



January 17, 2011

Filed electronically

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

Re: Registration of Foreign Boards of Trade, 75 Fed. Reg. 70,974 (Nov. 19, 2010);
RIN No. 3038-AD19

Dear Mr. Stawick:

BVMF S.A. - Bolsa de Valores, Mercadorias e Futuros ("BVMF") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed "Registration of Foreign Boards of Trade," 75 Fed. Reg. 70,974 (Nov. 19, 2010) ("Proposed Rules"). The Proposed Rules implement Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,¹ which permits the Commission to require registration by foreign boards of trade ("FBOT") wishing to provide their participants located in the United States with direct access to their electronic trading and order matching systems. The Proposed Rules include a "limited registration" process for FBOT's with existing FBOT no-action relief. BVMF generally supports the Proposed Rules, but for the reasons discussed below, urges the Commission to further streamline the "limited" registration process for FBOTs that were granted no-action relief under the 2006 Commission Policy.²

BVMF

BVMF was created in 2008 as the result of the merger between the Brazilian Mercantile and Futures Exchange ("BM&F") and the São Paulo Stock Exchange ("BOVESPA"). In 2008, BVMF entered into a long-term partnership with the CME Group, which involved among other things, linking their electronic trading systems. BVMF, on September 26, 2008 received no-action relief from the Division of Market Oversight, permitting it to provide direct access to their electronic trading and order matching systems from within the United States.³ The direct market access channel represents a substantial volume of activity on BVMF.⁴

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

² "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. 64843 (Nov. 2, 2006) ("Policy Statement").

³ Letter from Paul M. Architzel, Esq. to Richard A. Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (Sept. 26, 2008).

⁴ For example, in November 2010, 21,516,858 contracts were traded on the BM&F market through order routing via direct market access.



BVMF is regulated by the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários) (“CVM”)⁵ and is also subject to regulation by the Central Bank of Brazil (“BACEN”) with respect to financial matters. In addition, both the CVM and BACEN implement resolutions of the Brazilian National Monetary Council (“CMN”), the highest policy-making authority of the Brazilian financial system, composed of the Minister of Finance, the Minister of Planning and Budgeting, and the President of BACEN.

Proposed FBOT registration rules

The Commission has proposed rules under Section 738 of the Dodd-Frank Act to require registration for FBOTs that wish to provide their members or participants located in the United States with direct access to their electronic trading and order matching systems. Proposed new Chapter 48 of the Commission’s rules sets forth eligibility standards, registration requirements, and the registration procedure for new FBOT registrants and a “limited” registration procedure for FBOTs with existing no-action relief.⁶

Registration with the CFTC under new Part 48 of the Commission’s rules will require the FBOT to demonstrate that it meets, among others, the following requirements: (1) the FBOT and clearing members are fit and meet appropriate standards and that the FBOT and its clearing organization have and enforce provisions to minimize conflicts of interest and rules prohibiting disclosure of material, non-public information; (2) the FBOT’s automated trading system complies with IOSCO Principles (including fair trade matching by the algorithm, audit trail, demonstrated reliability, disaster recovery, and limitation to “approved” contracts); (3) the contracts available in the U.S. are limited to futures, options or swaps eligible to be traded on a designated contract market and are subject to prior Commission review; (4) the clearing organization complies with “Recommendations for Central Counterparties” issued by CPSS-IOSCO; (5) the FBOT is subject to “comprehensive and comparable” supervision and regulation by its home regulatory authority; (6) the FBOT has sufficient rules, available compliance resources and disciplinary procedures to enforce appropriate trading practices; and (7) information sharing arrangements are in place among the FBOT, the clearing organization, and home regulatory authorities.⁷

Proposed “limited” registration procedures

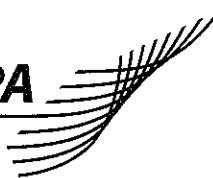
The Proposed Rules provide for a “limited” registration procedure for FBOTs that provide direct market access from the U.S. under an existing no-action letter.⁸ Under this proposed procedure, an FBOT that has previously been granted no-action relief would be required to file for registration within 120 days of the rule’s effective date. Under the proposed “limited” registration procedure, the FBOT must (1) include all of the information and

⁵ CVM has been responsible for the oversight of the Brazilian securities markets and the enforcement of securities and corporation laws since it was formed in 1976. In 2002, CVM’s jurisdiction was expanded to cover all derivatives markets, either organized on exchanges or traded over-the counter.

⁶ Proposed Commission Part 48.

⁷ *Id.* at § 48.7.

⁸ Since 1996, FBOTs have been permitted to grant direct access to the FBOT’s electronic trading platform by members or participants located in the U.S. under a “no-action” letter of Commission’s staff. As noted above, BVMF was granted no-action relief in September, 2008.



documentation required of new applicants; (2) if relying upon the previously filed request for no-action for this demonstration, the FBOT must resubmit all of the previously filed documentation; (3) identify the specific requirements for registration that are satisfied by the resubmitted information; and (4) certify that the resubmitted information remains current and true.⁹

BVMF recognizes that the Commission has been in the forefront of efforts by regulators to address the global nature of futures trading. The Commission's policies permitting U.S. persons to directly access non-U.S. electronic markets have been a model followed by many other jurisdictions. BVMF, and its U.S. participants, have benefitted from these policies. We recognize that although the proposed rules on registration of FBOTs would alter the process for authorizing direct market access from the U.S. to FBOTs, the Commission's basic policy of granting, and the conditions that must be satisfied to be granted, such access remain unchanged by the Proposed Rules. BVMF commends the Commission on its past leadership on these issues and on its commitment to continuing its basic policies on the conditions for granting such access.

The Commission has proposed to alter the procedures for granting direct market access to FBOTs. BVMF agrees with the Commission that a standardized process like the one described in the Proposed Rules is more appropriate and transparent than a no-action process in circumstances where the type of relief is granted on a "regular and recurring basis."¹⁰ However, BVMF believes that the "limited" registration process can be further streamlined, especially for FBOTs that have been granted no-action relief after 2006, when the Commission issued its Policy Statement establishing a uniform process and policies for the issuance of FBOT no-action letters.¹¹

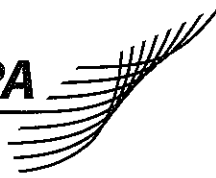
Streamlined registration procedures

Although the Commission has characterized the proposed procedures applicable to existing FBOTs as "limited," the requirements are nonetheless extensive. The requirement to resubmit documentation that was previously submitted and cross-referencing it to the new Appendix will be an extensive and burdensome undertaking. Placing this burden on FBOTs that received no-action relief under the terms of the 2006 Policy Statement is unwarranted because the conditions for qualifying for registration under the Proposed Rules are highly similar to those of the 2006 Policy Statement. Accordingly, in granting no-action relief following adoption by the Commission of its 2006 Policy Statement, the staff would have determined that the FBOT met the same substantive conditions as included in the proposed rules. Assuming that the Commission credits such a finding, the only additional requirement that would be necessary for a FBOT to meet to find that it is in compliance with the proposed requirements would be for the

⁹ *Id.* at § 48.6.

¹⁰ *Id.*

¹¹ 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.



FBOT to certify that there have been no material changes to the information or representations in its request for no-action relief, or if there have been, to identify and justify those changes as being in compliance with the proposed rules.

Such a process is contemplated by section 4(b)(1)(a)(ii) of the Act, which provides that in requiring registration by a FBOT, the Commission shall consider "any previous Commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation . . ." by its home regulator. However, the proposed "limited" registration procedure does not take into consideration previous Commission findings; rather it permits applicants to rely on previously submitted documents in support of what is, for all intents and purposes, a full registration application.

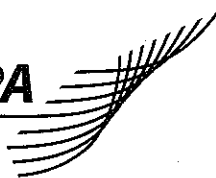
Placing greater reliance on its past findings under the no-action process, as Congress directed, not only would place less of a burden on FBOTs with existing no-action relief, but would conserve scarce Commission resources. This is particularly true with respect to those FBOTs that have received no-action relief under essentially the same standards as provided in the Proposed Rules.

Accordingly, we urge the Commission to amend the "limited" registration procedures to enable FBOTs to rely on the demonstration of compliance that they made in connection with a grant of no-action relief under the 2006 Policy by creating an alternative, certification procedure for those FBOTs with no-action relief received after the Commission issued its Policy Statement. Under such an alternative, FBOTs with no-action letters issued after October 26, 2006 would certify their continuing compliance with: (1) the terms of the no-action relief granted, and (2) the new FBOT registration requirements and conditions, along with providing information updating the prior submission to reflect any material changes since the no-action was granted.

Finally, the 120 day period required by the Commission for the filing of "limited" registration applications is unnecessarily short. As discussed above, the application requirements are extensive, even for "limited" registration applications. FBOTs may be hard pressed to meet that deadline, particularly in light of the other regulatory changes that are mandated under the Dodd-Frank Act. Accordingly, we respectfully suggest that the Commission extend the period allowed for filing "limited" registration applications to 180 days from the effective date of the final rules. This extended period will ease the administrative burden on the applicants and provide the Commission with additional flexibility when managing the registration process.

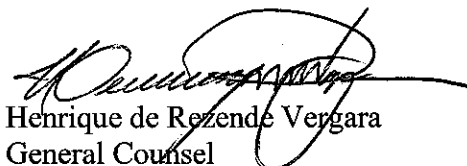
Conclusion

BVMF in concept supports the Commission's determination to formalize its process for granting direct market access from the U.S. through a registration process. Such a process will provide greater certainty with respect to the legal status of FBOTs with greater transparency than the no-action letter process. We commend the Commission for their continued leadership in these areas and respectfully request that the Commission place greater reliance on past findings that a FBOT is subject to comprehensive, comparable regulation by its home regulator, particularly for those FBOTs having qualified for no-action relief under the Commission's no-action Policy.



Please feel free to contact the undersigned at 55 11 2565-6211 or our counsel, Paul M. Architzel of Wilmer Cutler Pickering Hale and Dorr LLP at (202) 6636240 with any questions.

Respectfully submitted,



Henrique de Rezende Vergara
General Counsel