98-30
(17)

LIFFE

The London International Financial Futures and Options Exchange

22 September 1998

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

Jean A. Webb.

COMMENT

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

LIFFE Administration and Management ("LIFFE A&M"), which operates the market known as The London International Financial Futures and Options Exchange ("LIFFE"), appreciates the opportunity to respond to the request of the Commodity Futures Trading Commission (the "Commission" or "CFTC") for comments addressing the issues raised by the placement of computer terminals in the United States by foreign futures exchanges for the purpose of facilitating the trading of futures and options products available through such foreign exchanges (63 Fed. Reg. 39779 (July 24, 1998), hereinafter referred to as the "Concept Release").

LIFFE A&M is a Recognized Investment Exchange ("RIE") under the terms of the United Kingdom's ("UK") Financial Services Act 1986 ("FS Act"). Accordingly, it is subject to the oversight of the Financial Services Authority (the "FSA"), which is responsible for ensuring that LIFFE A&M continues to meet the recognition requirements that are stipulated in the FS Act. The FS Act provides that an RIE must, among other things, have sufficient financial resources for the proper performance of its functions, limit dealings on the exchange to instruments for which there is a proper market, and have arrangements for ensuring the performance of transactions effected on the exchange.

Although it is located and regulated in the UK, LIFFE is an international exchange, both in terms of the products that it lists and its membership. LIFFE operates markets in financial, equity, and commodity futures and options contracts denominated in seven major currencies (Sterling, Deutschmarks, ECU/Euro, Italian Lire, Swiss Francs, Japanese Yen, and U.S. Dollars). LIFFE's membership is also international. Approximately three-quarters of its members are from outside of the U.K. and approximately one-quarter are US entities. Thus, LIFFE and its members have a keen interest in the regulatory framework being developed by the Commission with respect to the installation of computer terminals in the US by foreign exchanges.

Cannon Bridge London EC4R 3XX
Telephone 0171 623 0444 Fax 0171 588 3624
http://www.liffe.com/

LIFFE Administration and Management
A wholly-owned subsidiary of LIFFE (Holdings) plc
Registered office as above
Registered in England no 1591809

Overview and General Comments

We commend the Commission on its generally thoughtful approach to the important issues discussed in the Concept Release. We must, however, emphasize the need for the Commission to move swiftly to finalize its rules so as to reduce regulatory uncertainty, provide for the comparable treatment of US and foreign exchanges and their members, and promote competition and innovation. In this regard, the current circumstance, wherein certain foreign exchanges are permitted to place and operate terminals in the United States pursuant to no-action relief granted by the Commission, while other foreign exchanges have not been able to obtain similar relief, creates a significantly unfair competitive environment.

The publication of the Concept Release reflects the interplay of the two most important developments in exchange-traded derivatives over the past decade, namely, the increasing globalization of financial markets and the integration of advanced technology by futures exchanges, futures industry intermediaries, and end-users in their trading activities. The application of advanced technology by exchanges, futures industry intermediaries, and their customers has the potential to increase greatly the domestic and foreign trading opportunities of US investors, to make such trading both more efficient and affordable, and to promote competition among exchanges and futures industry intermediaries worldwide. However, these benefits will not be maximised if the use of such technology is subject to outdated, unduly burdensome or inequitable regulation.

During the last decade US investors have increasingly sought access to investment and risk-management opportunities in non-US markets, which has been accompanied by the spectacular growth in trading by US persons in foreign futures and options on futures. It should be noted that the growth in trading in non-US markets by US persons has not come at the expense of US markets, but rather has accompanied the corresponding growth in volume on US contract markets.

In adopting an approach to regulation of the placement of computer terminals in the United States by foreign boards of trades and their members, we believe the Commission should adhere to the following four guiding principles.

First, we believe that the Commission should adopt rules that would permit foreign boards of trade and their members to place computer terminals in the US based on the comparability of the regulatory regime in the home jurisdiction of such foreign exchange with the CFTC's regulatory framework. Pursuant to CFTC Rule 30.10, the Commission has, for many years, successfully relied on the regulatory framework adopted by foreign futures authorities[1] (such as, in the UK, the FSA and its predecessors) in connection with the CFTC's regulation of the offer and sale of

---

[1] The term "foreign futures authority" is defined in Section 1a of the Commodity Exchange Act (the "Act") as "any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter."

foreign futures into the US by foreign brokers, including the members of foreign exchanges such as LIFFE. Bona fide foreign boards of trade[2] should not now be required to register with the Commission solely because such exchanges place computer terminals in the US. Instead, the Commission should rely on the existence of a comparable regulatory framework governing such foreign boards of trade.

Secondly, we believe that the Commission's customer protection obligation is accomplished through the Commission's basic regulatory structure applicable to all futures industry intermediaries. Such intermediaries, if located in the US, must be registered as futures commission merchants ("FCMs"), or, if located offshore, must be exempt pursuant to CFTC Rule 30.10. As currently proposed in the Concept Release, U.S. customers may only place orders on foreign exchanges through computer terminals if the transmittal of such orders to the exchange is intermediated by an exchange member registered with the Commission as an FCM, and therefore subject to CFTC regulation. Consistent with the CFTC's current regulatory scheme for foreign intermediaries under Rule 30.10, we believe it would also be appropriate for the Commission to permit Rule 30.10 exempt members of a foreign board of trade to offer electronic order routing to U.S. customers. If the Commission were to determine that the basic regulatory framework for FCMs or Rule 30.10 exempt firms fails to provide adequate customer protection in light of the technological advances in computer-based trading, we believe the Commission should address such issues through revision of its rules that are applicable to all intermediaries (FCMs or Rule 30.10 exempt firms) utilizing exchange computer terminals or order routing systems in their dealings with U.S. customers, rather than through the imposition of a separate and potentially inconsistent regulatory regime for foreign exchanges and their members.

Thirdly, the Commission should strive to develop a regulatory structure that provides domestic and foreign boards of trade and their members with the necessary flexibility to pursue technological advances that may be beneficial to end-users. For example, the Commission should empower all exchanges to be creative and innovative in developing and implementing order routing and execution systems without imposing unduly burdensome restrictions that frustrate the exchanges, their membership and end-users. This result can best be accomplished by moving away from the CFTC's traditional form of command-and-control incremental regulation and towards a goal-oriented approach to regulation.

Fourthly, we wish to stress the importance of not imposing more onerous restrictions or conditions on foreign boards of trade in connection with their placement of computer terminals or order routing systems in the United States than are prescribed by the CFTC for US contract markets. By establishing a regulatory framework that provides for comparable regulatory treatment of foreign and domestic exchanges and their members, the Commission will be able to satisfy its "obligations under the Act to maintain the integrity of the U.S. markets and to provide protection to US customers" without "inhibit[ing] cross-border trading by imposing unnecessary regulatory burdens."[3]

---

[2] *See* the discussion of "Bona Fide Foreign Board of Trade," *infra*.

[3] 63 Fed. Reg. at 39784.

In that regard, it would be appropriate for the Commission to consider the extent to which reciprocal treatment has been accorded to US exchanges seeking to place terminals in the petitioning jurisdiction. In the case of the UK, the statutory basis for the regulation of an overseas investment exchange (i.e., one whose head office is situated outside of the UK) is provided by Sections 37 and 40 of the FS Act. The FS Act provides that the Treasury shall recognize an overseas investment exchange if such exchange is, in its home country, subject to supervision that, together with exchange rules, is such that UK investors are afforded protection in relation to the overseas exchange at least equivalent to that provided in relation to UK RIEs, and the exchange and its regulator are able and willing to cooperate, through information sharing and otherwise, with the UK financial regulatory bodies.

In practice, an overseas exchange seeking recognition to do business in the UK would apply to the Treasury and would submit a copy of its rule book. Treasury officials would then examine these rules and the operation of the overseas exchange to assess the degree of investor protection likely to be afforded to UK-based investors using such an exchange. The standards to which UK-based RIEs must adhere provide a practical benchmark for the assessment of non-UK exchanges. In parallel, officials from the Office of Fair Trading would assess the competitive aspects of the non-UK exchange's rules and operation.

If on the advice from Treasury officials and the Director General of Fair Trading, Treasury Ministers agree that the overseas exchange would afford equivalent investor protection to that provided in the UK, and there is adequate provision for information sharing and cooperation between UK regulators and their counterparts, then the overseas exchange is granted recognition to conduct business in the UK. Subsequent to this recognition being granted, Treasury officials review the rules of overseas investment exchanges on a periodic basis (typically every year or two) to ensure that there are no material changes that might cause the recognition to be withdrawn.[4] The Chicago Mercantile Exchange ("CME"), New York Mercantile Exchange and the Chicago Board of Trade have all been recognized as overseas investment exchanges in connection with the placement of their computer terminals in the UK.

A regulatory approach that is premised upon the foregoing principles of: (1) comparability of regulatory regimes; (2) regulation of intermediaries as FCMs or Rule 30.10 exempt firms, as applicable; (3) encouragement of technological innovation through a goal-based regulatory framework; and (4) comparable and reciprocal treatment of domestic and foreign exchanges, which generally appears to be the approach suggested by the Commission in the Concept Release, has several advantages. First, it will provide regulatory certainty to foreign exchanges that install computer terminals in the US. Secondly, such an approach would not impose any significant additional regulatory burdens on foreign exchanges and their members. As a result, foreign exchanges and their members will be able to provide their services to US customers

---

[4] The Chancellor of the Exchequer announced in May 1997 that the UK system of financial regulation would be reformed and rationalized to bring banking, investment and insurance business under the purview of a single statutory regulator for the first time. A draft Bill to effect these reforms was published on July 30, 1998. It provides broadly for the continuation of the current recognition regime for overseas exchanges, save for the fact that responsibility for the regime will pass from the Treasury to the FSA. Each overseas exchange will be required to make an annual report to the FSA. Such exchanges will not, however, be subject to day-to-day scrutiny by the FSA.

without incurring redundant regulatory costs. Thirdly, this approach recognizes that principles of international comity support reasonable deference to a home country's governance of its own markets, particularly with respect to the trading of futures contracts listed on an exchange located and regulated in the home country. Fourthly, by regulating the futures intermediaries located in the US rather than the foreign exchange itself, the possibility of conflict between the Commission and the foreign exchange's home country regulator will be reduced. Fifthly, establishing a regulatory structure that focuses only on the limited activities occurring in the US rather than on the activities that a foreign exchange conducts primarily in its home country is consistent with the Commission's mandate under Section 4(b) of the Act.[5/] Sixthly, the regulation of intermediaries located in the US as FCMs, and intermediaries operating from outside of the US pursuant to Rule 30.10, is consistent with the CFTC's current customer protection scheme and objectives.

For the above-described reasons, we generally support the constructive approach to regulation of computer terminals of foreign exchanges proposed in the Concept Release. However, as set forth below in greater detail, we have specific concerns regarding certain elements of the Commission's proposal.

Response to Certain Questions Raised in the Concept Release

The Concept Release requests input on a broad range of issues related to a foreign exchange's placement of computer terminals in the United States. This letter does not attempt to respond to each of the questions with respect to which the Commission is soliciting comment. Rather, we have highlighted those issues that are particularly germane to LIFFE's business and the needs of its members, with a particular focus on those aspects of the Commission's proposal that appear to be inconsistent with the principle of comparable treatment of all exchanges, members and futures intermediaries.

Order Execution and Routing Systems

The Concept Release poses several questions relating to the types and distribution of order execution and routing systems that are currently being developed by various exchanges and what level of regulation is appropriate with respect to these systems. The Commission should grant exchanges and their members sufficient flexibility to develop, implement, and distribute order execution and routing systems, including "open architecture" systems. Any regulatory approach adopted by the Commission should encourage technological innovation and market efficiency because the ultimate beneficiary of such developments will be the end-users of the markets.

We are troubled, however, that the Concept Release's discussion of order execution and order routing issues appears to be framed solely with regard to conditions that apparently would be

---

5/ In 1982, Congress authorized the Commission to promulgate rules and regulations governing the offer or sale of foreign futures or options to US persons. Congress, however, prohibited the Commission from adopting any rule or regulation that: (1) would require Commission approval of any foreign board of trade contract, rule, regulation or action; or (2) governs any rule, contract term or action of a foreign board of trade.

applicable only to systems established by foreign exchanges. There is no regulatory justification for distinguishing between US and foreign exchanges in establishing a regulatory framework governing order execution and routing systems. We would expect the Commission to establish uniform standards that would be applicable to both US contract markets and foreign exchanges. For example, since 1995 the Commission has permitted the CME to issue Electronic Trading Hours ("ETH") Permits to individuals and firms.[6] ETH Permit holders are not members of the CME, but are entitled to have access to GLOBEX terminals for trading CME futures and options for their proprietary accounts. Additionally, ETH Permit holders that are commodity trading advisors are allowed to enter orders on GLOBEX terminals for accounts that they manage.[7] The Commission should permit non-members to have similar access to trading terminals and order routing systems of foreign boards of trade.

Additionally, the Commission has permitted the CME's members that are FCMs and their customers to utilize order routing systems whereby customers may transmit orders directly to their FCM via the Internet, and then, subject to certain prudential controls, permits the FCM to transmit the orders directly to the contract market's electronic trade matching system via the FCM's order routing system.[8] A foreign exchange should likewise be permitted to operate direct order routing systems provided the exchange has satisfied itself that its members have adopted appropriate procedures which ensure that the use of such systems by their customers will not jeopardize the financial integrity of the exchange or its members.

Information Sharing Requirements

In the Concept Release, the Commission requests comment as to whether its rules should state with particularity the elements which must be included in a satisfactory information sharing agreement between the Commission and a foreign regulatory authority. The Commission should continue to review such arrangements on an *ad hoc* basis, as is currently the case with respect to information sharing arrangements under Rule 30.10. There is no need for the Commission to impose a different regulatory framework for information sharing in connection with a foreign exchange's placement of computer terminals in the United States than the regulatory scheme currently in place pursuant to Rule 30.10.

In addition, the Commission has asked "[s]hould the [information sharing] arrangement be only between the Commission and the relevant home country regulator, or should the foreign board of trade itself be a party to the arrangement?"[9] The only parties to an information sharing arrangement should be the CFTC and the appropriate foreign futures authority. The placement of computer terminals in the United States by foreign exchanges should not require information sharing arrangements in addition to those currently in place between the Commission and foreign

---

6/ CME Rule 151.

7/ CME Rule 151.E.

8/ *See* Letter from John C. Lawton, Associate Director, CFTC Division of Trading & Markets, to Carl A. Royal, Senior Vice President and Special Counsel, CME (August 14, 1997).

9/ 63 Fed. Reg. at 39786, n. 40.

futures authorities. Accordingly, the Commission should require only the foreign futures authority, and not the foreign exchange or its members which the foreign futures authority regulates, to enter into an information sharing arrangement with the Commission as part of an order allowing a foreign board of trade to place computer terminals in the US.

Bona Fide Foreign Board of Trade

The Commission is seeking comment as to what level of activity in the US by a foreign exchange might require the foreign exchange to be designated as a US contract market. The proposal in the Concept Release contemplates a two-pronged approach which focuses on (1) a foreign exchange's US trading volume, and (2) its presence and activities in the US. In addition, the Commission has asked whether its rules should define specific thresholds that would require a foreign exchange to seek designation as a US contract market.

As a matter of principle, we believe that any board of trade physically located outside of the US which is subject to a comparable regulatory regime administered by a competent foreign futures authority in such foreign jurisdiction should be deemed a bona fide foreign board of trade. This would recognize the primary role of the foreign exchange's home regulator in overseeing the activities of the foreign exchange, whilst imposing minimum additional costs on foreign exchanges and market users, including US investors.

We are aware that the CFTC has some concerns about the possibility of a board of trade with a significant US nexus attempting to avoid regulation as a US contract market simply by (re)locating itself offshore in, by implication, as less well regulated jurisdiction. For the sake of clarity, I must stress that such concerns could not legitimately apply to the regulatory regime of the United Kingdom.

If the Commission were, nonetheless, to establish criteria for determining the bona-fides of a foreign board of trade – over and above an assessment of the relevant foreign regulatory regime - we believe the test should encompass a number of qualitative, rather than strictly quantitative, factors. We strongly oppose any test that is solely or primarily based on US trading volume as a percentage of total exchange volume or some other numerical threshold. Trading volumes are notoriously fickle and subject to significant fluctuation. For example, if volatility in bond markets were to decline for a significant period of time, the volume experienced on an exchange trading primarily contracts based on interest rates could drop significantly. However, such drop in volume may not be reflected equally across the countries of origin of the exchange's customers. Similarly, global or local business cycles may affect the volume of contracts being traded at any given time. Such fluctuations in volume may not be distributed equally in all jurisdictions where customers trade on the exchange and thus may distort volume percentages and should not be determinative of whether an exchange is a bona fide foreign board of trade. Thus, aggregate trading volume levels and percentages may be less than helpful in this context.

Rather than adopting an approach based primarily on trade volume percentages, the Commission should focus on the totality of circumstances surrounding a particular exchange's operations in determining whether such foreign exchange should be subject to designation as a US contract market. In performing its analysis, the factors to be considered by the Commission might include: (1) the jurisdiction in which the exchange is legally organized and located (i.e., is it

organized or located in a bona fide commercial jurisdiction or in a jurisdiction of "convenience"); (2) the choice of law governing the execution of transactions on the exchange; (3) the choice of law governing the futures or options contracts traded on the exchange; (4) the nature of the regulatory environment in which the exchange operates (i.e., is it subject to a regulatory scheme comparable to the CFTC's regulatory framework administered by a competent foreign futures authority); (5) the home country of the members of the foreign board of trade (i.e., are a significant number of members located in the exchange's home country or are they primarily located in the US); (6) the nature of the contracts listed on the exchange (i.e., are the contracts related to commerce conducted in the exchange's home country or geographical region or are they primarily "clones" of products offered on US contract markets); (7) the hours of operation of the exchange (i.e., are the hours of operation synchronized to the business hours of the exchange's home country or do they mirror US business hours); (8) the percentage of the exchange's trade volume originating in the United States (in the aggregate, including both computer-based and other trading); and (9) the level of a foreign board of trade's marketing and other activities and presence in the United States. A factual analysis which considers the totality of the circumstances should result in a fairer assessment of the bona-fides of a foreign exchange than simply applying a trading volume standard.

Notification Requirements

Included in its proposed list of conditions that the Commission would impose on any foreign exchange that wishes to place computer terminals in the U.S. is a requirement that the foreign exchange "notify the Commission immediately of any known violations of the order, the Act, the Commission's regulations, or any other futures regulatory scheme by the board of trade or by a member or affiliate operating under a Commission order."[10] We object to the scope of proposed Condition 4. We are not aware of any comparably broad obligations currently imposed on US contract markets pursuant to the Act or CFTC regulations or orders that require a US exchange to notify the Commission of violations of the Act or CFTC regulations by the exchange's members.[11] Rather, Section 5a(8) of the Act requires an exchange to enforce its own rules. Similarly, Section 8c(a)(2) of the Act and CFTC Rule 9.11 require a US exchange designated as a contract market to notify the Commission within thirty days of any suspension, disciplinary, expulsion, or access denial action taken by the exchange. However, US contract markets have no express duty to inform the Commission of violations either of the Act or of the CFTC's regulations by its members, or even violations of the exchange's rules by a member if the exchange determines, in good faith, not to institute action against a member for a violation of such rules.

Consistent with the principle of comparability of regulation, it would be unfair to impose a more onerous notification standard on a foreign exchange than is imposed on US contract markets

---

10/ See Condition 4. 63 Fed. Reg. at 39785.

11/ *But see* CFTC Rule 1.12(e), which provides that whenever a US contract market learns that a member has failed to file a notice or written report relating to: (1) a failure to comply with certain minimum financial requirements or (2) the existence of a material inadequacy (as defined in CFTC Rule 1.16(d)(2)) in a member's accounting system, internal accounting controls, or procedures for safeguarding customer and firm assets, such contract market must immediately report such failure to the Commission.

under similar circumstances. Accordingly, we recommend that the proposed Condition 4 be modified to require the foreign exchange to notify the Commission of disciplinary actions taken by such foreign exchange against any of its members with respect to violations of such exchange's rules relating to the operation of computer terminals in the US.

Provision of Certain Information by Exchange Members

In the Concept Release, the Commission has proposed that members of foreign boards of trade which wish to place computer terminals in the United States "provide a description of any litigation, enforcement actions, disciplinary proceedings or other civil, criminal or administrative proceedings, within the prior five years, involving the requester or any principal of the requester, in which there was an allegation of fraud, customer abuse, or violation of applicable regulatory or board of trade requirements."[12] The purpose of this requirement is, presumably, to protect US customers from dealing with unsuitable intermediaries. However, all members that will be dealing with US customers from a location within the US will be required to be registered as an FCM.[13] All FCMs are already required to provide certain disciplinary information to the Commission through the filing of mandatory updates to the registrant's Form 7-R with the National Futures Association ("NFA"). We see no benefits that would be derived from imposing a different reporting requirement than that currently mandated by CFTC Rules 3.10(d) and 3.31(a) and NFA Rules 204(d) and 210(a). Similarly, we see no benefits to be derived from requiring foreign intermediaries that are exempt from registration under Rule 30.10 to provide information to the Commission which is different from that which is currently available to the Commission pursuant to the applicable exemptive order issued under Rule 30.10. We believe that the Commission's proposed imposition of different reporting requirements with respect to the same disclosure issue simply because a foreign exchange member has placed computer terminals in the US effectively increases regulatory burdens and expenses with no commensurate increase in customer protection.

Contents of Petitions and Orders

The Commission is also seeking comment on the items to be included in the petition required to be filed by a foreign exchange (the "Petition") in requesting the Commission's approval to place computer terminals in the US. Generally, the items currently listed in the Concept Release seem designed to achieve the regulatory purposes of protecting U.S. customers and the integrity of US markets. However, once the Commission has satisfied itself as to the bona-fides of a foreign board of trade and the comparability of regulation in the jurisdiction in which such board of trade operates, it would seem that there would be no regulatory justification for requiring such foreign board of trade to provide on an ongoing basis a breakdown of trading volume derived from jurisdictions other than the US and the home country of the foreign board of trade, nor for requiring a breakdown of volume by customer and proprietary origin.

The Commission also requests comment as to whether Petitions should be evaluated (1) by assigning each item in the Petition a threshold that must be met before the Commission may

---

12/ *See* clause 9 at 63 Fed. Reg. at 39786.

13/ *See* clause 8, Id.

grant an order or (2) on the basis of a totality of the circumstances. Our view is that a totality of the circumstances approach will provide the Commission with more flexibility, which is desirable given the rapidly changing business environment being experienced by the futures industry.

The Petition Process

The Petition submission procedure set forth in the Concept Release would require a foreign exchange to submit the entire Petition, including those portions dealing with the regulatory requirements imposed by the regulatory agency in the home jurisdiction. The Commission, however, is seeking comment as to alternative submission methods which may prove less burdensome to both the Commission and to the petitioning exchanges. In this regard, we would suggest the adoption of a bifurcated process for submission of Petitions which would be substantially similar to that currently provided for with respect to applications for Rule 30.10 relief. Pursuant to our proposal, the applicable foreign futures authority in the exchange's home jurisdiction would first obtain approval of the jurisdiction on the basis of the regulatory comparability of the jurisdiction. Then, each exchange in an approved jurisdiction would separately seek approval for placement of its computer terminals in the United States. In those jurisdictions which have already obtained Rule 30.10 relief from the Commission, there would be no need for the exchanges or their regulators to provide the Commission with additional information relating to the regulatory scheme in such jurisdiction.[14]

We believe this bifurcated process will ease the burden on both the Commission and the foreign exchanges by minimizing unnecessary duplication of information. Because foreign futures authorities that have received Rule 30.10 designation and the Commission exchange information regarding their respective regulatory frameworks (and developments relevant thereto), the Commission need only review such information on one occasion (rather than in connection with the application of each exchange in such jurisdiction) and will receive updated information on an ongoing basis from a single source (rather than from multiple exchanges). The burden on an exchange to provide such information in its Petition, as well as its ongoing duty to inform the Commission of regulatory changes as set forth in proposed Condition 3 in the Concept Release, would be obviated.

Consistent with the foregoing bifurcated approach, we suggest that the Commission consider revising the terms of proposed Condition 3 to avoid unduly burdening foreign exchanges. As currently drafted, the condition would require each exchange to "notify the Commission in

---

[14] We note that the CFTC has granted Rule 30.10 comparability relief in the following jurisdictions: the United Kingdom (with respect to firms designated by SIB, SFA, or IMRO, which have been merged into the FSA); France (with respect to firms designated by COB or designated members of MATIF); Canada (with respect to designated members of the Toronto Futures Exchange or the Montreal Exchange); Singapore (with respect to members designated by SIMEX); Australia (with respect to members designated by the Sydney Futures Exchange); Japan (with respect to members designated by the Tokyo Grain Exchange); Spain (with respect to members designated by MEFF RENTA FIJA and the MEFF RENTA VARIABLE); and New Zealand (with respect to the New Zealand Futures and Options Exchange, Ltd.). In addition, Rule 30.10 comparability relief is pending for Malaysia (with respect to the Kuala Lumpur Commodity Exchange) and for Canada (with respect to the Winnipeg Commodity Exchange). CFTC Foreign Instruments Approvals & Exemptions Backgrounder, as of June 26, 1998.

writing immediately of any material changes in the information provided in its Petition to the Commission, in its rules, or in the laws or rules of its home country."[15] We propose revising the scope of a foreign exchange's notification requirement under Condition 3 to be limited to apprising the Commission of changes in the rules of such exchange as they relate specifically to the placement and operation of computer terminals in the United States and in the foreign exchange's home jurisdiction. As discussed in the prior paragraph, the Commission should be able to obtain information regarding the status of applicable laws and rules of the exchange's home country from the applicable foreign futures authority pursuant to the relevant Rule 30.10 order.

Finally, because the public will have had an opportunity to comment on the Concept Release, and, we presume, on the proposed rules prior to their being made effective by the Commission, we believe that the Commission should not be obligated to publish Petitions in the Federal Register for comment prior to approval or rejection by the Commission. Given the commercial and timing considerations involved in the submission of Petitions, the Commission should be encouraged to act as expeditiously as possible with respect to the processing of Petitions. Because the public will already have had ample opportunity to comment on the elements to be included in Petitions and the standards to be used by the Commission in evaluating such Petitions, the potential benefits of soliciting public comment on each Petition are outweighed by the need to process such Petitions expeditiously.

On-Site Review of Members

We support requiring an on-site review of each foreign exchange member or affiliate which has placed computer terminals in the United States on a biennial basis as suggested in the Concept Release. Currently, each FCM is subject to review by the designated self-regulatory organization ("DSRO") appointed for the FCM by the Joint Audit Committee. In order to avoid duplicative or inconsistent regulation, we believe that each FCM's DSRO should conduct periodic reviews of the FCM's activities with respect to computer terminals in the US.

Order Modification or Revocation Procedures

In the Concept Release, the Commission discusses its desire to retain the authority to condition, change, suspend or revoke any order it grants to a foreign exchange or its members, with respect to all or any portion of the order. However, the Commission does not discuss any procedures to be observed by the Commission in connection with taking such action. We believe that the Commission should promulgate a procedure whereby each exchange (and its affected members) which is the subject of a Commission order would be entitled to due process before the Commission may condition, modify, suspend or revoke the order permitting the exchange to place or operate computer terminals in the United States.

---

[15] 63 Fed. Reg. at 39785.

Registration Requirements

The Concept Release does not address whether order entry personnel will be required to be registered with the Commission in any capacity. It is our understanding that order entry personnel that do not solicit customer business and do not execute any discretion over customer orders need not register as associated persons of an FCM.[16] We request confirmation that the same registration standards will be applied to order entry personnel of foreign exchanges' member firms located in the US and that, as a result, personnel acting in a purely clerical capacity or only handling the proprietary trading of a member will not be required to register in any capacity with the Commission.

Conclusion

The pace of technological change and the globalization of markets is likely only to increase. These developments will continue to have a profound effect on financial institutions and investors worldwide. US and foreign exchanges should be permitted and encouraged to respond in the most efficient and innovative ways to such developments. Consistent with Section 12(g) of the Act, the ground rules adopted by the Commission with respect to the placement of computer terminals in the US should seek to encourage fair competition and innovation in the provision of such services.[17]

We have seen a copy of the comment letter submitted to the Commission on 18 September by the European Committee of Options and Futures Exchanges (ECOFEX). LIFFE concurs fully with the arguments contained in that submission.

We stand ready, of course, to discuss any questions the Commission or its staff may have regarding our comments.

Brian Williamson
Chairman

16/ *See* for example, CME Rule 574.

17/ Section 12(g) of the Act provides, in relevant part, that "Consistent with its responsibilities under Section 18, the Commission is directed to facilitate the development and operations of computerized trading as an adjunct to the open outcry auction system."