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September 22, 1998

COMMENT

Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

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Attention: Ms. Jean A. Webb
Secretary of the Commission

Re: Foreign Board of Trade Terminals

Dear Sir or Madam:

We are counsel to the Toronto Futures Exchange (the "TFE"). The TFE is pleased to respond to the request by the Commodity Futures Trading Commission (the "CFTC") for comment concerning possible rule-making regarding access to non-U.S.

Futures exchanges from trading terminals located in the United States (the "Release").

International Cooperation

Since the TFE is planning to close its floor, electronic access from market participants worldwide is critical to the future development of the TFE's markets. The principal contracts traded on the TFE are index futures on the Toronto 35 and 100 indices. No-action letters have been issued by the CFTC staff covering these contracts, thereby permitting their offer and sale to U.S. persons. The TFE has also obtained an

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order under Part 30 of the CFTC's regulations permitting participating TFE members, subject to certain conditions, to effect transactions with U.S. residents without the need to register with the CFTC as FCMs, or to comply with certain other CFTC requirements.

The CFTC has excellent cooperative arrangements with its counterparts in major markets. Formal arrangements involving the TFE include (1) the Financial Information Sharing Memorandum of Understanding entered into by the CFTC and TFE, as well as other Canadian SROs and agencies covering financial compliance monitoring of firms by these bodies and (2) the July 1992 Enforcement Memorandum of Understanding among the CFTC, Ontario Securities Commission and Quebec's Commission des valeurs mobilières du Québec.

The TFE believes that the history of comity and cooperation reflected in these regulatory actions and arrangements supports the concept of an approach similar to the Part 30 rules involving a two step process to permit the placement of terminals providing TFE access at U.S. locations. We believe that the international orientation of the CFTC has been one source of innovation in U.S. futures markets since a variety of products and soundly-based regulatory approaches have competed and interacted for the benefit of all.

Access Configurations

The TFE believes that any rule-making should contemplate a variety of configurations including (1) proprietary terminals substantially owned and licensed by foreign markets ("Proprietary Terminals"), (2) systems developed by third party

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vendors that meet foreign exchange requirements that are made available to market participants ("Vendor Systems") and (3) order-routing systems that do not involve human intervention or pre-trade order review which are proprietary to market participants ("Order-routing Systems").

Proprietary Terminals

The TFE views the conditions applicable to the relief granted to DTB (now Eurex Deutschland) to be generally appropriate for Proprietary Terminals.

As contemplated in the Release, the TFE believes that Proprietary Terminals should be permitted to be located either in the offices of members of the foreign board of trade or their affiliates. Affiliation should be based upon greater than 50% common voting control.

In the case of foreign markets that have obtained Part 30 relief for their members, we suggest that there should be no additional need to demonstrate comparability of regulation.

The TFE also believes that consideration should be given, in the future, to permitting certain classes of institutional investors to utilize Proprietary Terminals directly on a basis similar to that applicable to Vendor Systems and Order - Routing Systems, as described below.

In the case of Vendor Systems and Order-routing Systems that are not owned by the accessed foreign exchange and that provide substantially the same functionality as Proprietary Terminals, the TFE believes that these systems should be permitted to be used by affiliates of members and by certain U.S. institutional investors to direct orders to a member of the foreign board of trade for entry in the exchange's trading system without the need for human intervention or pre-trade order review, provided certain conditions are met.

The conditions we believe are appropriate are as follows:

(a) A definition similar to the definition "qualified institutional buyer" used by the Securities and Exchange Commission in Rule 144A(a)(1) should be used to determine eligible institutional investors who can be afforded such access. Such an entity would own and invest on a discretionary basis at least U.S. \$100 million in appropriate investments. A lower threshold of U.S. \$10 million could be used for registered broker-dealers and futures commission merchants. Entities meeting these tests can be expected to perform their own due diligence on the characteristics of foreign markets accessed in this manner. A definition resembling that of a QIB would simplify compliance since this definition is widely understood in the international financial community. Affiliates of foreign board of trade members should be permitted to have access using this configuration regardless of whether they are QIBs since no novel customer protection issues arise.

(b) Institutional investor orders should be required to be directed through the systems of either an FCM or an entity exempted from FCM registration pursuant to Part 30 (collectively, "Order Entry Firms"). The Order Entry Firm would be fully responsible for all trades implemented by the institutional investor and would be responsible, at the outset of the relationship and as the need arises, to advise the customer concerning the characteristics of, and risks associated with trading in, the foreign market using electronic means. In such a case, where the foreign market has not voluntarily entered the United States through placement of Proprietary Terminals, the TFE submits that it is more appropriate for the CFTC (or foreign regulator in the case of Part 30 firms) to place responsibilities on the Order Entry Firm to investigate and counsel its institutional customers concerning the nature of the foreign market, consistent with the relationship between the customer and the broker. We would expect that brokers and customers will consider matters similar to those assessed by the CFTC in the case of Proprietary Terminals. We also expect Order Entry Firms and their customers to adopt parameters on the trades that are implemented for both credit and regulatory purposes, including position limit compliance. If this approach is taken, we propose that the CFTC reserve the right to specifically prohibit those arrangements with particular markets in cases where the CFTC deems it to be in the public interest if it loses confidence in a particular market based upon demonstrated harm, but we do not see a compelling need for advance approval.

Bona Fide Foreign Board of Trade

The Release also addressed the issue of which markets should be considered bona fide foreign boards of trade. We suggest that this category should include each market which has obtained Part 30 relief on behalf of its members since, in practice, these are established markets with developed regulatory systems that are principal exchanges in their home markets. We do not believe U.S. volume limitations should be imposed because this penalizes success in developing products that meet market demand and since the exchanges cannot readily verify the sources of orders received since they can be routed to the exchanges in many different ways. Ultimately, exchanges would have to rely on information provided by their members who themselves may be acting for other firms. This would be a cumbersome process of uncertain benefit and accuracy. We also believe that marketing of foreign products through advertising or futures industry meetings in the United States should not be limited since market participants benefit from the free flow of information. Anti-fraud rules should be sufficient to deter misleading communications. We agree, however, that a foreign board of trade should not have a marketing or other office in the United States without appropriate limitations on its activities and the CFTC's consent, since the establishment of such an office reasonably implies a submission to jurisdiction. We suggest, however, that the establishment of representative offices to market exchange products and provide regulatory information to market professionals and institutional investors should generally be permissible.

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We would be pleased to discuss any of the comments in this letter with the Commission or its staff. If we can be of further assistance in this regard, please do not hesitate to contact Keith Boast, Vice President, External Affairs at (416) 947-4301, Timothy Baikie, Special Counsel, Market Regulation at (416) 947-4570 or the undersigned.

Yours very truly,

D. Grant Vingoe

DGV:LL