



AIR TRANSPORT ASSOCIATION

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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:

The Air Transport Association of America, Inc. (“ATA”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) proposed “Registration of Foreign Boards of Trade” (“Proposed Rules”).¹ The Proposed Rules would establish a registration requirement that applies to a foreign board of trade (“FBOT”) seeking to provide its participants located in the United States with direct access to its electronic trading and order matching systems. The Proposed Rules would also prescribe the conditions applicable to the trading of contracts on a FBOT with direct market access from the U.S. that settle to the settlement price of a contract listed for trading on a U.S. contract market (“Linked Contracts”). The Commission is proposing these rules to implement Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which permits the Commission to adopt rules and regulations requiring FBOTs with direct market access from the U.S. to register with the Commission.² ATA strongly supports the Proposed Rules,

¹ “Registration of Foreign Boards of Trade,” 75 Fed. Reg. 70,974 (Nov. 19, 2010) (“Proposed Rules”).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010) (“Dodd-Frank”). Section 738 of Dodd-Frank amends Section 4(b) of the Commodity Exchange Act (“Act”) to permit the Commission to adopt rules and regulations requiring that an FBOT register with the Commission if it wishes to provide its identified members or other participants located in the United States with

particularly the provisions relating to Linked Contracts. These proposed provisions will greatly assist the Commission's initiative to combat market manipulation and excessive speculation.

ATA

ATA is the principal trade and service organization of the U.S. scheduled airline industry.³ It is the nation's oldest and largest airline trade association and its members account for more than 90 percent of the passenger and cargo traffic carried by U.S. airlines. Since its founding in 1936, ATA has encouraged governmental policy decisions that foster a financially stable U.S. airline industry capable of meeting the nation's travel and shipping needs while withstanding the inherently cyclical nature of the airline industry.

ATA's Interest in the Proposed Rules

As major consumers of jet fuel, the price of which is tied to the price of crude oil, fluctuations in the price of crude oil significantly impact market volatility and the profitability of ATA members. Accordingly, ATA members rely on the orderly and proper functioning of the U.S. energy markets in order to prevent market manipulation, price distortion, and excessive speculation. U.S. airlines continue to face significant challenges managing the risks associated with increased volatility in the energy markets. The recent increased volatility in the energy futures markets have had, and continue to have, a severe, negative effect on air service.

The Commission's Proposed Registration Requirement

The Commission has proposed to establish a comprehensive regulatory framework for the registration of an FBOT that seeks to provide its members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system, as well as imposing conditions on the trading of Linked Contracts. This framework would ensure that FBOTs are subject to requirements that are comparable to the comprehensive regulations to which U.S.-registered entities are subject. The Proposed Rules also would impose enhanced conditions on FBOTs that list for trading Linked Contracts. These include the following:

1. *Public information.* The FBOT must make public information on the daily trading of the linked contract.

direct access to its electronic trading and order matching systems; the Commission may promulgate rules and regulations prescribing the procedures and requirements applicable to the registration of such FBOTs. *Id.* at Section 738.

³ The members of the association are: ABX Air, Inc.; AirTran Airways; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. Associate members are: Air Canada and Air Jamaica. Southwest Airlines does not join in these comments.

2. *Position limits.* The FBOT must adopt position limits for linked contracts comparable to the limits adopted by the registered entity for the contract to which it is linked.
3. *Authority over market participants.* The FBOT has the power to require or direct market participants to limit, reduce, or liquidate any position that the FBOT determines is necessary to prevent or reduce price manipulation, excessive speculation, price distortion, or the disruption of delivery or cash settlement.
4. *Large trader positions.* The FBOT or its regulatory authority must provide information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked.
5. *Reporting.* The FBOT or regulatory authority must provide the Commission with certain information regarding changes with respect to the linked contract and information necessary to publish reports on aggregate trader positions for the linked contract that are comparable to similar reports for the contract to which it is linked.
6. *Speculative position limits.* If the Commission establishes a speculative position limit, including related hedge exemption provisions, on the aggregate number or amount of positions in a contract traded on a U.S.-registered entity, then the registered FBOT must adopt similar position limits if it lists a linked contract.
7. *Exceeding position limits.* The FBOT must inform the Commission in a quarterly report of any of its members that had positions in a linked contract above the applicable FBOT position limit.
8. *Trade execution and audit trail.* The FBOT must provide trade execution and audit trail data for input into the Commission's Trade Surveillance System on a trade-date plus one basis.

Because a Linked Contract settles to the price of a contract listed on a U.S. contract market, it can affect prices on the U.S. market in two ways. First, the U.S. contract and the Linked Contract will act as a single market, transferring pricing information from one to the other through arbitrage. Second, if the regulatory requirements in the two markets differ, it can act as a means of evading the stricter requirements. Section 738 of the Dodd-Frank Act, and these Proposed Rules, are intended to address the negative effects that arise when Linked Contracts are not subject to the same requirements as apply on the U.S. markets. In doing so, Section 738 and the Proposed Rules should greatly enhance the Commission's ability to achieve one of the fundamental purposes of the Commodity Exchange Act--ensuring the price integrity of the futures markets.

One of the primary purposes of the Act is “to deter and prevent price manipulation or any other disruptions to market integrity.”⁴ The tools available to the Commission to effect this purpose include the Commission’s enforcement authority to sanction market participants that manipulate the price of futures, swaps or commodities, and setting and enforcing speculative position limits, which are a prophylactic means of deterring market manipulation and excessive speculation.⁵ Section 738 of the Dodd-Frank Act is intended to increase the efficacy of these tools by requiring Linked Contracts to meet the same requirements as apply to the U.S. contracts. Based on the requirements of Section 738, the Proposed Rules require the FBOT to provide the Commission with information comparable to its Large Trader Reporting System and to have in place and enforce comparable speculative position limits. Requiring reports comparable to the U.S. large trader reporting system will assist the Commission’s efforts by foreclosing a manipulator from hiding its position by trading on the linked FBOT. Applying speculative position limits to the Linked Contract will recognize the over-all size of a speculator’s position regardless of the market segment in which the speculator trades.

These are both important additional tools available to the Commission in achieving its statutory mission of ensuring the price integrity of the markets.

Conclusion

ATA strongly supports the Commission’s efforts to prevent market manipulation, price distortion, and excessive speculation, while promoting customer protection. As noted above, ATA members rely on the orderly and proper functioning of the U.S. energy markets in order to avoid excess market volatility that adversely affects air service. When manipulation causes the prices of those markets to become disconnected from fundamental market forces, ATA members and their customers suffer significant harm from the resulting increased costs and reduced services.

With the exception of proposed §48.8(a)(8)(i) concerning real-time reporting,⁶ ATA strongly supports the Proposed Rules, in particular the requirement that Linked Contracts provide for speculative position limits and position and audit trail reporting. These provisions should assist the Commission’s enforcement efforts, while also discouraging regulatory arbitrage. Market manipulation, price distortion, and excessive speculation in derivatives markets present global issues and require global solutions. ATA commends the Commission for its implementation of these sections of the Dodd-Frank Act. However, if the Commission

⁴ Section 3 of the Act, 7 U.S.C. § 5.

⁵ Section 4a of the Act, 7 U.S.C. § 6a.

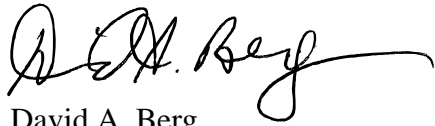
⁶ ATA members have significant concerns about the impact of reporting transactions on a real-time basis on their ability to engage in certain types of hedging transactions and recommend that this requirement be revised to allow delayed reporting to permit counterparties to close their related transactions. ATA will expand on these concerns in its comments on the proposed rule on Real-Time Reporting of Swap Transaction Data, 75 Fed.Reg. 76141 (December 7, 2010; comments due February 7, 2011).

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is to achieve its statutory mission of deterring price manipulation and excessive speculation it must also adopt effective speculative position limits.

Please feel free to contact me with any questions at 202-626-4000.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.A. Berg", with a long, sweeping horizontal flourish extending to the right.

David A. Berg