BUNDESAUFSICHTSAMT FÜR DEN WERTPAPIERHANDEL

The President

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COMMENT

Ms. Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
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Foreign Board of Trade Terminals;
Concept Release on the Placement of a Foreign Board of Trade's Computer Terminals in the United States

Dear Ms. Webb,

Thank you for the opportunity to comment on your above-referenced Concept Release.

I welcome your initiative to develop uniform rules on the placement of foreign exchange trading screens in the United States. Uniform regulation of foreign exchanges accords with the globalization of capital markets and at the same time promotes legal certainty and an equal opportunity to compete.

Please allow me to make the following comments in relation to the specifics of your Concept Release.

In relation to II. A. 1. Petition Procedure:

The need to implement an admission procedure is self-evident from a regulatory point of view, since the competent supervisory authority must at least be notified when foreign exchange trading screens are placed within its jurisdiction. Certain minimum standards, such as supervision of the exchange through the competent authority of the home State, must also be enforced.

Unnecessary obstacles to the placement of trading screens should not, however, be erected. Given the fact that foreign exchanges are monitored by the competent supervisory authorities of their respective home States, only truly necessary requirements should be imposed and truly necessary information requested relating to the supervision of the foreign exchange in its home State in order to avoid costly double supervision. Any further information required by the CFTC for monitoring market participants located in the United States should be requested separately. Supplemental supervision of foreign exchanges by the CFTC should be avoided. I would also note that placing an order by trading screen is no different from placing an order by telephone, telefax or telex.

Requirements for the placement of trading screens should not be so rigorous that they function in practice as restrictions on access. In particular, no additional obligations to which U.S. exchanges are not subject should be imposed on foreign exchanges. Otherwise the danger of competitive distortions might arise.

Access restrictions in respect of market participants and products traded on foreign exchanges should also not be imposed.

<u>In relation to II. C. 1. Bona Fide Foreign Exchanges</u>

The placement of trading screens in the United States should not cause foreign exchanges to be regarded as domestic U.S. exchanges. Foreign exchanges should also not, as anticipated in the Concept Release, be treated as U.S. exchanges upon achieving a certain trading volume within the United States. The fiction of a domestic U.S. exchange is unnecessary, since on the one hand the exchange is already subject to the supervision of its home State and on the other, only commercial trading participants – in other words, market professionals – are able to trade on the exchange. Private investors and other non-commercial trading participants may obtain execution of their orders only through commercial trading participants. Additional supervision of foreign exchanges by the CFTC is therefore not necessary to attain the requisite level of customer protection. In this regard, the supervision of market participants located and effecting customer transactions in the United States appears to be sufficient.

Furthermore, such regulations may effectively constitute a restriction on trade, in that foreign exchanges must either remain under the volume limit or subject themselves to additional monitoring by the CFTC. This would in turn create additional costs and potential competitive disadvantages.

<u>In relation to II. C. 2. Order Execution and Routing</u>

Monitors through which the customers of an exchange member may transmit orders in the context of order-routing cannot be considered trading screens of the relevant exchange. The customer remains unable in the case of order-routing to transmit orders directly to the exchange, since only commercial trading participants are able to effect transactions on the exchange. Trading on the exchange is possible for the customer only indirectly through a commercial trading participant.

No restrictions should be imposed in connection with order-routing systems. Because only commercial trading participants are permitted to trade on the exchange, they alone are responsible for proper transmission of customer orders that are placed through an order-routing system. It should therefore be left to the exchange and their commercial trading participants to decide whether order-routing systems are to be admitted, and if so, under what conditions.

Sincerely yours,

Georg Wittich

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