

RATEXCHANGE

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OFFICE OF THE SECRETARIAT

VIA FAX

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
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Washington, D.C. 20581
Fax: 202-418-5521

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COMMENT

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Re: Proposed Rules Concerning Regulatory Reinvention

Dear Ms. Webb:

RateXchange Corporation ("RateXchange™") is writing this comment letter in response to the Commodity Futures Trading Commission's ("CFTC") proposed New Regulatory Framework and, in particular, the proposed rules applicable to multilateral transaction execution facilities ("MTEFs").¹ RateXchange, based in San Francisco, is a business-to-business e-commerce company providing a neutral, vertical marketplace for the telecommunications industry. RateXchange operates several markets for telecommunications products, including the Real-Time Bandwidth eXchange™ ("RTBX"), CustomAuctions™ and a lead generation market. The RTBX is an on-line commodity exchange that allows telecommunications companies, Internet Service Providers and other commercial parties to anonymously buy, sell, and deliver standard wholesale bandwidth capacity around the world. Through RateXchange's CustomAuctions² and lead generation services,³ members can buy and

¹ A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 Fed. Reg. 38,986 (Jun. 22, 2000).

² RateXchange's CustomAuctions service uses a dynamic software platform for English-style auctions (similar to eBay), reverse auctions (similar to Priceline) and sealed-bid auctions. RateXchange works with the auction customer to market the auction to a targeted audience.

³ RateXchange Lead Generation is a free bulletin board service that enables buyers and sellers of telecommunications capacity to post bids and offers for four groups of services (RateXchange

sell telecommunications products including bandwidth (domestic private line, international private line (IPL), and satellite bandwidth), minutes (domestic and international traditional circuit-based telephony termination), voice over Internet protocol ("VoIP") (domestic and international minutes), domestic colocation space and wireless spectrum.

RateXchange commends the CFTC on its wide-ranging regulatory reform proposal. However, the proposal provides insufficient relief in several significant areas.

1. The CFTC Should Permit Eligible Commercial Participants to Act Through Intermediaries on DTFs. Proposed Rule 37.2(a)(1), which sets forth the only method of complying with the derivatives transaction facility ("DTF") exemption for MTEFs that trade commodities other than those eligible for trading on exempt MTEFs (as enumerated in proposed Rule 36.2(b) ("Rule 36.2(b) Products")), would not permit "eligible commercial participants" ("ECPs") (as defined in proposed Rule 37.1(b)) to trade on DTFs other than for their own account. As noted above, telecom products are not so eligible. However, proposed Rule 37.2(a)(2)(ii), an alternative method of complying with the DTF exemption, would permit participants that are not "eligible participants" ("EPs") to trade, among other things, Rule 36.2(b) Products through registered futures commission merchants on DTFs. The proposal does not make it clear why, if an "eligible commercials-only market structure lessens many of the regulatory concerns ordinarily present," ECPs should not be able to trade through intermediaries who are also ECPs, as EPs are able to do on exempt MTEFs via intermediaries who are EPs.⁴ In the near future, a large portion of the volume of transactions on the RTBX may be brokered transactions. RateXchange may wish to take advantage of the DTF exemption, but may not be able to do so if the DTF exemption precludes the participation of brokers. We believe the CFTC should promote the ability of DTFs to provide the telecom industry with valuable risk management tools.

2. The CFTC Should Expand the ECP Definition. Proposed Rule 36.1(a) would define an ECP to include banks, thrifts, insurance companies, corporations with more than \$10,000,000 in total assets or that have a net worth of \$1,000,000 and enter into bilateral agreements in connection with the conduct of their business, and dealers that regularly provide hedging, risk management or market-making services to ECPs. While brokers on RateXchange markets may be ECPs by virtue of having more than \$10,000,000 in total assets, this restriction could preclude smaller brokers from trading on RateXchange. In any case, large capitalization requirements applicable to brokers are unnecessary because such requirements would apply to the principals, who would be the only parties liable to perform the transactions.

Lead Generation is a free bulletin board service that enables buyers and sellers of telecommunications capacity to post bids and offers for four groups of services.

⁴ Supra note 1, at 38,990.

In addition, the telecom derivatives markets are still in their infancy.⁵ Permitting brokers experienced in other financial markets to apply that experience in the telecom markets could promote liquidity and speed the development of those markets. By including brokers in the definition of ECP, the CFTC could assist, rather than hinder, the development of the telecom derivatives markets.

3. The CFTC Should Expand the List of Rule 36.2(b) Products to Include Telecommunications Products. Telecommunications ("telecom") products are not on the proposed list of Rule 36.2(b) Products. The CFTC's proposal would exclude products from trading on exempt MTEFs based in part on whether the supply of the cash commodity underlying instruments traded on an MTEF is sufficiently liquid and deep to make price manipulation difficult.⁶ The supply of bandwidth is currently far larger than demand. Technology (e.g., wave-splitting) is also increasing capacity. As a result, telecom products do not present great opportunities for price manipulation and should be included on the list of Rule 36.2(b) Products. Moreover, because the CFTC has reserved its antimanipulation jurisdiction over exempt MTEFs, it has the ability to deal with market abuses in the unlikely event that they occur.

RateXchange appreciates the opportunity to comment on the CFTC's proposed rules concerning intermediaries. Please contact me at (415)-371-9807 if you would like to discuss or have any questions about RateXchange's comments.

Respectfully submitted,



Nick Cioll
Senior Vice President of Trading Operations

cc: Honorable William J. Rainer
Honorable Barbara Pederson Holum
Honorable David D. Spears
Honorable James E. Newsome
Honorable Thomas J. Erickson
C. Robert Paul, General Counsel

⁵ However, by one estimate, the traded telecom product markets could be worth \$12 billion within five years. Timothy Horan, CFA & Steve Kamman, Telecom Services Equity Research Report, CIBC World Markets (Dec. 9, 1999).

⁶ Supra note 1, at 38,988.