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September 8, 2008

VIA E-MAIL

Ms. Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Exemption of Certain Foreign Brokers or Dealers, Release No. 34-58047, File Number S7-16-08

Dear Ms. Harmon:

We appreciate the opportunity to comment on the proposal by the Securities and Exchange Commission (the "Commission") to amend Rule 15a-6 under the Securities Exchange Act of 1934 (the "Exchange Act").[1] As an initial matter, we would like to commend the Commission on taking this important step in the mutual recognition process. We fully support the Commission in its efforts to develop a coordinated approach to regulation in today's global market place and urge the Commission to continue to move forward with the mutual recognition process.

As noted in the Proposing Release, it has been almost two decades since Rule 15a-6 was originally adopted. Since that time, technology, communications networks and other factors have created a truly global market where US investors have virtually unlimited access to market information around the world. By crafting a more flexible framework within which foreign broker-dealers are permitted to operate in the United States, the Commission can reduce barriers to access while still providing necessary customer protections.

With respect to the proposed amendments to the rule, we focus our comments on the proposal to adopt new paragraph (a)(5) regarding familiarization with foreign options exchanges. Like other exchanges, the London market of LIFFE has sought guidance from Commission staff regarding familiarizing certain US institutional investors with its markets and the options on foreign securities traded on such markets.[2] While such guidance has been helpful in enabling the London market of Liffe to provide such investors with information regarding its products and

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1 Exchange Act Release No. 34-58047, 73 Fed. Reg. 39182 (July 8, 2008) (the "Proposing Release").

2 See SEC No-Action Letter to LIFFE Administration and Management, dated May 1, 1992 and SEC No-Action Letter to LIFFE Administration and Management, dated March 6, 1996.

markets, the relief available to foreign exchanges has been limited[3] and subject to somewhat cumbersome requirements for compliance. We agree that the adoption of proposed paragraph (a)(5) will provide greater legal certainty to market participants and believe that it strikes the appropriate balance between market access and customer protection. We have the following comments regarding specific aspects of proposed paragraph (a)(5).

Extension of the Rule to Qualified Investors

We fully support the Commission's proposal to extend the reach of the rule to qualified investors, as that term is defined in Section 3(a)(54) of the Exchange Act. In the context of familiarization with foreign options exchanges, we believe such an extension is entirely appropriate. The categories included in the definition, as well as the applicable ownership and investment thresholds, should be sufficient to ensure that persons falling within the definition have the requisite sophistication. Because today's global economy requires that sophisticated investors take into account foreign markets and foreign securities in their investment activities, such investors will likely have the requisite experience as well.

Further, this extension harmonizes the standards applicable in the familiarization process with those applicable under Rule 15a-6. The guidance previously provided to foreign exchanges and their members regarding familiarization extended to certain qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933 (the "Securities Act"). Under Rule 15a-6(a)(3), foreign broker-dealers are permitted to undertake certain activities with "US institutional investors" and "major US institutional investors" as those terms are defined in Rule 15a-6(b). Thus, a foreign broker-dealer was required to apply two different standards depending upon the type of activities undertaken with a US institutional investor. Applying a single category of investor to activities under both paragraph (a)(3) and paragraph (a)(5) will create a simpler, more efficient process, without sacrificing customer protection.

Scope of Activities Covered by Paragraph (a)(5)

We believe that, except as noted below, the exceptions set out in subparagraphs (i), (ii) and (iii) of paragraph (a)(5) will provide foreign broker-dealers, foreign exchanges and their representatives with sufficiently broad relief to enable them to familiarize qualified investors with foreign exchanges and the options on foreign securities traded on such exchanges. We believe that in our global economy it is critical that such investors have access to these markets and support the Commission's efforts to develop a structure that provides that access.

We also support the Commission's inclusion in the proposed amendments of an exemption from the broker-dealer registration requirements for familiarization with OTC options processing

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[3] Such guidance has been in the form of no-action relief granted by the staff of the Commission's Division of Trading and Markets.

services. As trading in over-the-counter options has expanded, the need for more effective processing has increased dramatically. OTC options processing services provide market participants with significant benefits, including the interpositioning of a central counterparty to transactions.[4] We believe such benefits should be available to qualified investors in the United States, who are likely significant participants in the over-the-counter options market.

We seek one point of clarification regarding paragraph (a)(5)(iii). This paragraph permits a foreign exchange to "make available to qualified investors through the foreign broker or dealer the foreign exchange's OTC options processing service."[5] As drafted, the language suggests that in all cases the service must be intermediated by a foreign broker-dealer. If a US registered broker-dealer has a customer that is a qualified investor, and such customer seeks to utilize a foreign exchange's OTC options processing service, it appears that the foreign exchange would not be permitted to provide the service to the US registered broker-dealer for use by its customer.[6] Rather, the foreign exchange may only provide the service to a foreign broker-dealer that would in turn provide it to the qualified investor. A US registered broker-dealer that is a member of the foreign exchange or otherwise has access to the OTC options processing service should not be put in a worse position as compared to foreign broker-dealers as a result of this rule. We ask the Commission to clarify the language of the rule to eliminate this confusion and expressly permit a foreign exchange to make its OTC options processing service available through a US registered broker-dealer.

Interpretive Guidance Exchange Act Section 17A

Section 17A of the Exchange Act requires the registration of any clearing agency "mak[ing] use of the mails or any means or instrumentality of interstate commerce to perform the functions of a

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4 As noted in a report issued in 2007 by the Committee on Payment and Settlement Systems of the Bank for International Settlements: "The use of a [central counterparty (CCP)] has the potential to mitigate the various risks associated with OTC derivatives. With respect to credit risk, a CCP allows members to achieve multilateral netting of credit exposures on the contracts cleared. It also typically employs robust margining procedures and other risk management controls so that it is more creditworthy than most, if not all, of its participants. A CCP has the potential to reduce liquidity risks by broadening the scope of payment netting. Its default procedures are often supported by specific provisions of national law, which would tend to reduce legal risk. Finally, CCPs tend to establish stringent operational requirements for back office operations, including automated submission of trade information and business continuity planning, leading to reductions in operational risk." Bank for International Settlements, Committee on Payments and Settlement Systems, New Developments in Clearing and Settlement for OTC Derivatives, March 2007, p. 25.

5 Proposing Release at 39211.

6 Although the definition of qualified investor includes a US registered broker-dealer, the language of the proposed rule is limited on its face to foreign broker-dealers.

clearing agency."[7] The Commission notes that an exemption from the registration requirement has only been required when services are provided to US entities with respect to US securities. With respect to the familiarization process, because only the foreign broker-dealer will have direct access to the foreign clearing organization, the Commission does not believe any relief is required. In the European markets, exchange OTC options processing services currently may be made available directly to an exchange member's customers as long as certain conditions are met.[8] We ask that the Commission confirm that with respect to OTC options processing services, as long as such services are only made available to qualified investors with respect to options on foreign securities, such service may be made available by the exchange directly to qualified investors (which would include US registered broker-dealers) without requiring the exchange providing such service to register under Section 17A.

"Reasonable Belief" Standard

In its proposal, the Commission asks whether a foreign broker-dealer or a representative of a foreign options exchange should be required to determine that the persons with whom they are dealing are, in fact, qualified investors. We believe that the only practical approach to this issue is to follow a "reasonable belief" standard as set forth in the proposed rule. Such a standard can be found in other provisions of the US securities laws[9] and is equally applicable here. To impose a strict liability standard on foreign broker-dealers and representatives of foreign options exchanges could have a chilling effect on the implementation of the amendments. If the benefits of the proposed amendments to Rule 15a-6 are to be fully realized, foreign broker-dealers and foreign exchange representatives must be held to a standard that is realistic and workable.

Expansion of Relief to Cover Limited Solicitation Activities

The Commission asks whether it is appropriate to expand the relief under the proposed amendments to Rule 15a-6 to cover certain limited solicitation activities. Permitting foreign broker-dealers to have expanded access to certain US investors raises a variety of complex issues. While we would be supportive of such an expansion, we believe that this issue may be more appropriately addressed in the broader mutual recognition effort. We hope that by bifurcating these issues, the Commission will be able to move forward quickly in adopting the proposed amendments.

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7 Section 17A(b)(1) of the Exchange Act.

8 Such access is similar to the sponsored access that is currently permitted on many of the US options exchanges, whereby an exchange member may permit a customer to have direct access to exchange systems. See e.g. Chicago Board Options Exchange Rule 6.20A and International Securities Exchange Rule 706.01 and Rule 706.02.

9 See, e.g., Rule 144A(d)(1) under the Securities Act of 1933.

Conclusion

In sum, we believe that the Commission's proposal to amend Rule 15a-6 is a critical aspect of the overall mutual recognition process and we fully support the proposed amendments, particularly regarding familiarization with foreign options exchanges. Not only does proposed paragraph (a)(5) provide needed legal certainty to market participants, it creates a workable framework for all market participants, while still providing an appropriate level of customer protection. We applaud the Commission's efforts, but also note that there is still much work to be done on mutual recognition. We ask that the Commission continue to move forward with the mutual recognition concept and look forward to additional action in the near term.

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We again thank you for the opportunity to comment on this important proposal. We remain available to discuss any aspects of this letter. In that regard, if you have any questions or comments, please feel free to contact the undersigned at 011-44-207-379-2217.

Sincerely,

Nick Weinreb

Nick Weinreb
Executive Director, Regulation

NW:60668736
cc: The Honorable Christopher Cox, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner