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Paris, 28 April, 1999

SECRETARIAT

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

COMMENT

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Re: CFTC Proposed Rules on Access to Automated Boards of Trade

Dear Ms. Webb,

SBF Paris Bourse, the French equity market, and its derivatives subsidiaries, MATIF SA (MATIF) and MONEP SA (MONEP) (collectively referred to herein as "SBF Group") are 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.<sup>1</sup>

The Commission proposed new rule 30.11 that would establish an exemptive procedure under which exchanges operating primarily outside the US 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.<sup>2</sup>

<sup>1</sup> See 64 FR 14159 (March 24, 1999).

<sup>2</sup> See 63 FR 39779, July 24, 1998 and comment letter of SBF Group on the Concept Release dated October 7, 1998.

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#### **I. Principal Points**

SBF Group welcomes the publication of the Proposed Rules and wishes to make the following principal points:

First, we support the regulation of access to automated foreign boards of trades by the Commission. However, we cannot accept the premise upon which the Commission asserts regulatory jurisdiction, i.e., that foreign boards of trade that are accessed from within the US are deemed to be located in the US and therefore subject to US laws. We strongly believe that a foreign board of trade that operates in and is regulated by a foreign country is not and should not be deemed to be located in the US. We therefore urge the Commission in adopting final rules to clarify that the intent of such final rules is to regulate the access to foreign markets from locations within the US, and not to take the position that such exchanges are themselves located in the United States.

Second, SBF Group supports the general approach of Proposed Rule 30.11 and, moreover, believes it appropriately exempts from the requirements of that Rule certain foreign exchanges such as MATIF and MONEP (hereinafter referred to collectively as "MATIF") that are linked with a US designated contract market. We have strong concerns, however, with the proviso in Proposed Rule 30.11(c) that a linked foreign exchange would 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 contract market that had been submitted to the CFTC for review.

While the specific terms of each link arrangement may vary, in the case of the GLOBEX® Agreement involving the CME and MATIF that uses the same trading platform and permits members of each exchange to access the products of the other exchange, the CFTC approved the arrangement under section 5a of the Commodity Exchange Act (CEA). Specifically, in approving the rules of the CME implementing the link with MATIF, the CFTC (1) analyzed the rules and regulations governing the operation of MATIF (2) ensured the harmonization of certain trading and disciplinary rules of each linked exchange (3) reviewed the plans for allocation of regulatory functions between French and US authorities (4) relied on its understanding of the regulatory protections in place in France based on the negotiations leading to the execution of the Mutual Recognition Memorandum of Understanding (MRMOU)<sup>3</sup> which, among other things, granted CFTC rule 30.10 relief to designated members of the French

<sup>3</sup> See 55 FR 23902 (June 13, 1990).

markets ; and (5) the arrangements in place for cooperation and information sharing as set forth in the MRMOU and the Administrative Agreement on investigatory and enforcement matters.<sup>4</sup>

As noted above, the CFTC has reviewed the rules of the French markets linked with the CME pursuant to section 5a of the CEA, rules which generally apply to the French markets irrespective of whether transactions are done via the link with the CME ; granted the members of French markets comparability relief under Part 30 of the CFTC rules through the arrangement of the MRMOU ; and entered into comprehensive arrangements to cooperate and share information. The CFTC's arrangements currently in place involving the MATIF go far beyond the "comparability" analysis contained in Proposed Rule 30.11.

In such circumstances, the SBF Group sees no basis for the Commission to limit access to MATIF contracts from US locations to those executed pursuant to the link arrangement with the CME. Moreover, we see no regulatory benefit to requiring SBF Group 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. Therefore, the SBF Group urges the CFTC in the final rules on this matter to clarify that products traded on linked electronic exchanges such as MATIF may be accessed from US locations: (1) pursuant to the terms of the GLOBEX® Agreement 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. If for any reason the CFTC determines that separate approval under Proposed Rule 30.11 will nonetheless be required for MATIF, we urge the CFTC to avoid requesting and undertaking duplicative information/analysis and take into account our additional comments set forth below.

Third, we recommend that the CFTC adopt an interim procedure to permit automated foreign exchanges that already comply with all the criteria proposed by the Commission, such as MATIF, to be accessed from locations in the US immediately. Therefore, for all the reasons mentioned above, we ask the Commission to authorize MATIF to be immediately accessed from within the US without any further filing of information to the Commission.

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<sup>4</sup> See Administrative Agreement executed on June 6, 1990 between the CFTC and the French Commission des Operation de Bourses.

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If the CFTC determines not to permit access to MATIF products as recommended in point two above, we urge the CFTC to take the following comments into consideration in adopting final rules as they would apply to automated access to exchanges in the SBF Group from locations in the US.

## II. **Comments on Proposed Rule 30.11**

### 1. **The one step procedure**

First, the SBF Group welcomes the proposal for a one step procedure that would permit appropriate firms without prior CFTC approval to have access to automated foreign boards of trade that have been exempted by the CFTC pursuant to rule 30.11 via DESs.<sup>5</sup>

### 2. **Required filings**

Proposed Rule 30.11(b)(2) provides that certain information as specified in that rule shall be filed with the CFTC. As set forth in our comment in section I above, the information specified in Proposed Rule 30.11(b)(2)(i)-(viii) have been filed with and analyzed by the CFTC in connection with the GLOBEX® Agreement and also in connection with the execution of the MRMOU with the French COB. For example, a foreign exchange linked in the manner of MATIF has already provided the CFTC with: (i) its address, (ii) articles of association, (iii) a description of the contracts traded on the exchange, (iv) its rules (including membership rules), (v) the address of the entity responsible for monitoring the exchange for compliance with respect to US-related activities and generally, (vi) the regulatory structure to which it is subject in its home jurisdiction, (vii) information sharing arrangements in effect, and (viii) a general description of the automated trading system operated by the board of trade, including a technical review of the system and the standards of that review. We, therefore, urge the CFTC in adopting final rules to qualify the required filings for exchanges such as MATIF in order to avoid the filing of information already in the possession of and analyzed by the CFTC.

### 3. **Conditions of an order**

Proposed Rule 30.11(d)(1) to (8) specifies the conditions that would apply to any exemptive order issued by the CFTC under Proposed Rule 30.11. In this regard, we offer the following comments:

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<sup>5</sup> See 64 FR 14159, 14163.

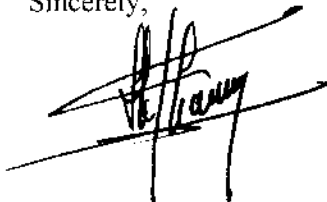
- 3.1 *Volume reporting.* Under Proposed Rule 30.11(d)(3), for each contract available to be traded through DESs and AORSs located in the US, foreign boards of trade must provide the Commission on a quarterly basis with total volume originating from the US as compared with world-wide trade volume. First, while an exchange may be able to provide volume information concerning orders entered into its DES accessed from a location in the US, it is not capable of providing similar information to the CFTC concerning access via AORS located in the US. Second, however, as we stated in our October 7, 1998 letter on the CFTC's Concept Release, we question the need for volume information in the first instance, as it does not seem relevant to the aim of regulatory supervision.
- 3.2 *List of members.* Under the same Proposed Rule as above, the foreign market must provide the Commission on a quarterly basis a list of members and affiliates that have DESs and which permit the use of AORSs in the US. While an exchange should be able to provide information concerning access to the market via DESs in the US, we question why the CFTC is imposing on the foreign board of trade the burden of monitoring access to AORSs from locations in the US when such information could more appropriately be provided by registered futures commission merchants and Part 30 firms.
- 3.3 *Notifications.* Under Proposed Rule 30.11(d)(4), the foreign board of trade must notify the Commission of certain events within a specified timeframe. Although we appreciate the CFTC's desire to obtain such information, we would like to stress that a foreign exchange would only be exempted if the CFTC finds that the foreign exchange is subject to regulation in its home jurisdiction pursuant to rules and standards approved by the Commission. We, therefore, question the need for the CFTC to obtain much of the information specified in the Proposed Rules. Further, it is the role of the home regulator to supervise the exchange and to address events such as system failures or members' default. We, therefore, recommend that any information regarding material changes and events such as member defaults and system failures be provided to the CFTC by the home regulator pursuant to existing information sharing arrangements.
- 3.4 *Petition disclosure.* Proposed Rule 30.11(e) provides for the publication in the Federal Register of pending petitions for exemptions. We would like to emphasize the high degree of competitiveness of the futures market. As a consequence, it does not seem appropriate to render the petitions available to the public. Confidentiality is one major condition to competitiveness and we urge the CFTC in the final rules to provide notice only with respect to the filing of the petition, and not to make the petition public. The Commission itself proposes to limit the availability if such disclosure would result in material competitive harm to the petitioner.

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3.5 *Modification of the order and specific provisions.* Proposed Rule 30.11(f) would provide the Commission the ability to condition any order in any manner that the Commission believes to be necessary or appropriate. We would strongly suggest that the Commission define or at least identify the criteria on which such additional conditions would be required.

SBF Group appreciates the opportunity to submit these comments in response to the Commission's publication of the Proposed Rules. We stand ready to provide additional information the Commission might deem useful in evaluating the matters addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Stephan", written over a horizontal line.

Patrick STEPHAN  
Executive Vice-President