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Comment on the Proposal concerning the Registration of Foreign Boards of Trade (FBOTs):

The European Energy Exchange of course agrees that there is a need to protect market participants in the United States and to ensure that the FBOTs subject to comparable supervision in case they are offering direct access to their trading systems in the US.
However, it seems to be a bit far reaching that even FBOTs who received a no action relief under the former regime - and since then have proved their reliability - shall now be obliged to fulfill the same registration process as completely new FBOTs.
The so called "limited application" under § 48.6 b of the proposed rulemaking does not largely differ from the registration process of the normal application. The possibility of relying on previously submitted information for the new registration does not facilitate the registration process for FBOTs of trade. If the limited application comprises resubmitting the whole volume of already submitted data, indentifying the requirements that are fulfilled by this information and, in addition, submitting all the documents related to additional demands issuing from the provisions under § 48.7 then the actual effort will be comparable to a completely new application.

It could be taken into account that for exchanges in the European Union there is already a comprehensive legislation on the security and reliability of exchanges (Regulated Markets in EU-terms). These acts include the Markets in Financial Instruments Directive (MiFID), a directive obliging the member states to have common rules concerning regulated markets as well as the Market Abuse Directive, aimed at the prevention of insider trading and market manipulation.
The MiFID already established harmonized requirements in terms of fair and orderly trading and uniform transparency requirements for shares. The latest review of the MiFID (see: http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf) already takes into account the consensus under the G20 including the US in the aftermath of the financial crisis to further strengthen the control over the more opaque parts of the financial system.

Given the uniform rules in the European Union which are, via the G20 consultations, about to be aligned with the US rules there should be the possibility of a general assessment whether the European exchange legislation meets US standards or not. The EU trading venues subject to existing no action reliefs can and should in consequence be treated consistently.
For example all trading venues recognized as a "Regulated Market" under MiFID should be deemed fit to meet the regulatory standards of a Registered Foreign Board of Trade under this legislative proposal. The Regulated Markets under MiFID (Title III of Directive 2003/39/ EG) all subject to a stringent set of rules that are to a large extent comparable to the requirements set forth in this proposal. There is also constant monitoring and publication done by the European Commission whether the different trading venues are still fulfilling the requirements for Regulated Markets (see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:348:0009:0015:EN:PDF). It could largely facilitate the registration process if already existing structures in Europe would be used. A unified approach would be beneficial for the FBOTs situated in Europe as well as for the Commodity Futures Trading Commission in the US.

In addition we would like to point out that the period of 120 days to resubmit all data for the "limited applications" seems to be very short given the fact that in order to file the application a vast amount of information must be handed over and the employment of legal aid in the US is likely to be necessary. In consequence it should be considered to expand this transitional period to at least 6 Months.