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Brumfield defends TT's controversial fee proposal

Harris Brumfield, chief executive of Chicago-based vendor Trading Technologies (TT), has defended his company's radical proposal that four of the leading derivatives exchanges pay TT a fee of 2.5 cents per trade, forever, in exchange for TT giving all its intellectual property to the industry. "This is merely a proposal that we cannot make the exchanges do. If we are right and the business proposal makes sense for all involved, they will do it," Brumfield told *Risk*. "If we are wrong, they will not," he adds.

In its proposal – first published in an open letter at the end of 2004 – TT argues that Eurex, Euronext-Liffe, the Chicago Mercantile Exchange and the Chicago Board of Trade should pay up, for the good of the industry. TT claims more than half of electronic trading volume across these exchanges flows through its order entry systems. So, TT's argument goes, it should be recompensed for the innovative technology it brought to the industry, and its vital role in facilitating booming trading volumes. Needless to say, the exchanges are remaining tight-lipped while they consider the potentially enormous implications of how they choose to respond.

The Futures Industry Association (FIA) was more forthright in expressing its opinion. Last month, it had alleged – in a memo accompanying a motion filed at an Illinois court – that TT's proposal amounted to a 'tax'. The motion itself requested that documents from a patent infringement case involving TT and another technology firm, eSpeed, be released for public access. TT and its lawyers took exception to some of the language, which was subsequently revised. "Their allegation that the open letter contained a threat is incorrect. TT is not

threatening anyone," Brumfield says. He claims there is support for TT, though many in the futures industry find it difficult to take a public stance against 'the powers-that-be', despite being in favour of TT's proposal. "These individuals and companies have to deal and negotiate with the exchanges and the exchanges have most of the leverage," he says.

Beyond its status as a potential landmark in intellectual property law, hundreds of millions of dollars are at stake on the ultimate outcome of TT's fee proposal. A quick calculation suggests that if TT's requested fee structure had been in place last year, the Chicago firm could have garnered nearly \$140 million. So beyond TT's lofty goal of promoting a level playing field, the economic incentive is clear. "Like any company, TT is in business to maximise its profits – we should not be criticised for that," Brumfield says. He has put \$40 million of his own capital into TT – a company that turned a profit of \$6 million last year. TT first became profitable in 2003.

Innovation

The key to how TT's fee proposal is resolved rests partly on its claims of innovation. Brumfield tells *Risk* that TT is "very confident" about its patents. "Three independent organisations, the US, UK and EU patent offices, all validated the MD Trader concept," he says, adding that those who have suggested the US Patent and Trademark office grants patents too easily are mistaken. He seems to have a point. Under the US procedure, the patent was reviewed and approved by a senior examiner, then subjected to further examination to ensure the initial decision to grant the patent was solid.

Though he concedes he could be



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wrong, Brumfield believes all four exchanges will elect to do the deal with TT. "Those that do the deal will have guaranteed level access to TT's distribution, and the ability to provide the benefit of TT's intellectual property to end-users who trade on their exchange," he adds.

It's also possible that none of the exchanges will go for the deal, and that TT's patent-related endeavours – in addition to the two patents associated with the eSpeed case, there are around 80 patents pending – don't proceed in its favour. In this case, Brumfield's oft-quoted sense of fiduciary responsibility to his employees, and all with a stake in TT's success, could lead him to sell the firm. Brumfield says he does not know what impact such a sale would have on the industry, he simply believes the best thing for the industry would be for the big four exchanges to do a deal with TT. "We have made our thoughts clear on why our proposal is good for the industry, and we haven't seen any persuasive counter-arguments," he says. ■

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