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COMMENT

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

Dear Ms Webb

CFTC PROPOSED RULES ON ACCESS TO AUTOMATED BOARDS OF TRADE

The Singapore International Monetary Exchange Limited ("SIMEX") is pleased to respond to the request for comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed rules on *Access to Automated Boards of Trade* ("Proposed Rules") issued on March 16, 1999.¹

Proposed Rule 30.11 would establish an exemptive procedure under which exchanges operating primarily outside the United States would petition the CFTC for orders that would permit electronic access to those exchanges from US locations without requiring them to be designated as US contract markets. US customers could also use order routing systems meeting the standards of Proposed Rule 1.71 to enter orders on the exempt electronic exchanges and on US futures exchanges. These Proposed Rules follow a CFTC Concept Release on the issues published in the Federal Register.²

I. SIMEX

SIMEX is located in Singapore and has been in operation primarily as a floor-based exchange since September 1984. It is regulated by the Monetary Authority of Singapore

¹ See 64 FR 14159 (March 24, 1999). On April 9, 1999, SIMEX requested a sixty-day extension of the comment period. On April 22, 1999, the CFTC issued an order stating its determination to extend the comment period on the proposed rules for seven days, to April 30, 1999.

² See Concept Release on Placement of a Foreign Board of Trade's Computer Terminals in the United States, 63 FR 39779 (July 24, 1998).

as a futures exchange under the Singapore Futures Trading Act of 1986. SIMEX offers a broad range of futures and options contracts, covering interest rates, currencies, stock index, energy and gold and its members and participants are global.

In its role as an international exchange, SIMEX has various alliances, linkages and arrangements with market and governmental authorities around the globe. For purposes of our comment letter, we would like to focus on those arrangements that we believe are relevant to our comments on the Proposed Rules.

- In 1984, SIMEX co-pioneered the world's first global clearing/trading link with the Chicago Mercantile Exchange ("CME"). This international trading link known as the Mutual Offset System ("MOS"), approved by the CFTC pursuant to section 5a of the US Commodity Exchange Act, permits CME firms to execute trades on SIMEX that may be transferred back to the CME as new or liquidating trades and similarly permits SIMEX firms to execute trades on CME that may be transferred back to the SIMEX as new or liquidating trades.³ In reviewing the application of the CME to implement the link with SIMEX, the CFTC staff analyzed among other things the customer protection, market surveillance and trade practice surveillance rules of SIMEX⁴.
- In July 1988, the CFTC issued an order under CFTC rule 30.3(a) authorizing option contracts traded on SIMEX to be offered and sold in the US. In issuing the order, the CFTC reviewed: (1) the availability of certain information relevant to preventing abuses in the trading of options; (2) arrangements in place for assuring that sales practice abuses in such options do not occur; (3) arrangements for US customers to redress grievances in respect of the offer and sale of such options; and (4) the regulatory environment in which such options are traded⁵.
- In December 1988, the CFTC issued an order under CFTC rule 30.10 granting an exemption to designated members of SIMEX from the application of certain CFTC

³ On August 28, 1984, the CFTC approved CME rules implementing the MOS. See CFTC News Release 2221-84, August 29, 1984.

⁴ The CFTC staff concluded that the system and rules adopted by SIMEX afforded many of the protections found on regulated US markets. See Staff Memorandum dated August 28, 1984 at page 67 analyzing the MOS link arrangement. Moreover, SIMEX is aware of no significant deficiencies found to date by the CFTC concerning the operation of the MOS.

⁵ See 53 FR 28826 (July 29, 1988). The CFTC amended rule 30.3(a) to eliminate the requirement that the CFTC authorize the offer and sale in the US of each foreign option contract. 61 FR 10891 (March 18, 1996).

rules and regulations based on substituted compliance with certain comparable rules and regulations in effect in Singapore.⁶

Each arrangement referred to above was the subject of appropriate information sharing arrangements between the CFTC, the Monetary Authority of Singapore and SIMEX.

Finally, on March 18, 1999 SIMEX entered into an electronic trading alliance with the CME and the Societe des Bourses Francaises ("SBF Paris Bourse") to offer trading of futures and options using a common electronic trading platform, to begin in the third quarter of this year. The GLOBEX® Alliance ("Alliance") will give members of each institution cross-exchange trading privileges with respect to the others' electronically traded products and establish a set of harmonized electronic trading rules and policies. As part of the agreement, SIMEX will adopt the NSC electronic trading platform developed by the SBF Paris Bourse, which has also been adopted by the CME for GLOBEX® 2, as its new electronic trading system. The Alliance is intended to complement the operation of SIMEX's trading floor.

II. Comments on Proposed Rules

SIMEX commends the Commission for its willingness to address the important issues related to providing electronic access to a foreign futures exchange from locations within the United States and wishes to provide the following comments on the Proposed Rules.

A. CFTC Jurisdiction

SIMEX supports the regulation of access to automated foreign boards of trades by the Commission. We respectfully disagree, however, with the assertion in the proposed rules that if contracts of a foreign exchange are accessible from within the US, the foreign exchange is no longer "located outside the US" for purposes of section 4(a) of the US Commodity Exchange Act ("CEA"). SIMEX believes this approach may be inconsistent with the mandate of section 4(b) of the CEA that in regulating access by US persons to foreign exchanges, the Commission not assert jurisdiction over the terms and conditions of foreign exchange contracts, the rules governing the trading of such contracts or any action of, or the organization of, foreign exchanges. Moreover, SIMEX notes that the CFTC in approving the electronic link between the CME and the Marche a Terme

⁶ See 54 FR 806 (January 10, 1989).

International de France ("MATIF"),⁷ and CFTC staff in issuing the February 1996 no-action letter to the Deutsche Terminborse ("DTB")⁸ took the view that pursuant to section 4(b) of the CEA the mere presence of foreign terminals in the US would not cause the Commission to deem any bona fide foreign exchange to be a domestic exchange requiring designation as a contract market.

We strongly urge the Commission in adopting final rules to clarify that the purpose of such rules is to regulate access to bona fide foreign markets from locations within the US, and not to assert jurisdiction over such exchanges as exchanges located in the United States that must be exempted from contract market designation pursuant to CEA section 4(c).

B. Proposed Rule 30.11

While SIMEX supports the general concept of Proposed Rule 30.11, we believe the Proposed Rule would impose unnecessary and duplicative requirements on certain foreign exchanges such as SIMEX whose operations and regulatory system are well known to the CFTC for the reasons noted in Section I above. In particular, we would encourage the CFTC in drafting final rules to develop flexible procedures that would permit the CFTC to rely to the maximum extent possible on the information and analysis of a foreign exchange already undertaken by the CFTC in other contexts in determining whether the regulatory concerns addressed by Proposed Rule 30.11 are satisfied.

For example, Proposed Rule 30.11(b)(2)(vi) provides limited relief to a foreign exchange that has been the subject of a comparability order issued pursuant to CFTC rule 30.10 from having to provide the CFTC with information already in the possession of the Commission. In all other respects, however, that foreign exchange would be required to otherwise comply with the filing and procedural requirements of the Proposed Rule which in many cases would require the foreign exchange to file duplicative information.

Proposed Rule 30.11(c) exempts from the requirements of that Rule certain foreign exchanges that are linked with a US designated contract market. However, the proviso in Proposed Rule 30.11(c) provides that a linked foreign exchange would nonetheless be required to seek exemption under Proposed Rule 30.11 if it planned to allow automated access to its products in any manner that would fall outside the arrangement with a US

⁷ See, e.g., CFTC approval on September 25, 1992 of CME rule 575 permitting CME to implementing the cross-exchange access program with MATIF through GLOBEX®. MATIF is a wholly owned subsidiary of SBF Paris Bourse.

⁸ See CFTC Staff Interpretative Letter No. 96-28, Comm. Fut. L. Rep. (CCH) 26,669 (Feb. 29, 1996), regarding the placement of DTB trading terminals in locations in the US. In June 1998, DTB changed its name to EUREX Deutschland.

contract market that had been submitted to the CFTC for review. If the CFTC determines that a foreign exchange is operated and regulated in a manner sufficient to permit a clearing or similar link with a US exchange, and the trading system (and/or the automated order routing system) is known to the CFTC, SIMEX sees no regulatory or policy reason why persons in the US should not be able to access contracts traded on that foreign exchange outside the specific link arrangement. We see no regulatory benefit to requiring that foreign exchange to seek exemption under Proposed Rule 30.11 when the same or more onerous analysis based on the same information will have been undertaken in connection with approval of the link arrangement under section 5a of the CEA.

Similarly, Proposed Rule 30.11(b)(2)(viii) provides that a foreign exchange need not provide the information on its trading system if information on the same system has been or will be provided to the Commission by another board of trade. However, the Proposed Rule makes the foreign exchange responsible for ensuring that the information is in fact provided by the other board of trade. In this connection, if a system is known to the CFTC because it has been approved by the CFTC for use by a designated contract market, SIMEX questions the need to require a foreign board of trade that also uses that system to require the US contract market to file appropriate information with the CFTC.

Our comments above illustrate the need for the CFTC to incorporate more flexibility into the final rules concerning the process by which it determines whether and how a particular automated foreign exchange is accessed from locations in the US. If the Commission through other procedures and arrangements has reviewed the rules and operations of a foreign exchange, the regulatory regime applicable to that foreign exchange, the mechanisms and laws governing information sharing and the automated trading system proposed to be used, SIMEX sees no regulatory benefit to requiring the exchange to file unnecessary and duplicative information and for the CFTC to undertake unnecessary and duplicative analysis.

Indeed, we can identify little if any information required in Proposed Rule 30.11 either as to SIMEX, the Monetary Authority of Singapore or the NSC system that the CFTC does not already have or has access to under existing arrangements. SIMEX is concerned that the proposed procedures mandate a single approach for all automated foreign exchanges irrespective of the CFTC's familiarity with a particular exchange and provide little opportunity for the CFTC to exempt any foreign exchange from the procedural burdens of the Proposed Rules.


If the Commission determines not to amend the proposed rules to include a provision that would permit the Commission to exempt exchanges such as SIMEX from the application requirement of Proposed Rule 30.11, we would still urge the CFTC in the final rules to clarify that products of foreign exchanges traded pursuant to linkage arrangements such

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as the GLOBEX® Alliance may be accessed from US locations: (1) pursuant to the terms of the link arrangement in respect of transactions executed pursuant to the link; and (2) in the same manner and on no less favorable terms than products traded on foreign exchanges that are exempted pursuant to Proposed Rule 30.11 with respect to transactions executed outside the link arrangement. Moreover, we also urge the CFTC to avoid requesting and undertaking duplicative information and analysis as described herein.

SIMEX appreciates the opportunity to submit these comments in response to the Commission's publication of the Proposed Rules. We would be pleased to provide additional information the Commission might deem useful in evaluating the matters addressed in this letter.

Yours sincerely



ANG SWEE TIAN
PRESIDENT