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April 22, 1999

Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
Attn: Jean A. Webb, Secretary of the Commission

COMMENT

Re: Access to Automated Boards of Trade

Gentlemen and ladies:

We are writing to express our views regarding the Commodity Futures Trading Commission's proposed new rules: 30.11 and 1.71. In general,

1. we respectfully oppose adoption of proposed Rule 30.11 on the grounds that, in our view, the regulation of foreign boards of trades in the manner contemplated appears to be outside the jurisdiction of the CFTC pursuant to Commodity Exchange Act §4(b). Even if, arguably, §4(b) of the CEA is not applicable, the CFTC appears to be attempting through the proposed adoption of Rule 30.11 to place conditions on certain futures and options traded on non-U.S. boards of trade already lawfully accessible to U.S. persons, solely because such futures and options are traded on an electronic marketplaces accessible through electronic means. Such restrictions appear unjustified and contrary to sound public policy; and

2. we respectfully oppose adoption of proposed Rule 1.71 because such rules substantially reiterate provisions of existing Rules 1.31 and 1.35 and common sense principles that already are implicit in many other provisions of the CEA and the CFTC's rules. We believe that the advent of new technology should not be greeted by the proliferation of new rules that materially restate existing rules.

That being said, we appreciate the CFTC's difficult task in evaluating the appropriateness of existing and new rules in the light of rapidly changing technology. Although we are aware that the debate over the CFTC's proposed new rules has been sometimes contentious, we are confident that the industry and the CFTC, working together, will be able to develop an approach to new technology that promptly and properly addresses the needs of U.S.-based customers to have the most efficient means of access to all lawful futures and options, the legitimate concerns of U.S. contract markets that non-U.S. exchanges should not be permitted access to U.S. persons to offer and sell U.S. products on materially more favorable terms than U.S. contract markets, and the interest of the CFTC to minimize systemic risk that might be exacerbated through the sheer speed of trading on electronic exchanges.

As background, FIMAT USA, Inc. is a wholly owned subsidiary of FIMAT International Banque, SA., which itself is a wholly owned subsidiary of Societe Generale. FIMAT USA, FIMAT Banque and its branches, and affiliated companies are commonly referred to as the FIMAT Group, while companies of the FIMAT Group, Societe Generale, and Societe Generale's branches and subsidiaries collectively are commonly referred to as the Societe Generale Group. Companies of the FIMAT Group are located in 13 countries and are members of 33 of the world's principal derivatives exchanges. FIMAT Banque and Societe Generale both maintain their headquarters in Paris, France. In addition to serving as a Director of FIMAT USA, I am Chairman of the FIMAT Group.

In addressing the CFTC's proposed rules, we must stress one point above all others: whatever the outcome, there must <u>promptly</u> be a mechanism established to permit all properly qualified U.S. persons direct access to screen based electronic trading systems of non-U.S. Boards of Trade provided trades ultimately are cleared by U.S. futures

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commission merchants or Part 30.10 authorized non-U.S. brokers. The current status quo that has permitted only EUREX since 1996 a basis to locate its terminals in the United States is patently unfair. In addition, particularly with the need for U.S.-based FCMs to devote more and more resources by year-end to resolve remaining Y2K issues, if any, it is critical that the CFTC promptly eliminate all doubt about the existing authority of FCMs to utilize automated order routing systems that provide U.S. customer access to all lawful futures and options, provided such systems comply with all existing rules and common sense practices that are implicit in current law and existing rules. Moreover, relief related to direct access to non-U.S. board of trades' screen based systems should only be granted contemporaneously with resolution of issues related to FCMs' automated routing systems; to separate these important issues from a technological perspective makes no sense, and in any case, would be unfair.

Consistent with our analysis, we wholeheartedly approach the recommendations of the Futures Industry Association expressed in its comment letter dated April 19, 1999, except that we believe that the approach suggested by the FIA (i.e., the CFTC should use guidelines, rather than rules, to issue orders to non-U.S. boards of trades seeking non-intermediated access to U.S. persons, and the CFTC should issue guidelines, rather than rules, to assist FCMS determine how to comply with existing regulatory requirements when utilizing order routing systems) and the matters addressed in FIA's proposed Guidelines should not be adopted in connection with an interim order, but with a final order, rule or interpretation. **Closure must be brought to both direct order access of screen based systems and automated routing systems once and for all!**

In particular, FIMAT USA offers the following specific comments:

CFTC Proposed Rule 30.11

Proposed Rule 30.11 articulates too many objectionable requirements for a non-U.S. board of trade to make its automated trading systems directly accessible to a U.S. person.

Again, underscoring our position:

1. all futures and options contracts (with the exception of certain contracts based on stock indices or sovereign debt instruments), wherever traded, are authorized to be purchased and sold by all U.S. persons. This is very different that the situation addressed by the Securities and Exchange Commission when it deliberated and issued an Order in March 1999 to Tradepoint Financial Network plc, a London-based electronic securities exchange that proposed to offer non-registered (i.e., non-authorized) securities to certain highly qualified U.S. persons; and

2. CEA §4(b) appears to prohibit the CFTC from adopting a rule or regulation that requires CFTC's approval of any contract, rule, regulation or action of any non-U.S. board of trade, or in any way governs any rule or contract term or action of any foreign board of trade. Accordingly, the CFTC must be very cautious in adopting a regulation that appears to govern rules or actions of foreign boards of trade.

It appears to us, accordingly, that the FIA's proposed guidelines for approval of foreign exchanges that seek to permit direct non-intermediated access to their trade matching/execution facility from the U.S. appear eminently reasonable. In addition, we believe that the following guidelines should be considered:

1. does the Petitioner require that all of its trades for U.S. persons be carried by a U.S. based futures commission merchant or a firm qualified for exemption from registration under Rule 30.10;

2. are the Petitioner's proposed futures and options contracts not materially identical to futures and options contracts already traded on designated U.S. contract markets;

3. do Petitioner's rules and systems explicitly grant clearing members the ability to refuse trades for their U.S.-based customers that are in excess of limits communicated to the Petitioner in advance of trading;

4. does the Petitioner make its rules and regulations readily available (preferably in the Petitioner's home country's language and in English) on the Internet or through another medium generally accessible by U.S. persons; and

5. is the Petitioner's presence in the United States limited to terminals provided to its members or to its direct access facilities, and a minimal ancillary physical presence (i.e., office and staff) solely as necessary to support its terminals and facilities? In evaluating presence, the CFTC should not grant an exemptive order to any non-U.S. board of trade that maintains warehouse or equivalent facilities in the United States, or bases its futures or options contract on commodities (as broadly defined in §1a(3) of the CEA) principally located in the United States (i.e., no direct, non-intermediated access screens for a non-U.S. board of trade's electronic wheat futures contract based on wheat that is deliverable through a U.S.-based warehouse).

We believe that many of the criteria that the CFTC proposes to consider pursuant to proposed Rule 30.11 are problematic. Specifically,

1. a determination of whether the non-U.S. board of trade's home country has a regulatory scheme that is "generally comparable" is far too subjective and unnecessary in light of the fact that the products of the non-U.S. board of trade are, for the most part, already authorized for purchase and sale by U.S. persons; and

2. the agreement of the non-U.S. board of trade to submit itself to the jurisdiction of the CFTC and U.S. courts is far reaching and potentially inhibiting to do business if other regulators adopt a similar rule as a condition for their citizens access to U.S. contract markets' futures and options contracts. Frankly, under applicable case law, such formal agreement is probably unnecessary.

CFTC Proposed Rule 1.71

Proposed Rule 1.71 articulates no material new requirements for a futures commission merchant that accepts orders from U.S. persons, except that it somehow differentiates between, on the one hand, orders for lawfully traded futures and options contracts on U.S. contract markets (or ancillary approved linked exchanges) and open outcry non-U.S. exchanges and, on the other hand, orders for lawfully traded futures and options contracts on electronic non-U.S. exchanges. The problem is, at the end of the day, what is being addressed is lawfully trades futures and options contracts. All other distinctions are not relevant: the CFTC already has in place a comprehensive regulatory scheme that expressly addresses what books and records a futures commission merchant must maintain (and make available to accept customer orders; see CFTC Rules 1.31 and 1.35). Moreover, an FCM already has fiduciary obligations to its customers and obligations of supervision and

internal controls that arguably would require it to have reasonable controls in connection with any automated routing system it utilizes or makes available to its customers.

Proposed Rule 1.71 appears to try to do too much. It endeavors to micro manage the systems and controls an FCM must utilize, directly and indirectly, to offer a particular type of lawful product to U.S. persons. Again, we believe that the Guidelines suggested by the FIA that an FCM should consider in developing an automated routing system are reasonable without being burdensome. The CFTC should formally confirm in an interpretation or similar mechanism that automated routing systems are authorized for all lawful products provided they conform to existing regulations; the CFTC may then articulate the FIA's proposed guidelines and possibly other reasonable guidelines, if necessary, as guidelines the CFTC would consider in evaluating whether an FCM's complies with existing rules.

In particular, FIMAT USA objects to many of the specific criteria proposed by the CFTC for an automated routing system to be authorized:

1. the CFTC is proposing that, as evidence of its exercise of proper internal controls and supervision, an automated routing system must perform trading or position limit checks prior to an order's execution. Although an advance check may be warranted for some customers under some circumstances, it may be impractical and non-justified under many circumstances for many sophisticated, well-capitalized customers who trade on multiple electronic markets in multiple currencies (however, we do believe that automated routing systems should at least have the capability to process credit or other appropriate limits as a matter of sound internal control); and

2. access by automated routing systems should not be limited solely to trading on certain types of exchanges: contract markets and boards of trades exempted by the CFTC pursuant to CEA §4(c). An FCM, as it does now, should be permitted to accept orders for all lawful futures and options and forward such orders in the most efficient means possible to ensure its customers best execution and service. Systems that provide direct access, but limit access to some lawful products, will create unnecessary logistical problems.

* * *

In conclusion, it appears that what the CFTC is trying to proscribe through adoption of proposed rules 30.11 and 1.71 are electronic gateways to lawful products unless the gateways comport with new requirements. Although speed issues presented by these new technologies correctly heightens the CFTC's concerns regarding systemic risk, these concerns do not justify imposing a new regulatory scheme when the old one is mostly broad enough to properly address the CFTC's legitimate concerns:

- minimal information provided to the CFTC by non-U.S. boards of trade - without determinations of comparability -- should be sufficient to permit U.S. persons directly to access lawful futures and options contracts electronically as opposed to dialing a phone particularly where, as now, at the end of the day, such futures and options contracts must be housed with a U.S. FCM or a non-U.S. broker exempted under Rule 30.10; and

- automated routing systems constructed pursuant to existing rules (including rules requiring internal controls) should be adequate to provide the CFTC with a sufficient audit trail to ensure that regulated entities under its jurisdiction comply with existing law and rules.

As the CFTC deliberates on these difficult issues, we respectfully request that it consider the implication if each jurisdiction imposed similar rules as the proposed rules

on foreign boards of trades and routing systems of domestic brokers. We submit that even if a few jurisdictions, in addition to the United States, imposed such rules, the vibrant international exchange-derivatives market place will be adversely and materially impacted.

We appreciate the opportunity to comment on the CFTC's proposed rules. Our hope again, however, is that whatever the resolution of these difficult issues, such resolution is implemented promptly.

If you have any questions, please do not hesitate to contact me at (212) 504-7595, or Gary Alan DeWaal, our Executive Vice President and General Counsel, at (212) 504-7495. Thank you for considering our views.

Very truly yours,

Marc Breillout
Director

cc: Secretary@cftc.gov
Futures Industry Association (Attn: John M. Damgard)