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By Electronic Mail

July 12, 2010

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

Re: Co-Location/Proximity Hosting Services 75 Fed.Reg. 33198 (June 11, 2010)

Dear Mr. Stawick:

The Futures Industry Association ("FIA") is pleased to respond to the Commodity Futures Trading Commission's ("Commission") request for comments on the proposed rule 17 CFR Parts 36, 37 and 38 relating to the provision of co-location and proximity hosting services by Designated Contract Markets ("DCMs"), Derivatives Transaction Execution Facilities ("DTEFs") and Exempt Commercial Markets ("ECMs") that list significant price discovery contracts ("SPDCs"). For the purposes of this comment letter, we will refer to DCMs, DTEFs and ECMs as "Exchanges".

FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants ("FCMs") in the United States. Among FIA's associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

The comments provided herein also reflect the views of the FIA Principal Traders Group ("FIA PTG"). The FIA PTG is a forum for firms trading their own capital to identify and discuss issues confronting the principal trading community. One of the group's stated goals is to promote cost-effective, equal and transparent access to U.S. and non-U.S. markets.

The FIA supports the Commission's intent to require transparency around co-location/proximity hosting facilities. In fact, the FIA in its Market Access Risk Management Recommendations released on April 27, 2010 included the following principle on co-location:

> "Steps should be taken to ensure that access to co-location is available to every firm that is interested in such a service and that the terms of the co-location service remain transparent to all market participants."

FCMs offer co-location services to customers through third-party providers and Exchanges. We understand the proposed rules are intended to apply to Exchanges and their relationship with those entities to which they offer co-location services as well as third-party providers. Some market participants, including FCMs and trading firms, may have data centers with direct connections to Exchange matching engines. We do not read the proposed rules as applying to FCMs and their relationships with their customers or situations where FCMs or trading firms may be in close proximity to an Exchange matching engine. As customers of third-party providers and Exchanges, FCMs and trading firms are impacted by these regulations and support the Commission's efforts to bring transparency and fair access to the markets.

Background

Co-location and proximity hosting refer to data centers that offer an alternative method to brokerage and trading firms seeking the fastest possible access to an exchange's network. Co-location takes place when the Exchange provides connectivity to its execution infrastructure via its own network and hosting in its own data center. Proximity sites are data centers offered by an Exchange or a third-party vendor for low-latency access to an exchange's network via a third-party network connection. In addition to hardware rack space, co-location and proximity services typically include various levels of redundant power, access to different telecommunication and Exchange connectivity options, "remote hands" support, security, climate control services, and other auxiliary services required by market participants and service providers.

Clearing firms, banks, market makers, proprietary trading firms, hedge funds, trading service providers, and independent software vendors all use co-location and proximity services. Each of these participants may use these services for a number of reasons including low and high-frequency trading, minimizing their infrastructure footprint, providing market data and execution services to participants that don't wish to rent space directly, providing proximity hosting for international participants, and off-site disaster recovery.

Exchanges, third-party providers, and market participants have taken a variety of approaches to co-location and proximity hosting. It is important to consider the CFTC proposed rules across a variety of models. For discussion purposes, we consider three models:

a. Data centers owned and managed by an exchange (distributes space/power to market participants and third-party service providers).
b. Proximity site owned and managed by an exchange (exchange selects third-party site to offer service but retains ownership/management).
c. Proximity site that is owned and managed by third party.

Fee structures vary due to the wide range of co-location and proximity facilities and the variety of services they provide; however, generally fees are based on the amount of space that is rented and the amount of power that is needed. Other factors that may be included in the cost are hardware installation services, facility provided support, and cross-connects or circuits to exchanges.

The Proposal

The Commission's proposed rulemaking includes four major mandates:

1) Exchanges must offer equal access to co-location/proximity hosting facilities.
2) Exchanges must disclose latency numbers from those facilities.
3) Fees for co-location and proximity services must be uniform and non-discriminatory.
4) Exchanges must ensure they have sufficient agreements in place with third-party service providers to carry out their self-regulatory obligations.

Exchanges must offer equal access to co-location/proximity hosting facilities.

FIA agrees that market participants that are willing to pay for co-location and proximity hosting should have equal access to these services. FIA also supports the Commission's requirement that Exchanges should allow any third-party provider that meets exchange requirements to provide proximity services to the Exchanges. We would like the Commission to clarify, however, that the combination of an Exchange co-location facility and approved third-party providers would satisfy the Commission's requirement to provide "sufficient availability of services for any and all willing and qualified market participants."

Data center space is finite and FIA does not believe that an Exchange should be required to build additional data centers whenever existing space is fully utilized. The Exchange should have a transparent and fair process for allocating space in a co-location facility. For example, whenever a new co-location is made available there should be an introductory period where each market participant is offered the same amount of space so that everyone is allowed an equal chance to get space when the data center is launched. Once a data center is full, space should be made available on a first come first serve basis. If first come first serve is not allowed, it could create situations that run counter to the intent of the regulation to provide fair and equal access.

In order to expand the available co-location/proximity space available for any given Exchange, FIA agrees that Exchanges "shall not act to bar otherwise eligible and qualified third-parties from providing co-location or proximity hosting services to market participants." Exchange requirements for third-party providers should be non-discriminatory and readily available for market participants, third-party providers and regulators to review. We recommend that each Exchange publish a list of "approved" proximity locations. There is some precedence for this--CME Group and IntercontinentalExchange post a list of approved ISVs and third-party proximity providers on their web sites. In this scenario, proximity sites benefit from more advertising; trading firms have a single source for connectivity options; and Exchanges expand their co-location footprint.

Exchanges must disclose latency numbers from those facilities publicly.

The proposal asks for "specific and separate detail" on four types of access: 1) market participant is co-located directly, 2) when a market participant is co-located through another market participant such as a clearing firm, 3) when a market participant is connected through a third-party service provider, 4) or any other manner. FIA agrees that making latency data available is desirable, but the exchange should be required to report only the latency between its hand-off point for market participants and the public edge of its matching engine at both its Exchange data centers and regional proximity sites managed by the Exchange. It should not be the responsibility of the exchange to provide latency statistics on other types of access. Market participants should work with their clearing firms and third-party providers to obtain information on latency relevant to those types of access.

The FIA believes that the market participants that are connecting directly to Exchanges' matching engines would benefit from knowing how the latency of their specific connection compares to the latency of other equal direct connections to the Exchange matching engines. An individual end user should know how its average, shortest, and longest latency measurements in Exchange data centers compares to other connections they are considering. Additionally, the end user should know the number of data points used to generate those statistics as well as their standard deviation. Further, to avoid discrepancies in latency within an Exchange data center, as new data centers are built or existing data centers upgraded, steps should be taken to ensure the same distance from the rack space to the matching engine throughout the data center.

The Commission asked for comment on the type of latency information that should be reported and the frequency of disclosure of that information. FIA agrees with the Commission's proposal to report the longest, shortest and average latencies. Finally, since infrastructure technology does not change significantly in a month's time, we believe reporting latency information on a quarterly basis would be sufficient.

Fees for co-location and proximity services must be uniform and non-discriminatory.

FIA agrees that fees for co-location and proximity hosting should be "uniform and non-discriminatory". We would ask that the Commission clarify that the proposed rule applies only to co-location fees and does not impact other types of Exchange fees.

Exchanges must ensure they have sufficient agreements in place with third-party service providers to carry out their self-regulatory obligations.

The proposal requires Exchanges to acquire "all information necessary to carry out its self-regulatory obligations and other obligations under the Commodity Exchange Act and Commission Regulations". We ask the CFTC to clarify that use of co-location or proximity services does not create new reporting requirements in order for Exchanges to carry out their SRO responsibilities. Further, if the Exchange requires information from third-party non-member vendors in order to meet their SRO obligations, the FIA requests that the Exchange not approve that third-party provider until it agrees to provide the required information.

Conclusion

The FIA commends the Commission for its thorough review of co-location and proximity hosting and appreciates the opportunity to comment on the proposed rules. We would be happy to answer any questions or assist the Commission in any way we can as you move forward with this rulemaking.

Sincerely,

John M. Damgard
President