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Ms. Brooksley BORN
Chairperson
COMMODITY FUTURES TRADING
COMMISSION
3 Lafayette Center
1155 21st Street N.W.
WASHINGTON DC 20581
ETATS-UNIS

COMMENT

Le Président

Paris, le 7 OCT. 1998

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

Dear Ms. Born,

As requested in the *Concept Release* of July 18, 1998, we set out our comment hereunder as regulator of the French financial instruments markets, of which the *Marché à terme international de France* (MATIF) futures market enjoys the recognition of the American authorities by virtue of the Mutual Recognition Memorandum of Understanding (MRMOU) signed by our respective commissions in June 1990.

The MRMOU

In accordance with the terms of the MRMOU and the principle of cross-membership between markets, MATIF SA and the Chicago Mercantile Exchange (CME) are currently able, through the services provided by GLOBEX, to negotiate products and instruments on their respective markets on a transfrontier basis.

The MRMOU entered into force on November 12, 1992. Our understanding is that the MRMOU was not only intended to be an information sharing agreement and an arrangement intended to circumvent Law No. 80-538 of July 16, 1980, amending Law No. 68-678 of July 26, 1968 (French Blocking Statute) in the interest of international cooperation between our two regulatory bodies. A fundamental element of the agreement is also the mutual recognition of our futures markets, i.e., the cross-exchange access program, in which the exercise of our respective regulatory competences is determined by the origin of the products traded.

COMMODITY FUTURES
TRADING COMMISSION
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COMMISSION DES OPÉRATIONS DE BOURSE

17, place de la Bourse - 75082 Paris Cedex 2 - Tél. : 01 53 45 60 00 - Télécopie : 01 53 45 63 00

COB

In order to institute the cross-exchange access program, a comprehensive assessment of our respective rules and regulations had to be undertaken during the negotiation of the MRMOU to ensure that our futures markets were subject to comparable regulatory controls, oversight and enforcement, and that our regulatory systems adhered to the principle that the protection of investors is paramount.

The procedure whereby the French authorities evaluate a foreign regulatory authority and recognize a foreign market is provided under the Law of March 28, 1885, as amended, and Decree No. 90/948 applying the Law. The criteria in that procedure take into consideration rules governing not only the functioning of a market, the protection of its integrity, its transparency and the quality of information disclosed to investors regarding traded products and instruments, but also a public or self-regulatory authority's ability to share and exchange information. Satisfied that the CFTC's regulatory scheme was more than adequate, the Minister of Economy and Finance extended recognition to fourteen US futures markets on September 20, 1991 (At this time, eleven US futures markets participate in the cross-exchange access program.). The criteria in the French procedure are nearly identical to those required by the CFTC when it grants Rule 30.10 exemptions. Indeed, the CFTC evaluated the COB's regulatory scheme and recognized MATIF pursuant to its Rule 30.10 authority.

Underlying the MRMOU are the concepts of reciprocity and mutual confidence in the capacity of our regulatory bodies to oversee the functioning of our respective futures markets. In terms of reciprocity, we have both profited from the information sharing agreement and, anticipating changes in the terms of the MRMOU, we have consulted mutually with a view to finding common ground without resorting to unilateral action. The mutual confidence we have in one another's regulatory capacity is evidenced in our agreement. Having established that our regulatory schemes are comparable, the CFTC and the COB understand and expect that the authority in whose jurisdiction futures contracts originate will exercise appropriate oversight and control within its home jurisdiction.

In our opinion, this agreement has been beneficial not only for the CFTC and the COB, but also for the markets that currently enjoy recognition in either France or the US. And, it is because the system we have built pursuant to the MRMOU has been so mutually beneficial that we request clarification of that instrument's status in light of the rules you have proposed in the *Concept Release*. Indeed, we believe the issues herein to be of the utmost importance.

The Concept Release

The *Concept Release* proposes to introduce or specify certain prerequisite qualifying criteria to the act of recognition of a foreign market when trading occurs electronically. In particular, foreign boards of trade that wish to trade their products through the use of "computer terminals" placed in the US must comply with a two-step petition procedure similar to the procedure provided for in obtaining a Rule 30.10 exemption. We wish to note that it is not clear to us how the definition of "computer terminal" or the petition procedure will affect our agreement under the MRMOU, and we shall highlight the areas in which the contemplated definition and procedure appear to be incompatible with or repeat the terms of the MRMOU.

COB

"Computer Terminal"

As you are aware, France has acquired a considerable amount of experience in the field of electronic trading, and our experience is especially extensive with regard to trading on futures markets. In fact, GLOBEX was one of the first electronic trading systems in Europe. Accordingly, we understand the desirability of enacting or specifying certain prerequisites applicable to the recognition of a foreign market whose trading is carried out electronically. Yet the products traded pursuant to the MRMOU have been traded electronically for several years, and this seemed to raise no cause for concern until now.

The *Concept Release* states that foreign boards of trade which negotiate their instruments via "computer terminal" will be subject to the proposed rule. While we understand the CFTC's interest in maintaining a broad definition of "computer terminal" so as to keep pace with advances in technology, we do have some difficulty in understanding how the rule applies to our agreement. First of all, the *Concept Release* mentions the partnership between MATIF and the CME, however, it does not mention how the proposed rule will affect the MRMOU or the MATIF-CME relationship. French markets are entirely electronic. It would seem to frustrate a basic assumption on which the MRMOU was made - i.e., cross-exchange access - if such access, available for the past six years, were suddenly prohibited or significantly hindered simply because a formerly-recognized MATIF member used a different brand of computer or computer system.

Petition Procedure

The *Concept Release* proposes a petition procedure whereby: (1) a foreign board of trade must petition the CFTC for an order allowing it to place its terminals in the US, and (2) members of a foreign board of trade, or a member's affiliates, must request confirmation of relief under the order to be able to operate a computer terminal in the US.

We wish to inquire whether the *Concept Release* suggests that MATIF, the already-recognized French "Futures and/or Options Market" under the MRMOU, would have to petition for an order to allow it to place its terminals in the US. This would seem to be somewhat repetitious and illogical, given the fact that the information the CFTC would require (*Concept Release*, pp. 8-9) has already been provided pursuant to the MRMOU and that MATIF contracts have been traded electronically in the US for some time. Moreover, such an order would appear to be rather unnecessary, due to the fact that the conditions placed on orders granted by the CFTC (*Concept Release*, pp. 9-10) in the proposed rule are already provided for in Article III of the MRMOU (Information Sharing Agreement).

We would also like to draw your attention to a potential direct conflict between the proposed rules and the terms of the MRMOU. The proposed requirement that a foreign board of trade's members be registered as futures commission merchants (FCMs) (*Concept Release*, p. 9) is evidently in opposition to the definition of "Recognized Persons" in Article I(k), which reads:

"Recognized Person" means: (1) an Authorized Person that . . . is permitted to offer or sell Futures or Options Contracts traded on the Markets subject to the supervision of the COB, or to accept orders and funds related thereto, to Clients residing in the United States, without any additional registration in accordance with the provisions of Part 30 of the CFTC's regulations (emphasis added).

COB

As we understand it, MATIF members seeking to be recognized are not required to undergo *further* registration procedures in order to be recognized pursuant to the MRMOU.

With respect to the section of the *Concept Release* entitled "Requests for Confirmation of Relief from Members and their Affiliates" (p. 10) we would like to note that it repeats many of the obligations found in Article V of the MRMOU. Moreover, it adds additional obligations that appear to be quite onerous and unnecessary if one considers that such firms are subject to the oversight of either the COB or CFTC (depending on the origin of the contract traded), exercising their proven comparable regulatory competences.

General Observations

The *Concept Release* proposes to introduce modifications that appear to be serious departures from the basic principles and established relationships on which the MRMOU is based. We are cognizant of the CFTC's concern with the degree of a foreign board of trade's cross-border activities with US investors or the ability of certain parties to evade CFTC regulation by locating in a foreign jurisdiction and trading electronically. However, we believe that this concern, as applied to the COB and MATIF, is not well-founded in light of our longstanding relationship and agreement under the MRMOU.

The reality of our situation is this: fourteen US boards of trade have been recognized by France; one French board of trade has been recognized by the US. If the CFTC's concern is with the volume of trading that MATIF members perform in the US, we believe that this should not determine who should regulate the contracts traded. Rather, having satisfied the criteria regarding the comparability of our regulatory systems, the appropriate jurisdiction, as set out in the MRMOU, is the country within whose jurisdiction the contract originated. And, based on the mutual confidence we have in the our respective capacities to regulate and oversee our markets, we understand that the COB and CFTC will exercise those capacities, thereby minimizing the ability of certain entities to evade appropriate regulation.

Unless we have misunderstood the *Concept Release*, it would seem that the consequences of the proposed rule could include: (1) the repudiation in whole or in part of the MRMOU, and (2) certain Recognized Persons, who have at their disposal "computer terminals" within the US, having their former recognition withdrawn and being required to undergo additional registration procedures not provided for under the MRMOU.

If these consequences are intended, we wish to point out that:

- Such a reinterpretation of our arrangement under the MRMOU would contradict not only the past practices and customs we have established pursuant to the MRMOU, but also the position traditionally adopted by the CFTC, which the *Concept Release* itself recognizes.
- Such changes would also bring into question, on a unilateral basis, the very notion of a "Recognized Market" on which so many financial cross-border services have been based for so many years, as well as disrupt the diverse agreements signed by numerous counterparts of the CFTC, like the COB.

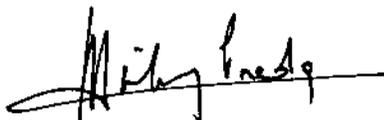
COB

- The proposed rules would seem to negate efforts undertaken by a number of international groups whose very objective has been to facilitate the provision of cross-border financial services in a regulated and cooperative environment (see IOSCO's *Principles for the Regulatory Review of Automated Systems (The Boca Raton Declaration)*).
- Finally, we wish to inquire whether a foreseeable consequence of the *Concept Release's* subject matter would involve US authorities carrying out inspections in France, pursuant to enforcement or discovery orders mandated by the proposed rules. If so, we wish to note our concern regarding this possibility of extraterritorial application of US law on markets which clearly fall within the jurisdiction of their own national regulatory authorities.

Conclusion

We would be grateful if you would address our questions, take into account our observations and, if necessary, reconsider the various propositions formulated in the *Concept Release* in order to avoid the entire subject of cross-border activities, which has never before raised any serious or major difficulties, being brought into question at this late stage. We do hope for the continued vitality of our agreement under the MRMOU, the enduring mutual recognition of MATIF and eleven active American futures markets, and the durability of the mutually-beneficial information sharing arrangement we have enjoyed for so long.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michel Prada", with a long horizontal flourish extending to the right.

Michel PRADA