

CFTC Letter No. 98-71**September 29, 1998****Division of Trading & Markets****Re: Order Entry Systems Permitting Direct Access to Products of Foreign Boards of Trade**

Dear :

Thank you for your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated June 23, 1998 on behalf of your client, "X". By your letter, you request that the Division not recommend enforcement action to the Commission if "X" or any firm affiliated with "X" provides order entry systems ("OES") to certain customers of "X" in circumstances where the OES would be located outside the U.S.

As you are aware, on July 17, 1998, the Commission issued a concept release requesting public comment on issues concerning foreign board of trade computer terminal placement in the U.S. 63 Fed. Reg. 39779 (July 24, 1998). This release is the first stage of a process which the Commission anticipates ultimately will result in the adoption of final rules that, among other things, will establish specific requirements (1) for foreign boards of trade that wish to offer access to their products electronically from within the U.S. without being required to be designated as a U.S. contract market, and (2) for members of such foreign boards of trade and their affiliates that wish to utilize these electronic systems. The concept release requests comment on a number of issues for purposes of developing Commission rules, including issues concerning the treatment of order routing systems and order execution systems. These issues include, among others, whether an order routing system should be considered to be a "computer terminal" under Commission rules, what information should be provided to a customer through such a system, what safeguards and controls should be required to be included in an order routing system, and how the Commission should treat firms operating under Part 30 of the Commission's rules who wish to use these systems.

Although the Commission's recent concept release deals primarily with the use of foreign board of trade computer terminals and OESs within the U.S., the use by customers of U.S. FCMs of OESs that eliminate human intermediation raises certain issues concerning the integrity of the U.S. FCM even if such OESs are operated solely outside the U.S. While the Division believes that the use of such OES systems may have a beneficial effect for customers and FCMs, the Division does not believe that it is appropriate to formulate policies regarding their use via the issuance of "no-action" letters. Rather, the Division intends to address the important issues you raise in conjunction with the Commission's

ongoing rulemaking process regarding electronic access to foreign boards of trade. While we are declining to issue the requested no-action letter, your submission has been very helpful in framing the issues arising from U.S. FCMs' use of OESs, and we encourage you to review the concept release and to file comments thereon that can assist the Commission's development of rules in this area.

If you have any questions concerning this matter, please contact me or Division Chief Counsel David Battan.

Very truly yours,

I. Michael Greenberger

Director