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SUBMITTED 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 Montréal Exchange Inc. ("MX") 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 would establish a registration requirement in place of the current no-action process for Foreign Boards of Trade ("FBOT") wishing to provide direct access from the U.S. to the FBOT's electronic trading platform.

Montréal Exchange

MX is a standardized derivatives exchange, processing derivatives trades on an electronic platform, having its main office and place of business in the City of Montreal, in the Province of Quebec, Canada. MX lists for trading a number of different classes of derivatives, including equity and currency options, options on futures contracts and futures contracts. MX's predecessor corporation, the Montreal Stock Exchange, was incorporated and officially commenced operations as a stock exchange in 1874. It began trading options on equity in 1975 and futures contracts on government debt and financial instruments in 1988. Bourse de Montréal Inc., successor to the Montreal Stock Exchange, was incorporated under Part IA of the Companies Act (Quebec) on September 29, 2000 following the demutualization of the Montreal Stock Exchange. MX has operated as a for-profit company since its demutualization. Since 2008 and following the business combination between MX and TSX Group, Inc. to create TMX Group Inc. ("TMX Group"), MX is a wholly-owned subsidiary of the TMX Group, a widely held public company, the common shares of which are listed on the Toronto Stock Exchange. The Bourse is recognized and regulated by the Autorité des marchés financiers as an exchange and a self-

regulatory organization for the purpose of carrying on business in Quebec. MX was granted no-action relief by the Commission's Division of Trading and Markets on February 27, 2002.

Proposed FBOT registration rules

The Proposed Rules would require registration for FBOTs that wish to provide direct access from the U.S. to their electronic trading and order matching systems. Beginning in 1996, FBOTs seeking to provide such access requested that the Commission's staff confirm that it would not recommend enforcement action to the Commission for failure to register as a contract market. On October 27, 2006, the Commission issued a Policy Statement in which it endorsed this FBOT no-action process.¹ To date, the Commission's staff has issued approximately 38 FBOT no-action letters. The Proposed Rules would require that FBOTs with current no-action relief register with the Commission through a "limited" registration process.

An FBOT registering with the Commission would have to meet a number of conditions, including the following; (1) the participants or members of the FBOT and its clearing organization 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.²

Proposed "limited" registration procedures

As noted above, the Proposed Rules provide for a "limited" registration procedure for FBOTs that provide direct market access from the U.S. under relief granted by a prior no-action letter.³ Under the proposed "limited" registration procedure, an FBOT that previously had been granted no-action relief must (1) include all of the information and documentation required of new applicants; (2) if relying upon the previously filed request for no-action relief 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

¹ 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.* 64,843 (Nov. 2, 2006) ("Policy Statement").

² Proposed Rule 48.7.

³ 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.

(4) certify that the resubmitted information remains current and true.⁴ 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.

Inclusion of swaps

Proposed Rule 48.7(c)(1)(i) would permit direct market access from the U.S. of swaps listed for trading on a registered FBOT that also meets a number of conditions that apply to swap execution facilities.⁵ The Commission explained that this is consistent with Section 733 of the Dodd-Frank Act which permits the Commission to exempt a foreign swaps trading facility that is comparably and comprehensively regulated by its home regulator from the requirement to register in the U.S.

MX strongly supports Proposed Rule 48.7(c)(1)(i). The proposal to permit an FBOT to make available swaps for trading for direct access from the U.S. is consistent with the fact that an FBOT is subject to regulation by its home regulator that is comparable to a U.S. designated contract market, an acceptable venue for the execution of swaps. The proposed rule will enable U.S. participants to directly access a greater variety of swaps execution venues and at the same time will conserve Commission resources by providing comparably regulated foreign trading venues with an established avenue to register in the U.S.

Proposed "Limited" Registration Process

MX generally supports the Commission's proposal to register FBOTs that permit direct access from the U.S. Registration may provide greater certainty with respect to the status of FBOTs than the current no-action process and would provide a more transparent procedure to applicants. However, MX believes that the proposed "limited" registration procedure fails adequately to credit a past determination by Commission staff that an FBOT with existing no-action relief is comprehensively and comparably regulated.

In this regard, the proposed "limited" registration process includes extensive documentation requirements, particularly the requirement to identify how the previously submitted documents meet the new documentation provisions of the proposed Appendix to Part 48 and to resubmit all of the previously submitted materials. In addition, as proposed, FBOTs would be required to update their previously submitted documentation. Updating the previously submitted documents to reflect the large number of changes that may have been made over the course of years would constitute a significant burden. This requirement is misplaced in light of the on-going requirement to which FBOTs have been subject under the no-action letters to inform the Commission of material changes as they occur.

⁴ Proposed Rule 48.6.

⁵ Proposed Rule 48.7(c)(1)(i);

In addition to the burden on the FBOTs in assembling the substantial documentation for the “limited” registration application, the process will require that the Commission devote a significant amount of resources to reviewing these “limited” registration applications. This review will essentially duplicate the prior review process undertaken at the time the no-action relief was granted. Congress did not contemplate that the Commission would embark upon this effort to duplicate its prior determinations. Section 4(b)(1)(a)(ii) of the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* (“Act”), specifically provides that in requiring registration by an FBOT, the Commission shall consider “any previous Commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation . . .” . Rather than taking into consideration its previous findings of comparability, the proposed rules merely permit applicants to rely on previously submitted documents. Placing greater reliance on its past findings under the no-action process will not only lessen the burden on FBOTs, but it will conserve constrained Commission resources with no diminution of protections to the public or any increase in systemic risk.

MX respectfully requests that the Commission consider streamlining the “limited registration” process to credit fully previous findings that an FBOT granted no-action relief is comprehensively and comparably regulated by its home regulator. The FBOT would be asked to certify that it is in compliance with the registration conditions and that it remains in good standing with its regulator. This approach would achieve the statutory goals of the registration provision, place appropriate reliance on past determinations, and enable the Commission appropriately to focus its limited resources on new applicants for FBOT registration.

Finally, whether or not the Commission decides to move forward with its proposed “limited” registration process, MX requests that the Commission extend the period for submitting a “limited” registration application to no less than 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.

Conditions for Registration

One of the conditions for registration as an FBOT under Proposed Rule 48.8(a)(3)(i) is that the clearing organization for the FBOT either be a derivatives clearing organization or “satisfy the recommendations of the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions” (“Recommendations”).⁶ In this regard, the Commission as part of the application for registration requires that the FBOT provide a detailed description of the manner in which the clearing organization complies with each of the Recommendations and documentation supporting the representations made. This new requirement is beyond the scope of the determination that the Commission makes under section 4(b)(1) of the Act when it registers an FBOT. The Commission registers an FBOT on the basis that it is comparably regulated to a designated contract market. In support of that determination, the applicant should be asked to demonstrate

⁶ Proposed Commission Rule 48.8(b)(1)(iii)(C).

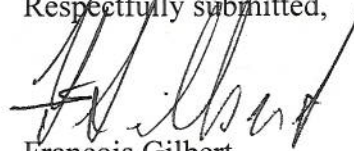
that the regulations, standards and policies of the home country regulatory authority are comparable to those of the Commission. However, the proposed rule requires the FBOT to provide a direct demonstration of compliance with the Recommendations.⁷ MX respectfully requests that the Commission replace the proposed direct demonstration of compliance with one that is keyed to assessing the comparability of the home country regulatory framework for clearing organizations. As noted in our discussion of the "limited" registration procedure, FBOTs with existing no-action relief would certify that the clearing organization that clears for the FBOT meets the registration conditions and that it remains in good standing with its regulator.

Conclusion

MX supports the proposed rules with the modifications discussed above. We believe that further streamlining the "limited" registration process is critical to both FBOTs and the Commission being able better to deploy their resources in addressing the many requirements of the Dodd-Frank Act and similar requirements that may be enacted in other jurisdictions. Historically, the Commission has been a leader in the efforts of regulators to address the global nature of derivatives trading. With the inclusion of swaps within the FBOT construct, the Commission continues its leadership role, potentially having a profound effect on the ease of international trading of exchange-listed swaps.

Please feel free to contact the undersigned at (514) 871-3528 or our outside counsel, Paul M. Architzel of Wilmer Cutler Pickering Hale and Dorr LLP, outside counsel to the MX, at (202) 663-6240, with any questions regarding our comments.

Respectfully submitted,



François Gilbert,
Vice-President, Legal Affairs, Derivatives

⁷ Compare the requirement of Proposed Rule 48.8(a)(3)(i) relating to clearing organizations to the proposed demonstration regarding the trade matching system which requires the FBOT to "provide a copy of any order or certification or self-certification received and any discrepancies between the standard of review and the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products." See Proposed Part 48, Appendix III(a)(7)