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November 1, 2010

VIA E-MAIL: FBOTRegistration@CFTC.gov

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: New Registration Requirements for Foreign Boards of Trade

Dear Mr. Stawick:

We are writing on behalf of our client, Osaka Securities Exchange Co., Ltd. (“OSE”). We, and OSE, appreciate the opportunity to submit our views in advance of the Commodity Futures Trading Commission (“Commission”) proposing rules with respect to the registration of foreign boards of trade (“FBOT”), and in particular with respect to: 1) the registration procedure; 2) the need to clarify the distinction between “direct market access” and automated order routing systems (“AORS”) under section 4(b)(1)(A) of the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”);¹ and, 3) the applicability of the provisions relating to linked contracts traded on FBOTs.

Osaka Securities Exchange

OSE was established on April 1, 1949, and was the first financial instruments exchange to trade equity derivatives in Japan. It is currently the largest equity derivatives exchange in Japan measured by trading volume and contract values.² OSE is authorized to list for trading futures and options on stock indexes and options on securities.³ As of 2009, OSE handled 89% of the stock index futures market in Japan. The Nikkei 225 Futures, introduced at OSE in 1988, is an internationally recognized index futures.

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”).

² OSE is now the second largest (after the Tokyo Stock Exchange) among the five Japanese financial instruments exchanges that trade cash products in terms of amount of business handled.

³ Options on securities traded on OSE include options on equities, ETFs and REITs.

OSE's Pending FBOT No-action Request

On February 10, 2010, OSE requested confirmation under the Commission's existing Policy Statement⁴ that the staff would not recommend that the Commission take enforcement action against OSE for permitting direct electronic access to its market from the U.S. (the "No-action Request"). OSE's No-action Request was thoroughly reviewed by the staff prior to enactment of the Dodd-Frank Act. OSE supplemented its No-action Request, responding to a number of staff questions beginning in early June, 2010 and concluding on July 11, 2010. At that time, there were no remaining issues outstanding in the review of OSE's No-action Request and OSE's request for no-action relief remains pending with the Commission.

With that history in mind, OSE offers the following comments in advance of the Commission proposing rules relating to the FBOT registration provisions of the Dodd-Frank Act.

Interim Relief for Foreign Boards of Trade with Pending No-Action Applications

Section 4(b)(1)(A) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, authorizes the Commission to adopt rules regarding registration with the Commission of FBOTs that provide direct electronic access to their market from the U.S.. This rulemaking authority is permissive, and the Commission is not mandated by the Dodd-Frank Act to implement a registration procedure for FBOTs.

Prior to the enactment of the Dodd-Frank Act, OSE had requested permission for U.S. members and their customers to directly access the OSE market. OSE's request had been the subject of a thorough review by the staff and OSE was awaiting an on-site inspection at the time of enactment of the Dodd-Frank Act. Substantial Commission staff resources have been expended on OSE's request and little further expenditure of Commission resources would be necessary to complete the process of considering the No-action Request.

The provisions of the Dodd-Frank Act do not become effective until July 16, 2011. It would be a substantial hardship on those markets with pending requests for no-action relief if the Commission defers acting on such requests until after its new registration procedures become effective. This is particularly true for requests for no-action relief which were in the final stages of staff review at the time of enactment of the Dodd-Frank Act. This hardship is particularly pronounced in light of the fact that Congress determined that the exercise of authority by the Commission to establish a registration procedure is within the Commission's discretion. While OSE does not

⁴ The Commission in its Policy Statement entitled, "Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract market or Derivatives Transaction Execution Facility," 71 Fed. Reg. 64443 (November 2, 2006) ("Policy Statement") outlined the procedures that foreign boards of trade should follow in requesting permission to establish direct market access from the U.S. and the information to be provided to the Commission's staff in support of such requests.

question the Commission's wisdom in proceeding to propose rules establishing a registration requirement for FBOTs, we strongly believe that the Commission, as a matter of discretion, should continue to review, and as appropriate grant, no-action requests that were pending at the time of enactment of the Dodd-Frank Act, at least with an interim effective period.

More importantly, completion of OSE's No-action Request by the staff would not entail a significant expenditure of staff resources, and ultimately would conserve Commission resources by recognizing the substantial work already undertaken in the review of such pending requests. Because all FBOTs will be required to comply with the rules that the Commission promulgates, completing action on those pending requests for no-action relief that are already near completion would in no way compromise compliance with the final rules, but would provide FBOTs interim relief during the substantial time which remains before Dodd-Frank Act becomes effective and the Commission can take action on the substantial number of requests for registration that the Commission is likely to receive.

Registration Procedure With Respect to FBOTs with Pending No-action Requests

Section 4(b)(1)(A)(ii) of the Act, as amended by the Dodd-Frank Act, directs the Commission, when adopting the FBOT registration rules and regulations, to consider "any previous Commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country." The Congress recognized by the inclusion of this provision that the Commission should implement the registration procedure as efficiently as possible, taking into account its previous analysis of the regulatory framework of various jurisdictions in connection with prior grants of no-action relief. OSE believes that Congress's intent that the registration process credit such past findings extends to those applications for no-action relief, such as OSE's, which were nearing completion at the time of the enactment of the Dodd-Frank Act.

OSE therefore suggests that if the Commission determines not to complete the processing of pending requests for no-action relief, that it take into account and credit the review and analysis of these issues with respect to those FBOTs with applications for no-action relief that were nearing completion at the time of enactment of the Dodd-Frank Act. At a minimum, FBOTs with pending requests for no-action relief should be assured that the processing and review of any FBOT registration application should be seamless with the review of their pending no-action request which has been interrupted. In this regard, the review of pending applicants for no-action relief should be in advance of any FBOT that either is already operating under existing no-action relief or that has never previously requested no-action relief.

Definition of “Direct Access” Granted by Foreign Boards of Trade

Section 4(b)(1)(A) of the Act, as amended by the Dodd-Frank Act, provides that “for purposes of this paragraph, ‘direct access’ refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.” This provision is clearly intended to apply to the granting by the FBOT to a U.S. person authority to directly access the FBOT’s trade matching engine. As the Commission is aware, many intermediaries have AORS which are solely and exclusively under the intermediary’s control. Nevertheless, there may be some confusion over whether the rule of an FBOT setting the connectivity standards for an intermediary’s AORS connection is in some way a grant of direct market access. It would benefit both FBOTs and market intermediaries if the Commission’s rules clearly distinguish between these two separate and different paths of accessing a market.

Restrictions on Foreign Boards of Trade with Respect to Linked Contracts

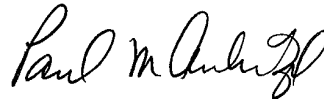
Section 4(b)(1)(B) of the Act, as amended by the Dodd-Frank Act prohibits the Commission from permitting FBOTs to grant its members or other participants in the United States direct access to its trading and order-matching system with respect to linked contracts unless a number of regulatory requirements are satisfied. The protections afforded by this provision are admittedly important in ensuring that markets that operate as a cohesive whole are free from manipulation and abusive trading and that the Commission and the FBOT’s home regulator have the tools necessary to address potentially violative conduct. However, these issues are only able to arise in situations in which there is more than a *de minimis* amount of trading in a linked FBOT contract. Accordingly, OSE recommends that the Commission consider including within its rule a triggering level above which some or all of the linked contract requirements would be effectuated. This recognizes that a *de minimis* amount of trading in a linked contract on a FBOT does not pose a substantial market risk, permits the possible development of greater competition, and would adjust the nature of the regulatory requirements to the level of trading activity on the FBOT. OSE believes that this strikes the appropriate balance between the goals of the Act to promote both competition and market integrity.

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OSE commends the Commission’s efforts to continue to safeguard trading and clearing activities and looks forward to working with the Commission throughout the course of the Dodd-Frank rulemaking process.

We would be happy to discuss our comments above at greater length with the staff. Please feel free to contact Ms. Yukiko Yamaguchi, Manager, Business Development, Osaka Securities Exchange Co., Ltd at +81-(0)3-3665-4152, or Paul M. Architzel of Alston & Bird, LLP, outside counsel to OSE at (202) 239-3492, if you have any questions regarding our comments. On behalf of OSE, I thank the Commission for providing us with the opportunity to provide our thoughts with respect to the Commission's rulemaking.

Respectfully submitted,



Paul M. Architzel

cc: Ms. Yukiko Yamaguchi
Chairman Gensler
Commissioner Dunn
Commissioner Chilton
Commissioner Sommers
Commissioner O'Malia
Daniel Berkovitz, General Counsel
Eric Juzenas, Counsel
Richard Shilts, Director, DMO
David Van Wagner, Chief Counsel DMO
Duane Andresen, DMO