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OPTIONS & FINANCIAL FUTURES
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24 September 1998

Ms Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street,
N.W., Washington, D.C. 20581

COMMENT

By facsimile : (202) 418-5521

Dear Madam,

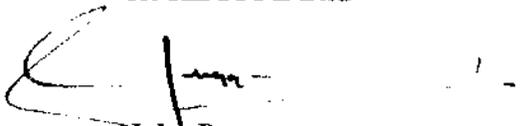
FOREIGN BOARD OF TRADE TERMINALS

We note with interest your request for public comment in relation to *Concept Release on the Placement of a Foreign Board of Trade's Computer Terminals in the United States* published in the Federal Register on 24 July 1998.

We are pleased to enclose our general comments in response to the highlighted issues in the said Concept Release.

We hope it will be of assistance to the Commission.

Yours faithfully
for **KLOFFE Bhd**



John Duggan
Chief Operating Officer

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CONCEPT RELEASE ON PLACEMENT OF A FOREIGN BOARD OF TRADE'S COMPUTER TERMINALS IN THE UNITED STATES

Petition Procedure

In relation to the Commission's request for comment on whether it is feasible to allow submission of petition on behalf of the foreign board of trade by a member of the foreign board of trade or by the foreign board of trade's regulatory authority, we are of the view that both parties should be allowed to do so in order to provide flexibility.

In respect of request for information on percentage of trading volume originating from each other's jurisdiction, we would like to reserve our right to disclose on a voluntary basis as it is classified as sensitive information.

Technology

We are of the view that the Commission should not use technological proficiency as the basis for imposing regulatory requirements based on the following reasons:

1. Regulatory policy that discourages technological development operates at cross purposes to major CFTC goals. An electronic market, for example, provides a superior audit trail for transactions and reduces certain abuses in the handling of order. We would like to suggest that the CFTC focus on the markets' integrity, rather than their technological architecture.
2. Regulatory policy that is linked to a state of technology is more likely to be doomed to failure because it will become quickly outmoded. Electronic systems for communications and trade are changing rapidly, and no regulatory policy based on a given stage in that evolution can remain relevant for long.

Placements with "Affiliates" and in "Booths"

We find that the Commission's proposal to allow foreign market terminals to be placed with bona fide U.S. affiliates of their member firms as well as in the booths of member firms or affiliates on the floors of U.S. exchanges is favourable as it provides flexibility and efficiency.

Volume-Based U.S. Presence

The Concept Release requests comment on when an exchange is truly "foreign". We also note the Commission's suggestion that a foreign market, even if its execution facilities are located abroad and is not U.S. controlled, could be regulated as a

“contract market” if its trading volume from US sources exceeds a certain percentage of its overall volume.

We disagree with this suggestion based on the following reasons :

1. It is very possible that a foreign board of trade might list products which have substantial U.S. investor appeal. Products whose major support originate outside the market’s home jurisdiction are not uncommon (for example LIFFE and the German Bond, SIMEX and the Nikkei 225, NYMEX and its new Mideast crude oil contract). Often these markets gain volume supremacy through innovative new products, better service (and/or lower cost), sound regulation and leadership as well as high liquidity.
2. The Commission is charged by the U.S. Congress to promote competition (Commodity Exchange Act ss15) unless there is an overriding regulatory concern that dictates otherwise. Furthermore, setting percentage “quota” of US-sourced volume beyond which the full brunt of US regulation will be imposed is anti-competitive because it effectively discourages both (a) new product development where U.S. popularity may be high and (b) aggressive U.S. marketing to assure the product’s commercial success. As full compliance with the CFTC “contract market” requirements is a commercial impossibility for most foreign exchanges, this volume restriction would constrain what a foreign market can bring into the U.S. and would allow U.S. exchanges a free rein to exploit the excess demand that the foreign market is not permitted to handle.

Reciprocity

The Commission is proposing to consider whether that market’s home country provides access to terminals of U.S. markets as a factor before allowing placement of foreign exchanges’ terminal in the U.S.

We are agreeable to this proposal provided that the Commission should not try to impose any particular scheme for providing reciprocity, the result rather than the method should be determinative.

Furthermore, U.S. exchanges wishing to gain access to foreign jurisdictions for terminal placement should understand that with reciprocity as a factor abroad as well as in the U.S., a serious level of opposition to foreign placements in the U.S. may and should trigger retaliation.

Comparative Regulation

We note the Commission's suggestion that it might conduct a review of the regulatory scheme in the foreign jurisdiction for its comparability to the U.S. system before allowing terminals into the U.S.

We are not agreeable to this suggestion based on the following reasons:

1. A regulatory comparability study is expensive, time-consuming and unnecessary. The effort might be worthwhile when seeking exemption through Part 30.10 to avoid registration as an FCM but cannot be justified in light of the fact that the Commission proposes to require FCM registration as a pre-condition to U.S. placement of trading terminals.
2. A regulatory comparability study would come gravely close to violating the U.S. Congress' prohibition against interference in the affairs of a foreign market [*Commodity Exchange Act ss4(b)*] since in the words of that section, the "person(s) located in the United States" on whom CFTC requirements may be imposed are already been required to register as FCMs and Aps.

Definition of an "Affiliate" of Foreign Board of Trade

We do not have any view to the contrary on the 50% threshold that is being used as in normal circumstances it provides control by affiliates over the members or members over the affiliates. However, we are of the view that in addition to the 50% ownership requirement, there should be the requirement that the affiliate should have some form of control over the members or vice versa.

Additional matters:

- Page 21 footnote 33 - we believe that it would be more appropriate for the foreign board of trade to submit application as it on behalf of their markets that they are seeking the petition.
- Page 22 second paragraph - we are of the view that the home country regulator of the petitioner (in our case, the Securities Commission) would be in a better position to clarify or provide information concerning the ability of U.S. boards of trade to place and operate terminals in the petitioner's home country as it may involve interpreting our Futures Industry Act 1993 in relation to operating a futures market.

- Page 26 footnote 39 - we believe it may be better if an arrangement be made to enable on-site review to be conducted by the NFA or a U.S. self regulatory organisation, given the potential cost in conducting such exercise.
- Page 27 footnote 40 - in terms of parties to the information sharing agreement, the information sharing agreement should at least be entered into by the relevant regulatory authorities. If agreed by these two parties, then the foreign board of trade may enter into a tripartite information sharing agreement with the two regulatory authorities.
- Page 26 footnote 43 - we believe that requirement (4) is too onerous for the registered entity as it is in no position to make such certification.
- Page 34 - we believe that the CFTC needs to be more transparent in determining the level of U.S. activity before requiring the market to be designated as a contract market. Some form of guidance in terms of the level of activities would be useful for petitioners.
- Page 38 last sentence - as we understand it, the requirement should be made the same as the products are still being traded on a foreign board of trade. The computer terminals of a U.S. contract market is just a means of facilitating trading of such products.