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Remarks of

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In general, we are very pleased with the CFTC's proposed regulatory scheme, as it provides regulatory relief while maintaining market oversight, necessary requirements for financial integrity and appropriate enforcement measures. It strikes a balance between self-regulatory responsibilities and federal regulatory responsibilities. It moves away from prescriptive regulation to give our markets greater flexibility to adapt to a changing marketplace, to meet competitive challenges and to remain innovative.

Today, I would like to summarize nine particular issues that are important to the Exchange. Our views will be more fully elaborated in written comments.

1. Given the restructuring and demutualization of exchanges, it is important to include the following item in the CFTC proposal for regulatory reinvention:

   - Successors to existing designated contract markets (whether by merger, consolidation, sale or other reorganization) should be eligible for RFE status without having to make a full application to the CFTC; e.g., NYBOT would be granted RFE status on the basis of CSCE, NYCE, etc.

2. We welcome the opportunity to be able to convert existing markets or to create new markets under the DTF regulatory regime. In particular:

   - We are pleased that the CFTC is willing to consider, on a case-by-case basis, granting DTF status to non-enumerated agricultural commodities, such as the CSCE's World Sugar Contract, on the basis of the surveillance history and other characteristics of the relevant contract. We applaud the Commission in deleting the mere "threat of manipulation" as the operative standard for making such case-by-case determinations.

3. Regarding agricultural commodities enumerated in Section 1a(3), we have 2 concerns:

   - The proposal states that a DTF, even if it is limited exclusively to commercial traders, could not trade agricultural commodities enumerated in Section 1a(3) of the Act. We have some concerns about this provision as it applies to NYBOT products, and will spend more time determining whether the lost opportunities that will result from such a restriction are wise. We will provide further details in our written comments.

- We recommend that terms and conditions for contracts based on agricultural products enumerated in Section 1a(3) of the Act, whether traded on an RFE, or ultimately a DTF, not be subject to prior CFTC approval.

4. A DTF should not have to provide a trading location physically separate from an RFE for its products.

   - For example, at the NYBOT Sugar 14 (domestic) and Sugar 11 (world) are now traded in the same ring. It makes no sense to force brokers to choose whether they will execute Sugar 11 or 14, or to run back and forth between rings. We believe that both of these contracts could continue to trade in the same ring without confusion and with the appropriate level of oversight, even if one contract market is a DTF and the other is an RFE.

5. In the proposal, RFEs and DTFs which give access to foreign brokers as intermediaries would be deemed the agents of such foreign brokers and their customers for purposes of service of process unless there is an FCM in the chain. We have concerns about whether exchanges would be in a position to compile information needed to serve effectively as such an agent. This provision should be left open by the CFTC until other options can be considered, as this runs counter to the concept of deregulation of exchanges.

6. The proposal states that on a DTF, a floor broker or trader with less than $1 million net worth or $10 million total assets "may have access to trade" only through an FCM clearing member with $20 million capital, so that the broker can be provided with "disclosures and other protections."

   - We believe this provision is probably overkill. Floor brokers and traders are registered and are sophisticated market users. If the reason for using a well-financed intermediary is to provide additional disclosures and other customer protections, there is no need to apply it to floor brokers and traders.

   - The level of sophistication of a floor broker regarding futures and options transactions should not be measured by net worth or total assets. This should be a sophistication test, not a financial test.

   - On this same point, it is not clear what "access" means. Does it mean orders would be entered with the FCM and the FCM arranges execution, or could the floor broker still execute for his own account so long as he carries an accont with the requisite type of FCM which provides the extra disclosures?

7. Under the core principle related to financial standards in proposed Part 38, an RFE must have rules addressing "the protection of customer funds." The guidelines suggest these "should address the segregation of customer and proprietary funds, the custody of funds and investment standards." This seems to create new and onerous burdens for exchanges, since the current scheme does not require contract markets to have rules in such areas, but rather the CFTC imposes them directly. The result could be chaos, as each exchange may adopt different guidelines, especially in a competitive environment.

8. The Commission should keep in mind that some aspects of the transparency of a market will be affected by whether it is electronic or open outcry. For example, bids and offers may only be available for dissemination in an electronic market, since they are not automatically captured by open outcry trading methods. Thus, the level of transparency must be appropriate to the method of order execution.

9. Finally, we urge that the Commission work as aggressively as possible to keep the momentum going on these proposals.