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COMMENT

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April 30, 1999

By Fax

Commodity Futures Trading Commission
 1155 21st Street, N.W.
 Washington, D.C. 20581
 Attention: Ms. Jean A. Webb
 Secretary of the Commission

Re: Access to Automated Boards of Trade

Dear Sir or Madam:

This comment letter is submitted on behalf of 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 proposed exemptive procedures allowing electronic exchanges operating primarily outside the United States to obtain an order permitting electronic access to those exchanges from the United States without being designated as contract markets.

Qualified Automated Order Routing Systems

The TFE supports the philosophy underlying the proposal namely that the regulation of foreign markets accessible from the United States should be primarily left to foreign regulation, provided that the CFTC has a threshold comfort level with the operation of the foreign market and its regulatory system. The specified information required to be included in a petition under proposed Rule 30.11 is generally of a kind needed to satisfy such a threshold.

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We continue to believe, however, that foreign boards of trade accessed through automated order routing systems by certain institutional investors should not require the foreign exchange to petition the CFTC for any form of recognition. In our previous comment letter, dated September 22, 1998, we suggested that the definition of a qualified institutional buyer ("QIB") contained in Securities and Exchange Commission Rule 144A(a)(1) be used for this purpose. It should be accepted that there is some class of institutional investors that by virtue of their investment experience and sophistication need no more protection than FCMs acting for their proprietary accounts. We believe that the petition process should not be required for exchanges that can be accessed through automated order routing systems by such institutions. They can reach their own judgments concerning the quality of the foreign market's trading system and do not need the protections of the CFTC petition process. The proposed rules are farsighted in contemplating electronic retail involvement. They should also be flexible in taking into account the differing circumstances of large institutional investors. The petition process is an unnecessary assertion of jurisdiction in the case of access by the largest institutions.

We therefore propose that the characteristics of qualified automated order routing systems set forth in Rule 1.71(b)(1)(ii) be modified to eliminate the requirement of a petition where access is limited to QIBs by the rules of the foreign board of trade and by contract with the members affording access.

Pre-Trade Credit and Trading or Position Limit Screening

The CFTC has requested comment concerning whether foreign boards of trade offering Direct Execution Systems should "have the ability to provide pre-execution credit and trading or position limit screening." We believe that the supervisory responsibility for these matters should remain with the clearing firm affording access and not with the exchange. In light of Griffin Trading, we would expect that commercial interests will drive clearing firms to perform an enhanced monitoring role. Exchanges, as self-regulatory organizations, together with other SROs and governmental bodies, have a prominent role in examining firm compliance with prudent credit practices and position limits, but these responsibilities must remain the primary responsibilities of the firms involved. Responsibility should not be shifted to the market and self-regulatory organization itself. The

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SRO should be a check on the behavior of firms acting in their own interest and not a substitute for commercial care or legal compliance.

Marketing Activities

Rule 30.11(b)(1)(iii) requires that to be granted an exemption order, the petitioning exchange would, *except for certain incidental contacts with the United States*, be present in the United States only by virtue of being accessible from within the United States via its automated system. In terms of what constitutes acceptable "incidental contacts", we do not believe that a foreign board of trade should be more circumscribed in marketing its products than firms exempt from registration under Rule 30.10. Such firms can engage in advertising activities under the relevant Part 30 orders. In 1992 the potential scope of the relief granted under Rule 30.10 was expanded to contemplate a limited marketing presence in the United States by such firms.

As stated in an order of the CFTC, dated November 3, 1992 (57 F.R. 49644) (the "1992 Order"):

foreign firms which received rule 30.10 relief could, from a location outside of the United States, offer or sell foreign futures or option contracts to persons located in the United States, as long as such conduct did not violate the anti-fraud provision of rule 30.9 and was not otherwise inconsistent with the provisions of the Commodity Exchange Act ... or regulations thereunder or the law of the other jurisdictions in which the firm is located. This conduct could include telephone calls, mailings (both printed material as well as electronically encoded material such as compact discs or computer diskettes), or advertising in media such as radio, television or newspapers (including the transmission of advertising via computer screens).

The 1992 Order expanded the permitted marketing activities to include activities within the United States that are reasonably limited in duration and frequency. For this purpose, visits which do not in the aggregate exceed thirty business days in any one calendar year are deemed to be "reasonably limited."

We believe that a foreign exchange which has obtained relief under proposed Rule 30.11 should not be any more constrained in its marketing activities than firms that have the benefit of a Part 30 exemption. We suggest that only activities going beyond those outlined above should be required to be disclosed in a petition, and

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that a facts and circumstances analysis should be applied to such additional activities, including the establishment of a representative office. Rule 30.11(b)(1)(ix) should also permit a list of prospective activities by the foreign board of trade to avoid the need for frequent amendments.

The discussion of permitted marketing activities in the 1992 Order provides a useful bright line test, which will avoid uncertainty as to the minimal permitted activities that need not be specified in a petition.

Approval of Automated Trading System by Petitioner's Home Country Regulator

Rule 30.11(b)(1)(v) requires the CFTC to determine that a petitioner's home country regulator has reviewed and approved the petitioner's automated trading system. Different jurisdictions give more or less weight to self-regulation. We believe that this provision should be revised to require a representation by the foreign exchange that an independent review was conducted and that the resulting report was provided to its home country regulator. Requiring home country regulatory review and approval is an unnecessary prescription as to how a foreign regulator will supervise the self-regulatory organizations subject to its jurisdiction.

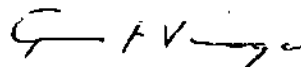
Appointment of Agent for Service of Process

The appointment set forth in Rule 30.11(d)(6) should be limited to matters "with respect to the board of trade's activities' conducted under the Section 4(c) exemption order ..., " as subparagraph (7) is limited. As written, the ability to effect service on the foreign board of trade goes beyond matters arising under this regulatory initiative.

* * *

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

Very truly yours,



D. Grant Vingoe