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Sent: Monday, July 12, 2010 9:55 PM
To: colocation <colocation@CFTC.gov>
Cc: Thomas Callahan <TCallahan@nyx.com>; Lynn Martin <lmartin@nyx.com>
Subject: Co-location/Proximity Hosting Services Proposed Rules Comment Letter from NYSE Liffe US
Attach: NYSE Liffe US CFTC Co-Lo Comment Letter.pdf

Dear Mr. Stawick:

Please find attached NYSE Liffe US's letter commenting on the Commodity Futures Trading Commission's proposed rules regarding Co-Location and Proximity Hosting Services.

Respectfully,

Karl D. Cooper
Chief Regulatory Officer
NYSE Liffe U.S.
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July 12, 2010

Via Electronic Mail

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington DC 20581


Re: NYSE Liffe US Comment on Proposed Rules for Co-Location/Proximity Hosting Services (75 Federal Register 33198 (June 11, 2010))

Dear Mr. Stawick:

On behalf of NYSE Liffe US LLC (“NYSE Liffe US” or the “Exchange”),¹ a Commodity Futures Trading Commission (“Commission”) Designated Contract Market (“DCM”), I write with respect to the above-referenced Commission Notice of Proposed Rulemaking.

Launched in September 2008, NYSE Liffe US provides a fully electronic, liquid market for physically deliverable 100 ounce gold futures, 5,000 ounce silver futures, options on gold and silver futures, and mini-sized gold and silver futures as well as a suite of equity futures products on our platform based on MSCI indices. These contracts clear through the Options Clearing Corporation, a registered derivatives clearing organization. We soon hope to list other competitive products in the coming months, including U.S. interest rate contracts to coincide with the launch of our new clearinghouse, New York Portfolio Clearing, upon regulatory approvals.

¹ NYSE Liffe US is an indirect, majority-owned subsidiary of NYSE Euronext, the holding company created by the combination of NYSE Group, Inc. and Euronext N.V. NYSE Euronext operates the world’s largest and most liquid exchange group and offers the most diverse array of financial products and services. NYSE Euronext, which brings together six cash equities exchanges in five countries and six derivatives exchanges, is a world leader for listings, trading in cash equities, equity and interest rate derivatives, bonds and the distribution of market data.




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NYSE Liffe US fully supports the Commission's overall goals that it hopes to achieve through a rulemaking regarding co-location. We support the practice of co-location and proximity hosting as long as such services are fairly offered. Market participants taking advantage of such services benefit public customers and other market participants by enhancing the liquidity available on a DCM. Frequently this leads to narrow bid/offer spreads and an overall reduction of trading costs for all market participants.

We welcome the Commission's approach which, like our own view, appears to recognize the positive value co-located market participants bring, as long as there are restrictions sufficient to guard against unfairness in the allocation of such services. Thus, we agree that DCMs should not be allowed to use co-location access to unfairly favor some market participants over others or unfairly penalize particular market participants or classes of market participants. NYSE Liffe US's parent, NYSE Euronext, has long been on the record of supporting greater transparency and as such equally supports the goals the Commission is attempting to achieve by requiring the public reporting of latency metrics.

Although supportive of the laudable goals the Commission is seeking to achieve through its proposed rules, NYSE Liffe US is concerned that the rules as proposed would have several unintended and adverse consequences. Specifically and as set forth in greater detail below, we are concerned that the rules as proposed would:

- create an uneven playing field between exchanges and third-party providers where they offer competing services;
- prevent initiatives by exchanges to promote liquidity provision that would benefit public customers and hinder competition between DCMs;
- unfairly force DCMs in some cases to provide services in a non-economically rational manner; and
- require reporting by DCMs that will not assist market participants in comparing the services offered by competing DCMs because of the lack of industry standard metrics.




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The Commission Should Not Create an Uneven Playing Field Between DCMs and Third-Party Providers and Provide DCMs with Clear Authority to Regulate such Providers Where Appropriate

To date, Congress and the Commission have not sought to regulate directly a myriad of third-party providers in the United States futures markets that offer a variety of services. As a result, such third-party providers, many of whom provide critical services to assist market participants in the execution and clearing of futures transactions are not regulated by the Commission or any other government or self-regulatory organization. These third-party providers in many ways complement the services provided by DCMs and futures commission merchants (“FCMs”) which are regulated by the Commission. In other cases, however, these third-party providers offer services that, at times, may compete with DCMs and FCMs.

Where third-party providers offer services which compete with DCMs or FCMs, the proposed rules should be amended to make clear that the standards imposed on DCMs are also imposed on the third-party providers so that the proposed rules do not create an “uneven playing field.” In an uneven playing field, free riders such as unregulated third-party providers would be allowed to gain off of the DCM’s investment in building an exchange marketplace without helping to shoulder the burden of building that marketplace. For example, NYSE Liffe US currently leases the data center space in which its primary matching engine is located from a third-party provider. The third-party provider is not a Commission registrant and leases space in the data center to a variety of commercial enterprises, some involved in the futures markets and others that are not. NYSE Liffe US has no control over the data center’s decisions to lease space that may provide some operational advantage to a market participant. Prescribing that DCMs offer a “one-size fits all” fee structure, while allowing third-party providers to offer more tailored solutions may reduce the incentive for DCMs to offer co-location services and result in more such services being offered outside of the Commission’s proposed fair access rules. Accordingly, restricting DCMs as providers of services but not third-party providers would reduce competition and innovation to the detriment of all market participants, and possibly result in fewer solutions being subject to the proposed rules.

The proposed rules place certain obligations on DCMs such as the duty to obtain from such third-party providers “on an ongoing basis all information necessary from [them] to



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effectively carry out its self regulatory obligations.”² The proposed rules, however, do not grant DCMs the clear authority to obtain such information from such third-party providers. This is particularly concerning where such regulation would be inconsistent with existing contractual terms or where there is no privity of contract between the DCM and the third-party provider.³

Fair Access Requirements Should Not Hinder DCM Efforts to Promote Liquidity and Competition Between DCMs

Where a DCM offers a similar or identical contract in competition with a more established contract at a competing DCM or where a DCM simply lists a new contract not traded on any other DCM, DCMs frequently employ market making or other liquidity provision programs that are designed to benefit public customers. Such programs may sometimes reasonably include connectivity arrangements, including co-location or proximity hosting. The Commission’s proposed rules would appear to require a DCM to offer co-location or proximity hosting services on an equal economic basis to anyone regardless of whether they are providing a benefit to public customers as market makers and other liquidity providers do. Fair access requirements should not inhibit DCMs from providing connectivity solutions to those customers who act as market makers or other liquidity providers on separate economic terms as these firms significantly enhance the liquidity available for public customers to interact with. It should be recognized that such market participants provide the benefit of liquidity enjoyed by all market participants by bearing the burden of making a market throughout the trading day. Providing a co-located connectivity solution, therefore, in return for bearing the market making burden is in our view fair, but not uniform. Accordingly, NYSE Liffe US submits that fair access

² It is not clear whether part of these self-regulatory obligations are to enforce a uniform, non-discriminatory fee structure by third-party providers. If so, the proposed rules do not provide DCMs with the explicit authority to do so.

³ On a technical note, the proposed rules define the term “co-location/proximity hosting services” but elsewhere use the term “co-location services.” We see an important distinction between the two. Co-location refers to the placement of market participants’ or third-party providers’ computers within NYSE Liffe US’s leased space at the data center in which the Exchange’s matching engine is housed. Proximity hosting refers to the lease of space elsewhere in the data center in an arrangement directly entered into between the data center owner and a market participant. Obviously, we have more control over the terms of co-location services and less control over the terms of proximity hosting.



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requirements should allow DCMs to consider the contribution to liquidity that a potentially co-located market maker or liquidity providing entity offers in order to benefit public customers in the trading of any of its contracts. Moreover, as market making programs can be critical to one DCM's efforts to compete against another, we believe the Commission should be sensitive to the adverse impact on competition between DCMs that restricting the grant of preferences to market makers could have.


DCMs Should Not be Required to Provide Additional Capacity in Non-Economically Rational Contexts

Ultimately, co-location or proximity hosting services may become a scarce resource for one or more DCMs. Unless clarified, the Commission's proposed rules may require DCMs to construct or otherwise provide additional services without regard to the marginal costs of providing such services to additional users in the context of scarce resources. Such a result would be unreasonable, and could adversely impact the provision of such resources and innovation in such services.

There are no Established Latency Transparency Standards

To ensure precise and comparable latency standards reporting across all DCMs, the Commission would need to publish and police a set of standardized measurement requirements that would:

- Enable each DCM to measure and report latency standards on an exact like-for-like basis;
- Clearly define the exact points that each DCM would be required to measure and report latency between; and
- Ensure that those points that latency is measured between are within a DCM's managed domain, such that they have control over any and all components that may impact the latency being measured.



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Such measurement requirements would need to be reflective of and limited to the general customer experience, as opposed to each individual customer connection or data flow. While NYSE Liffe US supports the implementation of such requirements on a uniform basis, it should be noted that such requirements must become industry standards if they are to be useful to market participants. Insofar as uniform measurement requirements have not been adopted, the public dissemination of latency standards without such uniform measurement requirements might create confusion and lay the groundwork for false or faulty reporting.

In considering whether to establish such measurement requirements, the marginal costs of complying with such requirements should also be considered. To the extent such costs are significant, the provision of low latency solutions and innovation in such services might be compromised.

* * * *

NYSE Liffe US thanks the Commission for the opportunity to comment on the Commission's proposed rules on co-location and proximity hosting. Although we support the broad outlines and ultimate goals that the proposed rules attempt to achieve, we respectfully submit that the proposed rules be amended or clarified to address the issues and concerns we have set forth above.

Respectfully submitted,



Thomas F. Callahan
President & Chief Executive Officer
NYSE Liffe US LLC