

Commodity Floor Brokers & Traders Association
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August 17, 2000

BY TELEFAX

Ms. Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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OFFICE OF THE SECRETARIAT

Re: Regulatory Reinvention, Federal Register Release dated June 22, 2000 concerning Proposed Rules relating to a New Regulatory Framework for Multilateral Transactions Executions Facilities, Intermediaries, and Clearing Organizations; and Exemptions for Bilateral Transactions.

Dear Ms. Webb:

The Commodity Floor Brokers and Traders Association ("CFBTA") or "Association") is pleased to have the opportunity to comment on the Commodity Futures Trading Commission's proposed rules concerning a comprehensive new regulatory framework, published in the June 22, 2000 issue of *Federal Register*.

The CFBTA is a not-for-profit membership association, representing the interests of the floor trading community of all the New York "bricks and mortar" futures exchanges. The Association is comprised of individuals and small companies, executing orders and making markets on the floors of these exchanges, and its membership rolls lists over 750 members from the New York Board of Trade and the New York Mercantile Exchange.

The Association wishes to make a specific observation about the consequences of exclusion under certain circumstances of floor traders from participation in the proposed Derivatives Transaction Facilities ("DTF") tier of regulated markets. The Association believes that the exclusion of these participants will not only deprive floor traders of opportunities to make money in markets they have been trading in for years and indeed decades, but also will make the new DTF markets less attractive to other participants, thereby reducing liquidity and increasing the potential for uneven markets.

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The Association understands that the Commission is proposing a three tiered approach to regulation of the markets, ranging from a Registered Futures Exchange ("RTF"), the most regulated, to a Multilateral Transaction Execution Facility ("MTEF"), effectively exempt from regulation. In the intermediate position is the DTF, which will be subject to an intermediate level of regulation and accordingly, may be established by the current contracts markets, which are to become RFEs. Proposed regulation 37.2 there are three ways that an entity can qualify for regulation as a DTF. It is the method proposed in §37.2(a) (1) which creates a problem for that portion of the Association's members who, save for not usually falling within the definition of an eligible commercial participant, would want to trade the products on a DTF that had so secured that its status (trading in a non-agricultural commodity, but limited to trading by "eligible commercial participants" as defined in §37.1 (b)).

Floor traders had historically provided liquidity and market making services to participants in the futures markets for over a hundred years. Without liquidity the success of markets will be impaired, and accordingly so will their price discovery and risk shifting functions. Markets should not be unnecessarily hobbled by needless elimination of sectors offering liquidity. At present, the bricks and mortar exchanges and their floor trading populations are facing unprecedented competition from OTC and electronic markets. The Association believes that its members, including its floor members, should be given every opportunity to demonstrate the superiority of the open outcry system and should not be impeded in so doing by unnecessary regulatory restraints.

In the energy futures markets, which would be eligible for DTF status through proposed §37.2(a)(1), floor traders, or locals, as they are informally known, provide an unusually large portion of the liquidity. Some statistics demonstrate that locals account for almost one-half of the trading volume in active New York Mercantile Exchange ("NYMEX") contracts. This percentage far exceeds the norm in the futures industry. Thus, it is apparent that if NYMEX were to seek DTF status through proposed §37.2 (a)(1), the market liquidity would be severely reduced and the attractiveness of the markets to participants would be diminished and the contract might be at risk. The impact on NYMEX and its floor population, including the locals, is unfortunately self-evident.

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The definition of eligible commercial participants, which incorporates the Swap eligible participant definition, is intended to exclude either parties who lack capital or who lack knowledge and sophistication about the markets. The Association respectfully submits that the Commission in requiring floor traders to have \$10,000,000 in personal assets sets the bar to high. Most [AGG: should this be simply many of the locals?] of the locals do not have \$10,000,000 in assets, but they are very savvy, are guaranteed by clearing members, and do not need the protection that retail customers do. The Association suggests that the Commission alter §37.1 (b) to include floor traders as eligible commercial participants. The following language is suggested:

(b) Definition. As used in this part "eligible commercial participant" means and shall be limited to a party or entity listed in Sect. 35.1 (b)(1), (b)(2), (b)(3), (b)(6), and (b)(8) of this chapter that in connection..., or is a *floor trader or dealer* that regularly provides hedging, risk management or market making services to the foregoing entities.

Conclusion

The Association is not aware of any compelling need to bar floor traders from participation in such DTF markets and believes that the Commission does a gratuitous disservice to certain bricks and mortar exchanges and a significant portion of their membership at a critical time in their history and business lives.

The CFBTA appreciates the opportunity to submit these comments on the "Regulatory Reinvention" proposed rules. If the Commission wishes to contact the CFBTA, I would be happy to answer any questions or respond to any comments related to the release of this letter.

Sincerely Yours,



A. George Gero
Chairman