factors could disadvantage U.S. customers, decrease exchange competition and heap substantial costs (and potential liability) on U.S. firms.

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[1] FIA is not certain how the Commission is defining today "direct U.S. access" to FBOTs. FIA does not believe artificial distinctions should define "direct access." In our view, therefore, if an intermediary provides software to a U.S. customer allowing the customer to transmit orders directly to an FBOT, that FBOT should still be considered to be "located outside the U.S."

FIA appreciates that the Commission-authorized, no-action practice has allowed, and will allow, FBOTs to offer contracts now listed on U.S. designated contract markets under foreign regulatory structures that differ from those of the Commission. We are confident the Commission will be able to continue to use its leadership position within the international regulatory community to harmonize its regulatory approach with those of its international colleagues. In the end, FIA believes the Commission's leadership in this regard will make futures markets stronger both nationally and internationally.