



FUTURES INDUSTRY ASSOCIATION

INC.

2001 Pennsylvania Avenue N.W. • Suite 600 • Washington, D.C. 20006-1807 • (202) 466-5460

Fax: (202) 296-3184

98-30

(16)

VIA MAIL

To: The Honorable Brooksley E. Born

COMMENT

From: John Damgard & Barbara Wierzynski

Date: September 30, 1998

Re: **Filing for Concept Release on the Placement of Foreign Board of Trade's Computer Terminals in the United States**

Please see attachment, as we are filing this today.

U.S. DEPARTMENT OF JUSTICE
SECURITIES AND EXCHANGE COMMISSION

1998 OCT -2 10 30 AM '98

RECEIVED
OCT 1 1998

COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD
OCT 2 2 04 PM '98



FUTURES INDUSTRY ASSOCIATION

INC.

2001 Pennsylvania Avenue N.W. • Suite 600 • Washington, D.C. 20006-1807 • (202) 466-5460

Fax: (202) 296-3184

COMMENT

September 30, 1998

Ms. Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RECEIVED
FEDERAL RESERVE
1998 OCT -2 10 12 AM '98

Re: Concept Release on the Placement of a Foreign Board of Trade's
Computer Terminals in the United States

Dear Ms. Webb:

The Futures Industry Association ("FIA") respectfully submits this comment letter in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") request for comment on its Concept Release on the Placement of a Foreign Board of Trade's Computer Terminals in the United States ("Concept Release"). 63 Fed. Reg. 39779 (July 24, 1998).

The FIA is a not-for-profit corporation, which acts as a principal spokesman for the futures and options industry. Its members include approximately 70 of the largest futures commission merchants ("FCMs") in the United States. Among its associate members are representatives from virtually all segments of the futures industry, both national and international. Reflecting the scope and diversity of our members, FIA estimates that its members effect more than 80 percent of all transactions on US contract markets.

Overview and General Comments

The FIA commends the Commission for its willingness to address the important issues related to providing electronic access to a foreign futures exchange from locations within the United States. Technological advances are fundamentally altering the way futures markets operate and automated mechanisms are facilitating the means by which both US and foreign markets are accessed. In this environment, the FIA urges the Commission to move quickly to put in place a flexible, forward-looking regulatory framework that will accommodate new technology and increase market access for firms and customers alike.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Two

Trends in technology provide tremendous opportunities and benefits to exchange members and customers. New technologies will greatly increase access to US and foreign markets and products, make trading more efficient and cost effective and promote competition at all levels of the marketplace. FIA believes that the Commission's framework should support conditions that will foster innovation and increase market access. The FIA also believes it is important that that framework permit markets and firms to determine which of their members and/or customers should have access to new technology.

Our comments on the Concept Release are provided within the context of the following three general principles that we believe should guide the Commission in developing this framework:

Discussion

I. Regulatory Framework should be Flexible, Forward-Looking and be Capable of Accommodating Evolving Technology

In the Concept Release, the Commission notes that, as technology evolves, new types of access to foreign markets will develop.¹ FIA agrees and urges the Commission to implement a framework that is forward-looking, flexible and not only capable of accommodating the evolving technology but also facilitates innovation. Failure to do so will result in an approach that is unable to accommodate new practices, situations and technology without frequent amendment and supplementation. Ultimately, it will affect the ability of US customers to hedge the risk associated with their international portfolios and the ability of US firms to deliver the services and provide the software that their competitors around the world are now able to provide. For these reasons, in the areas discussed below, the Commission should avoid imposing detailed prescriptive rules concerning the method and means by which firms and markets comply with Commission requirements. The Commission should instead allow markets and firms to have the latitude necessary to make commercial and operational judgments about how they will meet regulatory requirements.

II. Regulate the Activity, Not the Technology

¹ 63 Fed. Reg. at 39787.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Three

The Commission inquires whether mechanisms that enable customers to submit orders electronically to an FCM, and subsequently to a foreign futures exchange without any human intervention at the FCM, should be considered a "computer terminal" under Commission rules.² Specifically, the Commission asks what characteristics would distinguish an automated order routing system from a computer terminal, and asks in this regard whether the Commission should require an employee of the FCM to take some "affirmative, non-automated action" to transmit the order for execution and whether any restrictions, such as the type and amount of information available on the system should apply.³ The Commission also inquires whether fully automated order routing systems should be permitted to provide access to all foreign futures exchanges, even if the foreign exchanges have not received permission to place terminals in the US.⁴

Although technology is the engine driving change in the industry, the Commission's focus should be on the underlying activities that are undertaken using new technology and the demonstrated risks, if any, posed by those activities. Specifically, technology should be a regulatory issue only to the extent it increases or minimizes regulatory risk. We note several points in this regard.

A. Tailor regulation to activity

First, the FIA believes that the Commission should not permit technological developments to obscure the distinction between exchanges and brokers; between exchange systems pursuant to which the parties entering an order agree to the terms of a trade and systems that merely provide enhanced interfaces with such trade execution systems. Technology may change the manner in which brokers and customers relate to, or communicate with, each other, but it does not alter the fundamental nature of the relationship, or the rights and obligations of the parties. The customer remains obligated to the broker to meet margin obligations and the broker is responsible for all mandated customer protection requirements and similarly remains

² Id., at 39787.

³ Id., at 39788.

⁴ Id., at 39788.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Four

responsible to the clearing firm or the exchange/clearinghouse for all trades executed for or on behalf of its customers.⁵

Indeed, the Commission's customer protection rules currently mandate that those who do business with US customers involving foreign futures and options transactions must register as an FCM or be exempted pursuant to relief provided under Part 30 of the CFTC rules.⁶ All US persons, unless they trade for proprietary purposes through an affiliate that is a member of the relevant foreign exchange, must have an account with an FCM or firm exempted under Part 30.⁷ FIA, therefore, believes that the FCM or Part 30 firm that has responsibility for ensuring compliance with applicable sales practice requirements, rules addressing protection of customer funds and for ensuring its compliance with applicable financial rules is best suited to determine whether and how its customers, or persons who control the trading for such customers, e.g., registered commodity trading advisors, obtain access to exchange computer terminals or automated order routing systems.

⁵ As the Commission is aware, customers whose accounts are documented with a US FCM may be provided access to an automated order routing system by an affiliate of the US FCM that has subscribed to the particular order routing system. The fact that a legal entity in the group other than the US FCM has contracted with a particular vendor and will provide access to the technology to certain customers of the US FCM will not affect the FCM's relationship with its customers or its regulatory responsibilities under the US Commodity Exchange Act ("CEA"). Second, for the reasons noted below in II.C. below, the FIA wishes to confirm the continued effectiveness of footnote 2 of CFTC Staff Interpretative Letter No. 93-115 relating to foreign order transmittal in circumstances where customers input orders into an order routing system that interfaces with a computer terminal of an affiliate of the FCM, not of the FCM. Indeed, for the reasons stated in II.C. below, FIA believes that the enhanced risk management capabilities of the new technology should address CFTC staff concerns that resulted in the requirement that the FCM and the relevant foreign firm be affiliated. See CFTC Staff Interpretative Letters Nos. 93-115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 (Dec. 23, 1993), and 95-08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 (Jan. 25, 1995).

⁶ See 17 CFR Part 30.

⁷ See CFTC Staff Interpretative Letters Nos. 88-15, Comm. Fut. L. Rep. (CCH) ¶24,296 (August 10, 1988) (which provides that the registration requirement does not apply to any person trading solely for proprietary purposes), and 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (Nov. 17, 1987) (which provides that the registration requirement does not apply to a foreign firm that is either a member of a foreign exchange or is affiliated with an FCM whose sole nexus with a US customer is that it carries that FCM's customer omnibus account).

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Five

The means by which customers today can access markets, either by direct contact with the broker or via an automated system or some combination thereof, does not change the core relationship between brokers and their customers. Similarly, the fact that an exchange determines to switch from floor trading to electronic trading, or that the open architecture of its electronic platform permits direct interfaces with automated order routing systems does not change its basic regulatory responsibilities to maintain a fair and orderly market and to prevent fraud and abusive trading practices.

A good example of the need to focus on the function being served by the system in order to tailor appropriate regulation is available when considering the Internet. The Commission has approved Chicago Mercantile Exchange ("CME") rules that permit FCMs' customers to access CME contracts traded on the GLOBEX system initially by entering orders via the Internet, which then pass through the FCM's electronic interface with the GLOBEX system for trade execution.⁸ Provided the orders satisfy certain prudential filters programmed by the FCM and tailored to that customer, the FCM's interface automatically submits the orders to the GLOBEX system for execution.

It would appear, therefore, that the Commission has accepted this functional approach to regulatory issues raised by technology and has recognized that facilities that provide a direct automated connection to an exchange should not themselves be regulated as markets, nor should they be viewed as extensions of the market. This analysis should not change in circumstances where the order routing system interfaces with a foreign futures exchange. The order routing system does not become an exchange and the foreign exchange that interfaces with the order routing system is not operating from locations within the United States, nor should it be deemed to be doing so. For all of the foregoing reasons, in response to the Commission's question, the FIA does not believe that order routing systems should be deemed "computer terminals" with the consequences of that definition.⁹

This approach, which FIA endorses, would also argue against attempting to make distinctions between order routing systems that are fully automated and systems that may require a degree of human intervention, or those that display the full range of information available on a

⁸ See Letter from John C. Lawton, CFTC, to Carl Royal, CME, dated August 14, 1997.

⁹ See 63 Fed. Reg. at 39786-39787.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Six

computer terminal, and those that do not. The element of human intervention or the scope of available information are not what distinguish an exchange from a device that provides access to the market. Moreover, giving weight to such distinctions is inconsistent with the Commission's need to focus on core activities and, ultimately, will result in the Commission being drawn inexorably toward setting some arbitrary level of "human intervention" or degree of information that in the end will serve little or no regulatory or public interest.

Therefore, the FIA believes that whether a firm should be permitted to provide its customers access to an automated order routing system should not turn on whether the process is fully or only partially automated, or the type or amount of information accessible on the system, or whether the foreign futures exchanges that are being accessed have received permission to place terminals in the US.

B. Regulations should be based on demonstrable, not anticipatory, risk

Second, not only should the regulation be tailored to the activity, any new regulations proposed or adopted by the Commission should be based on demonstrable and not anticipated risk that the Commission can reasonably expect may result from the activity undertaken using the new technology. The Commission should be able to articulate the specific new risk resulting from the technology that the proposed rules are intended to address. A general discomfort with the unknown, in the absence of any demonstrated increase in risk either to customers, firms or the market, is an insufficient basis to make new rules and would not, in our view, be consistent with the Commission's mandate to protect US markets and US customers. Nor is it appropriate to require the industry to demonstrate to the Commission on an on-going basis that any new technology proposed to be used is not susceptible to any risk. No system of regulation can guarantee against all risk.

On the other hand, the FIA understands the Commission has a legitimate interest in ensuring that the use of new technology does not affect a firm's ability to remain in compliance with appropriate Commission rules and regulations, or the Commission's ability to monitor for such compliance and to access necessary information.¹⁰ The FIA also believes that the

¹⁰ *Id.*, at 39786. With respect to information sharing, FIA would discourage the Commission from developing separate information sharing standards or procedures for these purposes. To the extent possible, the Commission should rely on existing arrangements for accessing information from particular jurisdictions. In addition, most jurisdictions have unique requirements governing what information can be shared, by whom, under what procedures, and their subsequent use. Therefore, these issues are best addressed on a case-by-case basis.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Seven

Commission could appropriately seek to ascertain in a non-prescriptive and flexible manner that FCMs and Part 30 firms have proper internal control procedures in place to protect against unauthorized access and trading to ensure that access to such systems does not create financial and operational risks for the firms. For example, the Commission could legitimately require that in providing its customers access to computer terminals, the FCM, its affiliate or Part 30 firm provide only those systems that, at a minimum, integrate credit and position limits,¹¹ or, alternatively, that such firms have the unilateral capability to direct the foreign exchange or clearing/exchange member firm to block access to the order execution facility by its customer.

C. Eliminate rules and regulations in cases where new technology renders them obsolete

Third, the Commission states that "its regulatory approach should not inhibit cross-border trading by imposing unnecessary regulatory burdens."¹² We agree and further suggest as part of this review that the Commission undertake a comprehensive review to determine whether technological trends are making aspects of the existing regulatory structure unnecessary, burdensome or contrary to the needs of customers and markets. We further suggest that the Commission take immediate corrective action in circumstances, such as the one discussed below, where evidence exists that new technology obviates the need for continued compliance with certain existing rules. The FIA would be pleased to work with the Commission in identifying existing rules, regulations, orders and interpretations that may have been rendered obsolete by new technology.

One specific area that the FIA believes falls into this category is the risk management issues addressed in two Advisories involving foreign order transmittal.¹³ Division staff permitted US customers of US FCMs to transmit orders directly to a foreign firm affiliated with the US FCM for execution for or on behalf of such customers through the FCM's omnibus account with the foreign firm.¹⁴ Many computer terminals and automated order routing systems contain the

¹¹ Id., at 39788.

¹² Id., at 39784.

¹³ Interpretative Letter Nos. 93-115 and 95-08.

¹⁴ Id.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Eight

risk management filters described above in connection with CME rules permitting Internet access to its products traded on GLOBEX. Systems that have such features will facilitate a firm's ability to ensure that its exposure to any single customer does not exceed the limits that it has prescribed for that customer. The system, rather than individual salespersons, will determine on a pre-trade rather than a post-trade basis, whether particular customer orders are within that customer's trading or credit limits. In these circumstances, many of the conditions in the Advisories intended to control an FCM's exposure to its customers where employees of a foreign firm input orders or otherwise deal with customers may no longer be necessary.

III. The Commission Should Not Impede Access to Computer Terminals and Automated Order Routing Systems From US Locations

The Concept Release contains an approach developed by the CFTC's Division of Trading and Markets ("Division") for the placement of a foreign exchange's "computer terminals" in US locations.¹⁵ The Division's approach would permit members of the foreign futures exchange and their affiliates to place computer terminals in their US offices or in their firm booths on the floor of a US futures exchange.¹⁶ The Commission also inquires to what extent customer use of automated order routing systems and computer terminals should be permitted and what safeguards, restrictions and conditions should apply to their use.¹⁷ The Division does not currently contemplate that the proposed rules would permit a customer to have a direct link to a foreign futures exchange's floor or computer terminal without first flowing through a registered FCM that is a member or affiliated with a member of the foreign futures exchange.¹⁸

Our comments in this area fall into two general categories. First, subject to protections provided by the broker/customer relationship, that the Commission take as expansive a position as possible regarding who can access computer terminals of foreign futures exchanges and automated order routing systems from locations in the US and defer to market and firm

¹⁵ 63 Fed. Reg. at 39784-39786.

¹⁶ Id.

¹⁷ Id., at 39787-39788.

¹⁸ Id., at 39787.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Nine

determinations relative to which members and which customers in this regard. Second, that in adopting a framework for permitting the operation of computer terminals in the United States, the Commission should avoid the imposition of unnecessary and/or duplicative regulation and defer as much as possible to home country regulation, and seek only to address those areas where regulatory gap is identified.

A. Markets and regulated firms, not the CFTC, should determine who has access to new technology

We have described above the Commission's customer protection rules that require registration as an FCM or exemption pursuant to Part 30 of the CFTC rules for those who do business with US customers involving foreign futures and options transactions.¹⁹ We have also urged the Commission to permit FCMs and Part 30 firms that have the responsibility for complying with customer protection and financial integrity rules determine whether and how its customers, or persons who control the trading for such customers, e.g., registered commodity trading advisors, obtain access to exchange computer terminals or automated order routing systems, or for that matter, any other means of accessing the market.

Consistent with the foregoing, the FIA seeks clarification on the ability of a non-clearing member of a foreign futures exchange to access that exchange's computer terminal from a location in the US. The FIA requests confirmation that by proposing that members and affiliates of members of the foreign futures exchange be permitted to obtain computer terminals in the US, the Commission does not intend that the customer protections afforded by its registration requirements, or its ability to regulate those who do business for US persons, be affected. Specifically, FIA requests confirmation that US-based members of a foreign futures exchange who are not FCMs and who trade solely for proprietary purposes may have accounts only with clearing members of the foreign exchange who are themselves FCMs, affiliated with FCMs or exempt from registration under Part 30.²⁰

¹⁹ See CFTC Staff Interpretative Letters Nos. 88-15 and 87-7.

²⁰ Id. As noted previously, the Commission's registration requirement for foreign futures and options transactions ensures basic customer protections, including the fitness of those who deal with US customers, customer funds protection, recordkeeping and reporting and the financial integrity of those who hold customer funds. See also 51 Fed. Reg. 12104, 12108 (April 8, 1986). The FIA's request for the inclusion of foreign firms solely on the basis that they are affiliated with a registered FCM would require the Commission to extend the current interpretation of who may carry the accounts of US

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Ten

Subject to this important proviso, however, the FIA can see no regulatory basis for the Commission to restrict access to computer terminals only to members of the foreign exchange or such member's affiliates. If the exchange rules permit the exchange's computer terminals to be placed in the offices of affiliates or customers of the member or affiliate, the Commission should not adopt rules that would operate to restrict that access. For that matter, the fact that the Commission would permit affiliates of exchange member to have such terminals will not negate exchange rules prohibiting such access. The rules of the foreign exchange, in the first instance, and second, the broker/client relationship, should determine whether and how individual customers, or persons who control the trading in such customers' accounts, are provided with access to such facilities.

The FIA also urges the Commission not to impose restrictions on the types of customers or account managers to whom FCMs and Part 30 firms may provide access either to computer terminals or to automated order routing systems. Absent exchange-set restrictions, we can identify no regulatory reason why the regulated firm's determination should not prevail in determining which of its customers (and customers' account managers) should be permitted access to computer terminals, or to any other new technology that makes trading more efficient and cost effective. Indeed, principles of fairness and equal access would argue against using the status of the customer as a condition precedent for determining whether that customer can have access to new technology. Moreover, as discussed above, new technology can greatly enhance a broker's ability to manage its exposure to individual customers.

In summary, FIA believes the FCM or Part 30 firm that has responsibility for ensuring compliance with regulatory requirements intended to ensure customer protection and its own financial integrity is best suited to determine whether and how its customers (or persons who control the trading for such customers) obtain access to exchange computers or automated order routing systems. A regulatory approach that dictates which US persons may have access to what types of mechanism for market access will deny US persons the benefits of new technology without achieving any core regulatory protection. Rather, the Commission can best ensure that the use of new technology does not create financial and operational risks for firms by

customers for foreign futures and options transactions. The FIA urges the Commission to consider granting this request and would be pleased to work with the Commission and its staff in addressing this issue.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Eleven

ascertaining that regulated firms have proper internal control procedures that address unauthorized access and trading.

B. Commission's approach should rely on concept of lead regulation and impose new rules only if necessary to address areas of regulatory gap

The second access issue relates to the proposed framework for permitting the operation in the United States of a foreign futures exchange's computer terminals.²¹ As has been stated earlier, as a matter of good regulatory and public policy, the Commission should seek to avoid imposing unnecessary and/or duplicative regulation and defer as much as possible to home country regulation. In an increasingly global marketplace, the FIA believes that lead regulation, complemented by additional requirements only to the extent necessary to address issues of core importance (e.g., ability to access relevant information), is the most effective and indeed the only feasible option available to the Commission. For this reason, the FIA respectfully takes issue with many aspects of the proposed approach of the Division in regard to the terms and conditions pursuant to which members and members' affiliates may access computer terminals. The Commission should not require bona fide foreign futures exchanges to seek designation as a contract market solely because they seek to place their computer terminals in the United States, nor should it implement a process that duplicates the contract market designation process under a different label.

On the other hand, FIA agrees that the Commission should formalize its approach and the procedures for placement of terminals in the US. The Division's approach enumerates the specific issues that could be germane to the Commission's assessment in this regard, including the laws, rules and monitoring system to which the foreign futures exchange is subject. In this connection, and consistent with the mandate of section 4(b) of the CEA,²² we would encourage the Commission to confine its review to addressing the core issue of whether the foreign market

²¹ As noted above, FIA believes that such approval process should apply only in respect of electronic trade execution systems operated by a bona fide foreign futures exchange that seeks to locate terminals in the US and not to order routing systems that interface with such systems.

²² 7 USC §6(b).

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Twelve

is a bona fide foreign futures exchange rather than seek to ensure that each element of the US regulation of contract markets is satisfied or to achieve some "comparable level" of supervision of the foreign futures exchange.²³ The core analysis that we propose, coupled with appropriate information sharing arrangements and the ability to obtain data on general levels of trading volume originating from the US, should be adequate to permit the Commission to evaluate on an ongoing basis whether the foreign futures exchange is bona fide or not. Moreover, the FIA is of the view that it would be difficult, perhaps impossible, and certainly inappropriate to adopt specific tests to evaluate each required item or an objective set of criteria for a "bona fide" foreign futures exchange that will apply to all exchanges in all circumstances.²⁴ In general, the Commission's approach should be qualitative, not quantitative, and should accommodate an evolving global market and regulatory environment.

In addition to the concerns already expressed regarding the Concept Release, the FIA also has specific objections to the following proposals:

1. The proposal that specific persons at the foreign futures exchange responsible for relevant compliance matters be identified in the application²⁵ -- FIA believes that this level of specificity is unnecessary and will result in frequent notification to the Commission resulting from personnel changes. It should be adequate for the foreign futures exchange to identify the responsible office only and/or designate a point of contact for the Commission for all inquiries.

²³ 63 Fed. Reg. at 39784-39786. For example, the Commission could require the foreign futures exchange to confirm that it has procedures in place to comply with the International Organization of Securities Commissions "Principles for Oversight of Screen-Based Trading Systems for Derivative Products" (June 1990). However, to the extent some or all of the issues relevant to whether a foreign market is a bona fide foreign futures exchange (i.e., the market has rules governing fair and orderly markets that are monitored for compliance by the relevant foreign market authority) have been addressed by the Commission in a Part 30 comparability or any similar analysis, the Commission should not seek to obtain duplicative information or undertake duplicative analysis.

²⁴ *Id.*, at 39784, 39787-39788.

²⁵ *Id.*, at 39784.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Thirteen

2. The proposal that the foreign futures exchange provide on a routine basis the percentage of trading volume that originates from each jurisdiction where trading activity occurs²⁶ -- While the percentage of trading volume originating from the US compared with total exchange volume could assist the Commission in determining whether the foreign futures exchange remains a bona fide foreign futures exchange, the Commission has not identified a regulatory purpose for the routine collection of trading volume information with respect to each jurisdiction where trading takes place.
3. The proposal that members of the foreign futures exchange provide a description of relevant litigation, enforcement actions, disciplinary proceedings or other civil, criminal or administrative proceedings within the past five years²⁷ -- FIA notes that the criteria for membership on the foreign exchange will have been evaluated by the Commission, and a certification by the foreign exchange and member firm that the firm is in good standing as a member should be adequate in this regard. Moreover, as noted above, the FIA believes that all intermediaries engaged in foreign futures and options transactions with US customers must be either a registered FCM, affiliated with an FCM or exempted under Part 30.
4. The proposal that the foreign futures exchange conduct a biennial on-site review of the activities of each member or affiliate or upon notice of breach²⁸ -- FIA can see no regulatory reason to require routine on-site audits of members or their affiliates operating under a Commission Order. If such member or affiliate is a registered FCM that FCM will be audited by its US designated self-regulatory organization for compliance with requirements related to its foreign futures trading activities. If the member or affiliate is engaged solely in proprietary trading, all information regarding that person's trading activities on the computer terminal is accessible to the foreign futures exchange on a real-time basis. FIA, therefore, sees no regulatory benefit that would be achieved by this

²⁶ Id., at 39785, 39786.

²⁷ Id., at 39786.

²⁸ Id., at 39785.

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Fourteen

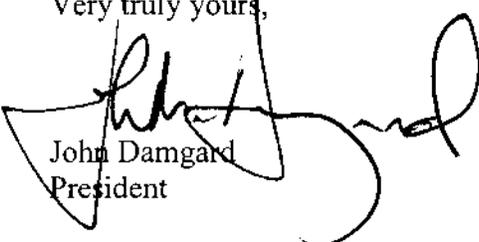
additional layer of audit for FCMs that is not already achieved by the existing audit program. Nor would any possible benefit be proportionate to the costs to FCMs or markets of complying with the audit requirement.

FIA's final point on this issue relates to the Division's intention to seek information concerning the ability of a US exchange to place and operate computer terminals in the home jurisdiction of the foreign futures exchange seeking to place its terminals in the US. FIA believes that this is relevant information that should be sought by the Commission and taken into consideration in its assessment of the totality of the application. The FIA endorses open and competitive markets and believes that foreign futures exchanges should be permitted to place terminals in the US, just as we believe US futures exchanges should be able to place terminals in foreign jurisdictions. We would be concerned, however, if the Commission were to adopt an express policy of reciprocity that would deny access to a foreign futures exchange solely on the basis that its home jurisdiction excluded US markets. The Commission should not perpetuate a foreign jurisdiction's bad policy decision by retaliating with similar policy. Instead, the approach adopted by the Commission should discourage others from exercising similar powers, which FIA believes can best be achieved by establishing cooperative relationships with foreign regulatory authorities in implementing a lead regulatory approach. Further, in framing its approach to "outbound" transactions by US persons on foreign markets, whether on computer terminals or automated order routing systems, the Commission should consider the impact of similar restrictions and regulations that would likely be imposed on "inbound" orders on US futures exchanges from foreign jurisdictions.

Conclusion

FIA appreciates the opportunity to submit these comments in response to the Commission's publication of the Concept Release. If the Commission or its staff has any questions regarding this letter, please contact the undersigned at (202) 466 - 5460.

Very truly yours,



John Damgard
President

Ms. Jean A. Webb
Secretary of the Commission
September 30, 1998
Page Fifteen

cc: The Honorable Brooksley E. Born
The Honorable John E. Tull, Jr.
The Honorable Barbara P. Holum
The Honorable David D. Spears
The Honorable James E. Newsome
I. Michael Greenberger