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NEW YORK
BOARD OF TRADE

June 26, 2006

Eileen Donovan, Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: What Constitutes a Board of Trade Located Outside of the United States

Dear Ms. Donovan:

A representative of the New York Board of Trade ("NYBOT") will not be able to participate in the June 27, 2006 Commodity Futures Trading Commission ("CFTC" or "Commission") hearing on the placement of terminals by foreign boards of trade ("FBOTs") in the United States. However, the treatment of a FBOT by the Commission could have significant implications for NYBOT contract markets that are based on agricultural commodities produced and delivered overseas. With the passage of the Commodity Futures Modernization Act of 2000 and the establishment of core principles rather than prescriptive regulation, the regulatory playing field for U.S. contract markets has been leveled considerably, allowing U.S. exchanges to compete more effectively in global markets. We therefore ask the Commission to proceed cautiously to avoid negative repercussions for U.S. exchanges that seek to offer electronic trading of their products on an international basis.

Faced with the globalization of markets, the goal of the CFTC should be to foster cross-jurisdictional regulatory cooperation, comparability and coordination. Thus far, the no-action review process for FBOTs that wish to place terminals in the United States has served these purposes well. It is based on an evaluation of whether the FBOT is subject to a comparable, comprehensive regulatory regime and whether the CFTC has adequate information-sharing agreements with the foreign regulator of the FBOT. The general guidelines for no-action relief used by the CFTC staff for reviewing the rules and procedures of the FBOT are similar to the core principles in the Act applicable to designated contract markets. To the extent that the CFTC has concerns about the particular manner in which a core principle is met under the foreign regulatory scheme it can make additional arrangements with the FBOT and foreign regulator to remedy the problem by granting no-action relief with additional stipulations.

The CFTC's June 8, 2006 Request for Comment states that the Commission is now considering whether a certain "level of contact with the U.S." should be used to determine whether a FBOT is "located outside the U.S." for purposes of Section 4(a) of the Commodity Exchange Act (the "Act"). We do not believe it is possible to identify thresholds for the placement of terminals by a FBOT on the basis of volume traded in the United States, location of management or characteristics of the contract, such as the origin of the underlying commodity, primary location of the cash market or location of delivery points, without being arbitrary and inviting reciprocity from foreign boards of trade. Such an approach runs the risk of creating barriers to U.S. exchanges as they attempt to expand business abroad. Rather, we believe that the key determinant of whether an exchange is a bona fide FBOT should be whether it is registered or licensed by a foreign regulatory authority that administers a comprehensive, comparable regulatory scheme, as determined by the Commission.

The international nature of NYBOT's commodity markets makes us particularly susceptible to compensatory actions that foreign regulators may take if the CFTC determines to use measures of "level of contact with the U.S." to determine whether a market is a FBOT. The commodities underlying NYBOT's sugar 11, coffee and cocoa contracts are produced overseas and often in countries where the CFTC does not have information-sharing arrangements. Of the 30 countries where sugar may originate, only four have information–sharing agreements with the United States. For cocoa, growths from over 30 countries are eligible and only two of these have information sharing agreements with the CFTC. NYBOT plans to make electronic trading available for all of its products and to place terminals for trading sugar, coffee and cocoa in foreign countries, including some where the products are produced, stored and delivered. Considering the importance of the underlying commodities to their economies, these countries will likely take a strong interest in how our markets are regulated by the CFTC and, specifically, how the CFTC treats FBOTs wishing to place terminals in the United States. It may be the case that those countries where regulators have information-sharing agreements with the CFTC will accept the CFTC's regulation of these markets and not impose duplicative requirements. However, for countries without regulated futures markets, the approach they may take is less predictable. Therefore, the Commission should carefully consider the possibility of unintended consequences in determining how to proceed.

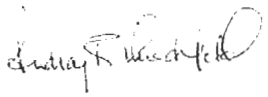
The Request for Comment also asks whether it is appropriate to use certain specified criteria --volume, underlying cash market, center of management-- to determine presence in the United States for purposes of Section 4(a). As a threshold matter, we do not believe that the volume transacted by U.S. customers should be used to determine whether a board of trade can be considered a FBOT. Whether one or one million trades are placed by US customers, the CFTC should assure that a FBOT has an adequate and comparable regime before it can place terminals in the U.S. Further, while the Commission must review such contract characteristics as the underlying cash market and delivery points to assure that a contract is not susceptible to manipulation, we do not believe that ascribing "locations" on that basis is possible or that doing so would advance the public interest. For example, the commodity underlying NYBOT's sugar 11contract is grown in, and delivered from, many foreign countries (to the exclusion of the U.S.) and significant trading in the contract is conducted by persons from many locations outside of the U.S. However, NYBOT is the premier market for this commodity and it is unlikely that any market integrity or customer protection benefits would accrue by subjecting this contract to regulation in multiple jurisdictions. In fact, just the opposite could happen, as regulatory uncertainty and increased costs could harm the market. Similarly, we do not believe that defining

"location" on the basis of management, ownership arrangements or the location of offices and technology of an exchange is instructive, as they are likely to change over time and certain functions, such as clearing and technology services, lend themselves to outsourcing. Accordingly, we question the appropriateness of introducing such factors in determining status as a FBOT.

We urge the Commission to refrain from actions that would inhibit cross-border transactions or instigate the establishment of burdensome regulatory requirements by foreign regulators on U.S. exchanges that wish to place terminals in foreign countries. Regardless of whether the Commission continues with no-action relief or decides to propose and adopt rules to codify the no-action process, case-by-case review will be necessary and the criteria for review should be similar to the core principles under the Act. The current guidelines used by CFTC staff for determining whether to issue a no-action letter seem to encompass these requirements and the objectives of the Commission as stated in the Request for Comment.

If the Commissioners or staff have any questions regarding the matters contained in this letter, NYBOT would be pleased to discuss them further.

Very truly yours,



Audrey R. Hirschfeld
Senior Vice President & General Counsel

cc: Chairman Reuben Jeffery III
Commissioner Sharon Brown-Hruska
Commissioner Walter L Lukken
Commissioner Michael Dunn
Commissioner Fred Hatfield

David P. VanWagner, Chief Counsel
Division of Market Oversight

Jaqueline Hamra Mesa, Director
Office of International Affairs