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COMMENT

Ms. Jean A. Webb
Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Concept Release on the Placement of a Foreign Board of Trade's Computer Terminals in the United States

Dear Ms. Webb:

On July 24, 1998, the Commodity Futures Trading Commission ("Commission" or "CFTC") requested comments on a concept release regarding the placement by foreign boards of trade of computer terminals in the U.S. National Futures Association ("NFA") welcomes this opportunity to comment on the Commission's concept release.

The fundamental concept underlying the Commodity Exchange Act ("CEA") was the restriction of futures trading to government-approved contract markets and an accompanying ban on all futures trading not conducted on such a market. The exchange, typically a traditional brick and mortar type structure, was the place members met during specified hours to trade via competitive open outcry in specifically listed commodities. Regulation of futures contracts, futures trading and all the activities of the participants of these markets flow from this structure. Over the past decade, technology has altered the traditional exchange structure such that computer screens and computer style networks are an increasingly prevalent alternative to the open outcry system. This same technology has also converted traditionally domestic markets into global markets. With the different time zones that exist across the world, the sun never sets on trading activity. Users are demanding access to markets in all time zones whenever they are open. One way to provide this access to a foreign board of trade is through direct electronic access to that exchange from the United States.

In particular, with regard to issues concerning the placement by foreign boards of trade of computer terminals in the United States, NFA supports the Commission's efforts to develop uniform rules about the placement of these terminals in the U.S. that will be consistent with the Commission's obligations under the CEA to maintain the integrity



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and competitiveness of the U.S. markets and to protect U.S. customers without imposing unnecessary regulatory burdens that might inhibit cross-border trading. We believe, however, that the analysis should focus less on the physical placement of actual computer terminals and more on issues relating to any form of direct electronic access to a foreign board of trade from within the United States.

Given the rapidly changing nature of technology and the explosive growth of the internet, issues regarding "foreign terminals" and where they will be located are increasingly irrelevant. Rather than defining "computer terminal," the Commission should be defining "direct electronic access." The term "direct electronic access" should be defined as broadly as possible to cover internet access, access to the exchange through a dial-up electronic system (such as banks offer their customers for personal banking), order execution systems such as universal order execution platforms, or any other type of electronic system that may be developed in the future.

In our view, however, direct electronic access should not be defined so broadly to include any transaction that passes through an intermediary, either with or without direct human intervention. The Commission seems to think that human intervention is important to the process. NFA believes, however, that intervention by an intermediary could be by computer or by person. An intermediary's order-routing system (as opposed to an order execution system) that checks the trade against the intermediary's credit requirements and limits on positions still passes the order through an intermediary, even though no human picks up the telephone and takes the order. Indeed, it could be that such electronic or computer-based intervention via an intermediary would be more effective and more efficient. Furthermore, defining access this way will not sacrifice any of the protections in the Commission's current rules since the intermediaries who are authorized to do business with U.S. customers – registered FCMs and 30.10 firms – have certain supervisory obligations to their customers that apply equally whether a customer calls in an order or types it into an order-routing system.

NFA also shares the Commission's concern that foreign boards of trade do not create categories of membership without creating meaningful distinctions between a member of a foreign board of trade and a customer thereof. In the electronic marketplace or exchange of the future, terms such as customer and member may become blurred given the structural make-up of marketplaces or exchanges. Given the changing electronic marketplace, an exchange may find it desirable to market low-cost exchange memberships to unsophisticated customers. By doing so, many of the protections customers currently receive would be eliminated, and financial and systemic risks would increase.



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The Commission should therefore, require the foreign exchange to provide information on its membership standards as part of the exchange's application for relief. The Commission should then closely examine those standards to ensure that they are meaningful standards rather than a subterfuge for marketing the exchange's products to the general public. For example, NFA's proposed definition of "enumerated person" could be adopted as a minimum standard with which to compare the foreign exchange's membership standards. (See NFA's June 5, 1998 Petition for Rulemaking to Amend CFTC Regulations 1.3, 1.55, 4.7, 35.1 and 36.1.)

The Commission also proposes requiring foreign exchanges to conduct on-site reviews of those U.S. members with direct electronic access. Footnote 39 of the release asks if the Commission should allow these exchanges to contract out those responsibilities to NFA or another U.S. SRO. NFA supports this basic concept and notes that the foreign exchange should be allowed to contract with either NFA or an FCM's DSRO, which has certain operational advantages. NFA is more than willing to conduct on-site audits on behalf of foreign exchanges, provided that NFA can recoup its costs. NFA has entered into these agreements in the past and would be happy to do so in the future.

The release suggests requiring members of the foreign exchange (and their affiliates) to file a request with NFA for confirmation that the member (or affiliate) can place computer terminals in the U.S. and to include the locations of those terminals. However, as noted earlier, this focus on the physical placement of a piece of hardware is too narrow. In the future, the person with access may be able to obtain access through any PC or telephone line. Therefore, asking where the hardware is located is too burdensome and impractical.

The Commission also states that the confirmation request filed with NFA would include a description of any legal actions against the person making the request or any principal. NFA does not understand why this requirement is necessary. First, FCMs are already required to report this information as part of the registration process and the other persons regarding the relief will not be trading on behalf of customers. NFA believes that it is the foreign exchange's responsibility – not the Commissions – to ensure that its members are not predisposed to violate its rules. Our understanding is that our role in this area would be very limited. If the confirmation discloses any legal actions, NFA would send a letter to the requester stating that access will not become effective unless and until the requester receives approval from the Commission. NFA would then send the request to the Commission for its review and decision.



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NFA appreciates this opportunity to comment on the Commission's approach to regulation of these markets. NFA urges the Commission to give serious consideration to these comments and to the comments of entities that participate in these markets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel J. Roth', written over a vertical line that serves as a separator between the signature and the name below it.

Daniel J. Roth
General Counsel

e:kmg/comment. foreignterminals