

January 18, 2011

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wilmerhale.com*FILED ELECTRONICALLY*David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581**Re: Registration of Foreign Boards of Trade, 75 Fed. Reg. 70,974 (Nov. 19, 2010);**
RIN No. 3038-AD19.

Dear Mr. Stawick:

We are writing on behalf of our client, Osaka Securities Exchange Co., Ltd. ("OSE"). OSE appreciates the opportunity to submit its views on the Commodity Futures Trading Commission's ("Commission") proposed rules: "Registration of Foreign Boards of Trade," 75 Fed. Reg. 70,974 (Nov. 19, 2010) ("Proposed FBOT Rules").

The Proposed FBOT Rules implement Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,¹ which allows the Commission to require registration for FBOTs wishing to provide their identified members or other participants located in the United States with direct access to their electronic trading and order matching systems. OSE generally supports the Proposed FBOT Rules, but suggests that the Commission, for the reasons explained in greater detail below, consider certain modifications pertaining to the requirements that apply to linked contracts,² particularly where a linked contract trades on the FBOT in only a *de minimis* amount.

Osaka Securities Exchange

OSE was established on April 1, 1949, and was the first financial instruments exchange to trade equity derivatives in Japan. It is currently the largest equity derivatives exchange in Japan measured by trading volume and contract values.³ OSE is authorized to list for trading futures and options on stock indexes and options on securities.⁴ As of 2009, OSE handled 89% of the stock index futures market in Japan. The Nikkei 225 Futures contract, introduced at OSE in 1988, is an internationally recognized index futures. In addition to the Nikkei 225 Futures

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act").

² Proposed Rule 48.8(c).

³ OSE is now the second largest (after the Tokyo Stock Exchange) among the five Japanese financial instruments exchanges that trade cash products in terms of amount of business handled.

⁴ Options on securities traded on OSE include options on equities, ETFs and REITs.

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Contract, OSE has been granted no-action relief by the Commission's Office of General Counsel to offer to U.S. persons futures contracts on the Nikkei 300 Index Futures Contract, MSCI Japan Index Futures Contract; Russell/Nomura Prime Index Futures Contract; and the Mini Nikkei 225 Index Futures Contract.

On February 10, 2010, OSE requested confirmation under the Commission's existing Policy Statement⁵ that the staff would not recommend that the Commission take enforcement action against OSE for permitting direct electronic access to its market from the U.S. (the "No-action Request"). OSE's request for no-action relief remains pending with the Commission.

Restrictions on Foreign Boards of Trade with Respect to Linked Contracts

Section 4(b)(1)(A) of the Commodity Exchange Act ("the Act"), as amended by the Dodd-Frank Act, provides that the Commission "may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade . . . located in the United States with direct access to the electronic trading and order matching system." Based on this authority, the Commission is proposing a new Part 48 of its Rules requiring the registration of FBOTs offering United States persons direct access to the FBOT's trading facility.⁶ Section 4(b)(1)(B) of the Act further provides that the Commission may not permit FBOTs to grant its members or other participants in the United States direct access to its trading and order-matching system with respect to linked contracts unless a number of regulatory requirements are satisfied. The conditions for maintaining registration with regard to linked contracts are set forth in Proposed Rule 48.8(c).

OSE concurs that the protections afforded by this proposed regulation generally are appropriate in ensuring that FBOTs that permit U.S. participants to access their markets directly are subject to a comprehensive and comparable regulatory framework in their home jurisdictions. Because the market in linked contracts may act as single, integrated market, we concur that the additional provisions related to linked contracts may be necessary and appropriate. However, these additional provisions are only necessary in situations in which there is more than a *de minimis* amount of trading in a linked FBOT contract. Nevertheless, the increased regulatory burden associated with these conditions, which may require the introduction of entirely new systems and processes, may be so great as to limit a FBOT's ability to introduce trading in such linked contracts. These additional requirements include for example the adoption of speculative

⁵ The Commission in its Policy Statement entitled, "Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility," 71 *Fed. Reg.* 64,443 (November 2, 2006) ("Policy Statement") outlined the procedures that foreign boards of trade should follow in requesting permission to establish direct market access from the U.S. and the information to be provided to the Commission's staff in support of such requests.

⁶ Proposed FBOT Rules, 75 *Fed. Reg.* 70,981 (Nov. 19, 2010).

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position limits and their associated reports, the provision of large trader reporting information, and the routine provision of trade execution and audit trail information. OSE believes that the Commission should provide for a *de minimis* exemption from these requirements. Such an exemption would apply to newly listed contracts until such time as they trade in volumes that are sufficiently high as to have an effect on the over-all market in the linked futures contract. This recognizes that a *de minimis* amount of trading in a linked contract on a FBOT does not pose a substantial market risk, permits the possible development of greater competition, and would adjust the nature of the regulatory requirements to the level of trading activity on the FBOT. OSE believes that this strikes the appropriate balance between the goals of the Act to promote both competition and market integrity.

Moreover, the Commission in Proposed Rule 48.8(c)(2) would require that a FBOT provide trade execution and audit trail data on a linked contract on a routine basis by the day following trade-date and that the FBOT agrees promptly to take the same action that the Commission may order under its emergency authority be applied to the linked U.S. market. Neither of these provisions is provided under, or required by, section 4(b)(1)(B) of the Act. OSE respectfully requests that the Commission reconsider the breadth of these requirements.

With respect to the requirement of Proposed Rule 48.8(c)(2)(ii), OSE recognizes that there may be instances where such information would be helpful to the Commission in carrying out its regulatory responsibilities. However, providing such information on a routine, daily basis would require FBOTs in many instances to make significant changes to their information processing systems. The Commission notes that it has imposed this condition on ICE Futures Europe, which has a very actively traded linked contract.⁷ Before making this a general requirement, however, OSE suggests that the Commission assess the relative burdens of this requirement and whether it could achieve the regulatory purpose as well through a more targeted requirement. For example, one alternative to requiring that the FBOT provide trade execution and audit trail data on linked contracts for the Commission's Surveillance System would be to require such information on an "as necessary" rather than on a daily basis.

OSE is also concerned about Proposed Rule 48.8(c)(2)(vi), which requires an FBOT to agree to take "similar action" as emergency action taken by the U.S. registered entity with respect to a linked contract.⁸ As the Commission notes, it requires that appropriate information sharing agreements be in place between the Commission and the FBOT's home regulator. Moreover, only FBOTs that are subject to a home regulator that "has power to intervene in the market" are eligible to register with the Commission.⁹ Based upon this provision, only FBOTs that are subject to the intervention of their home regulator would be eligible to register with the

⁷ Proposed FBOT Rules, 75 *Fed. Reg.* at 70982.

⁸ Proposed Rule 48.8(c)(2)(vi).

⁹ Proposed Rule 48.2(b)(5).

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Commission as a FBOT. OSE believes that it is preferable for the Commission to coordinate the actions that the FBOT should take in response to a market disruption or event through the FBOT's home regulator, in recognition of international comity. OSE believes that such coordination ultimately will provide for more effective coordination and regulation of linked markets through the cooperation of the involved regulators.

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OSE commends the Commission's efforts to continue to safeguard trading and clearing activities and looks forward to working together with the Commission toward that goal.

We would be happy to discuss our comments above at greater length with the staff. Please feel free to contact Ms. Yukiko Yamaguchi, Manager, Business Development, Osaka Securities Exchange Co., Ltd at +81-(0)3-3665-4152, or Paul M. Architzel of WilmerHale, LLP, outside counsel to OSE at (202) 663-6240, if you have any questions regarding our comments.

Respectfully submitted,



Paul M. Architzel

cc: Ms. Yukiko Yamaguchi