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August 8, 2000

VIA EMAIL AND REGULAR MAIL

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21ST Street NW
Washington DC 20581

Re: Regulatory Reinvention

Dear Ms. Webb:

The Global TeleExchange Inc. is pleased to submit these comments on the Commodity Futures Trading Commission's ("Commission's") proposed regulations, "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries, and Clearing Organizations" (hereafter, collectively the "Proposed Regulations").¹ The Global TeleExchange Inc. ("The GTX") operates a full-service Internet-based portal and real-time applications exchange. The GTX enables member telecommunications companies to buy and sell products, access information, and perform telecom-related research on-line. Currently, The GTX limits the products traded on its exchange to telecommunication minutes capacity.

The GTX supports the Commission's efforts in formulating and promulgating this "regulatory reinvention." We agree that core principle-based regulation will "provide greater flexibility in meeting technological and competitive challenges." 65 Fed. Reg. 38986, 38987. The proposed core-principles methodology is also more consistent with international regulatory practice in other areas, such as securities and banking regulation.² We believe, however, that certain provisions of the Proposed Regulations require clarification.

Proposed Regulation Section 37.3(a)(1)

One of the conditions for becoming a derivatives transaction facility ("DTF") is that the facility have trading rules which include, "depending on the nature of the trading mechanism," either (i) rules to deter trading abuses and adequate power and capacity to

¹ 65 Fed. Reg. 38986; (June 22, 2000).
² See, for example, Objectives and Principles of Securities Regulation, International Organization of Securities Commissions (Sept. 1998); Core Principles Methodology, Basel Committee on Banking Supervision, (Oct. 1999).

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enforce those rules, or (ii) the "[u]se of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules have occurred." Proposed Regulations, §37.3 (a)(1)(i)-(ii). The GTX welcomes the Commission's recognition of the role technology can play in effective self-regulation, but seeks clarification of the precise meaning of §37.3 (a)(1). Because it is set forth in an "either - or" construction, it appears that clause (i) ("rules to deter abuses") and clause (ii) ("technology") are intended to perform the same function - to prevent trading abuses and ensure that, if such abuses do occur, they will be properly discovered and investigated. However, The GTX recommends that the Commission clarify the phrase "impartial access to transactions."

The Commission should not require the facility to make every bid and offer open to every participant. Such a requirement is unnecessary to deter trading abuses and the parties may have bona fide commercial reasons for limiting the parties who may accept a particular bid or offer. The Commission should make clear that "impartial access" does not preclude a facility or the participants from limiting the types of counterparties who may respond to, or be matched with, a particular bid or offer. Commercial parties often desire, for various reasons (such as enforcing credit limits), to limit the types of counterparties, or even an individual counterparty, who may bid on a particular offer.³ Some electronic exchanges, for instance, allow participants to individually disqualify certain other participants from bidding on their offers. A participant may want to do this due to credit restrictions with that counterparty or even "bad experiences" in past dealings with that counterparty.

In addition, The GTX seeks clarification of the requirement in this provision that the technology "capture information." The Commission should make clear that the burden to "capture information" in Proposed Regulation § 37.3 (a)(ii) is no greater than the Recordkeeping requirements imposed by Core Principle Number Six.⁴

Proposed Regulation Section 37.2 (a)(3)

Section 37.3 (a)(3) requires rules "detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities." Again, The GTX requests clarification. The use of the phrase "ensuring the financial integrity" should not be interpreted to require that the facility provide some guarantee or assurance that a member will perform a particular transaction. We assume that if a facility has rules "detailing the financial framework applying to the transactions" it will fully satisfy the requirements of this provision. Certainly some facilities may choose to provide assurances of the financial performance of each transaction on their facility, but such assurances should not be required of all DTFs, just as some facilities might choose to use a recognized clearing organization, but are not required to do so.

³ We note that the Commission has not required DTFs or their members to use a clearinghouse. For those DTFs which choose not to use a clearinghouse, allowing the members to "pre-screen" the credit of their counterparties can be an effective way of managing credit risk.

⁴ Core Principle Number Six, Proposed Regulation § 37.3 (b)(6).

Proposed Regulation Section 37.5 (b)

The GTX fully supports Proposed Regulation § 37.5(b), which will prevent a party from claiming a contract is void or unenforceable due solely to a failure of the parties or the contract itself to comply with, or because of a violation by the DTF of, the terms of the Proposed Regulations. This provision will enhance legal certainty in the marketplace and prevent baseless claims for rescission by economically disappointed counterparties.

Core Principle Number Four - Transparency

The GTX requests that the Commission clarify the meaning of the phrase "actively traded products" in Core Principle Number Four (Proposed Rule §37.3 (b)(4)). If a product is "actively traded," this Core Principle requires the DTF to provide market information not only to its participants, but to the public as well. The level of trading which make a product "active" and therefore triggers this additional burden should be clarified. The GTX urges the Commission to adopt a flexible standard, which can be applied by facilities based upon the context of each particular market, for determining whether a contract is "actively traded."

Core Principle Number Five - Fitness

Core Principal Number Five (Proposed Rule §37.3 (b)(5)) requires appropriate fitness standards for members, operators and owners, their affiliates, and those who make disciplinary determinations. In Appendix A to Part 37 the Commission states that the "minimum standards" are the bases for refusal to register a person under section 8a(2) of the Act. We are concerned that this requirement is overly broad. Section 8a(2) was designed by Congress to apply to persons who are required to register with the Commission and who are involved in markets in which non-commercial customers can participate. Those fitness standards are ill-suited to a DTF in which members and owners are not required to register and in which the members are commercial parties largely trading for their own account. Applying the Section 8a(2) requirements to DTFs would require the DTFs to question their members regarding a panoply of issues that are largely irrelevant in this context. Indeed, for a DTF to ensure compliance, it may have to engage the services of the National Futures Association to police these standards. This would send the Commission's efforts for "regulatory reinvention" in the wrong direction.

Instead, the minimum fitness standards for those DTFs which are limited to commercial parties should vary according to the industry in which the particular product is traded. The GTX proposes that, as long as the DTF fully discloses its fitness standards to its members, each facility should be free to determine its own reasonable fitness standards based upon the products traded. Because the Commission will have access to all of the DTF's rules pursuant to Proposed Regulation § 1.41, the Commission can comment on any specific deficiencies in a DTF's fitness standards.

Core Principle Number Seven - Competition

The GTX requests that the Commission clarify Core Principle Number Seven (Proposed Rule §37.3 (b)(7)). Specifically, because a DTF will not necessarily be in a position to police off-exchange collusion between its members, we request that the Commission clarify that all that is required to comply with this Core Principle is rules prohibiting manipulation and trading abuses on the facility, as well as the means to enforce those rules.

Telecommunications Products

Under the Proposed Regulations, in order for a DTF to trade telecommunications products, one or both of the following conditions must be met: (i) either the individual contract must be approved by the Commission on a case-by-case basis; or (ii) the participants trading the telecom product must be limited to "eligible commercial participants." Proposed Regulations §37.2 (a)(1)-(2). However, the Commission has given little guidance about what factors it will evaluate when considering approving a contract on a case-by-case basis, other than that they should "have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated." Proposed Regulations §37.2 (a)(1).

Telecommunications products, particularly minutes, are not readily susceptible to price manipulation because they have a virtually unlimited deliverable supply. Due to large investments by many carriers in telecom capacity over the past few years and advances in technology, most carriers at any given time have a large amount of excess capacity, most of which is never used.⁵ In fact, at any given time, only approximately 25% to 35% of a carrier's minutes-capable network is utilized, leaving the other 65% to 75% as available capacity. In addition, new participants (such as utilities) are constantly entering the market with yet more capacity. In the major commercial termination points, such as London, New York and Los Angeles, the number of market participants, available capacity and liquidity of transactions makes market manipulation "highly unlikely."

The Commission should articulate the standards it will use to judge whether there is a "sufficiently liquid and deep cash market" to warrant approving a contract for trading on a DTF. The GTX believes that a DTF operating in a market where technology continuously generates increased supply constitutes a facility that should qualify for case-by-case relief under §37.2 (a)(1). In that regard, The GTX requests that the Commission cite telecommunications products in the "Supplementary Information" portion of the final release as an example of products with sufficiently liquid and deep markets to warrant approval under §37.2 (a)(1).

⁵ Today's technology allows real-time allocation of minutes traffic onto unused capacity. This has effectively increased the usable capacity of already built-out wire and fiber lines.

The GTX appreciates the opportunity to submit these comments on the Commission's Proposed Regulations. If you have any questions regarding our comments, please contact me at (703) 748-1230.

Sincerely,

Keith J. Mendelson
Executive Vice President External
Relations and General Counsel

cc: Honorable William J. Rainer
Honorable Barbara Pederson Holum
Honorable David D. Spears
Honorable James E. Newsome
Honorable Thomas J. Erickson
C. Robert Paul, General Counsel
John C. Lawton, Acting Director, Division of Trading and Markets
John Mielke, Acting Director, Division of Economic Analysis
Phyllis J. Cela, Acting Director, Division of Enforcement

COMMENTS ON CFTC REGULATORY FRAMEWORK, INTERMEDIARIES AND CLEARING

Received 8/4/00 & 8/7/00

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8/7/00	Blackbird	Shawn A. Dorsch
8/4/00	Board of Trade Clearing Corporation	Thomas J. Hammond
8/4/00	Brown Brothers Harriman	Robert C. Push
8/7/00	California Power Exchange	Scott D. Rasmussen
8/4/00	Clifford Chance Rogers & Wells	David Yeres
8/7/00	Financial Markets Lawyers Group	Joyce M. Hansen
8/7/00	First Options	Joseph L. Bernier
8/7/00	Goldenberg, Hehmeyer & Co.	Ralph Goldenberg/Christopher Hehmeyer
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8/7/00	Williams Energy Services	Garson Knapp

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The Commodity Futures Exchange

Deanne A. Oster