

The Forum of European Securities Commissions

FESCO

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1999 APR 27 P 13

The Chairman

Ms. Brooksley Born
Chairperson
Commodity Futures Trading Commission
1155 21st Street, N.W.

USA - Washington, D.C. 20581

COMMENT

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1999 APR 27 P 4:24

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Frankfurt, 23 April 1999

Re: PROPOSED RULES CONCERNING ORDER ROUTING AND ELECTRONIC ACCESS TO
FUTURES EXCHANGES OPERATING PRIMARILY OUTSIDE THE U.S.

Dear Brooksley,

I refer to the proposed new Rules 30.11 and 1.71 of the CFTC, which were the subject of discussion at the last meeting of FESCO on April 19 and 20.

In my position as Chairman of FESCO, I have taken the opportunity on behalf of FESCO to address some issues in the proposed rules that impact all members of FESCO alike. I enclose for your review a copy of my comment letter of even date.

I hope that the comments of FESCO will prove helpful to the CFTC in finalising the proposed rules.

Please do not hesitate to contact me should you have any question in this matter, or should you wish to discuss certain issues further.

I am looking forward to seeing you in Lisbon.

Yours sincerely,

Georg WITTICH

Enclosure

The Forum of European Securities Commissions
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1999 APR 27 P 12

The Chairman

C. J. ... SECRETARIAT

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.

USA - Washington, D.C. 20581

Frankfurt, 23 April 1999

Re: PROPOSED RULES CONCERNING ORDER ROUTING AND ELECTRONIC ACCESS TO
FUTURES EXCHANGES OPERATING PRIMARILY OUTSIDE THE U.S.

Dear Ms. Webb,

I refer to the proposed new Rules 30.11 and 1.71 (the "Proposed Rules") of the Commodity Futures Trading Commission (CFTC) and the invitation of the CFTC to comment on such Proposed Rules.

As the Chairman of FESCO, the Forum of European Securities Commissions, which assembles 17 securities commissions from all EU member states as well as from the EEA Member States Iceland and Norway, I am pleased to take the opportunity to comment on the Proposed Rules. While individual members of FESCO will comment on the Proposed Rules from their respective points of view, the comments set forth below relate to concerns which are shared by all members of FESCO.

Cross-border electronic financial activity represents a major challenge to financial regulation that is constituted on domestic boundaries. FESCO welcomes the CFTC's release of the Proposed Rules, which have had the useful effect of raising these issues for debate at an international level. It is to be hoped that the significant amount of time already devoted to this issue in the U.S. will enable publication of a final rule as soon as possible after expiry of the 30 day consultation period.

FESCO appreciates the CFTC's intention to recognise that certain regulatory regimes provide protection to U.S. investors comparable to that provided by the CFTC. The framework established by the existing European Directives in the securities field should provide the CFTC with sufficient confidence in the current regulatory regimes of member states of the European Economic Area.

Use of the concept of comparability between regulatory regimes is widespread in the regulation of cross-border financial activity in Europe and FESCO members are very familiar with the practice. It has the advantage of facilitating innovation in financial markets, while avoiding inefficient overlaps in regulatory effort.

FESCO

Against the background of the European experience, FESCO believes the CFTC concept of comparability could be easily extended further than presently envisaged. Some examples are outlined below.

1. FESCO believes that in recognising a comparable regulatory regime, the CFTC should only need to undertake an in-depth review of a regulatory regime once, and be able to rely on such review in subsequent applications from the same jurisdiction.
2. The Proposed Rules seem to grant to the CFTC the power, in response to, for example, increases in trading volume levels, to require non-U.S. markets to become U.S. designated markets. This conflicts with the concept of comparable regulatory regimes and the requirements imposed on markets in this connection. In FESCO's view, this reservation should be deleted.
3. Under the concept of comparable regulatory regimes, the CFTC should, after its examination of the respective regime, be able to rely on a markets' home regulator with respect to such markets' activities in its home jurisdiction. The CFTC should consequently be solely concerned with a markets' activities in the U.S. One concern in this connection is the regulatory review of a markets' trading system and the certification of such review required under the Proposed Rules. Given the general approach of the Proposed Rules to rely on comparable regulatory regimes, such reliance should also be possible in the question of trading systems.
4. The proposed extent of the jurisdiction of U.S. courts and proposed Rule 30.11(d)(8) on CFTC access to information direct from a petitioning non-U.S. exchange, seem to contain the potential for U.S. investigative actions and jurisdiction to extend to other regulatory regimes, even where the matter, for example, some form of market abuse, has occurred in the home jurisdiction. Instead, it should be possible for the CFTC to rely upon both a comparable regulator's approach to investigating and resolving relevant issues and the information sharing arrangements with that regulator.
5. With regard to Rule 1.71, FESCO is concerned, that for AORS the concept of comparable regulatory regimes is not expressed as clearly as it could be. FESCO is certain that reliance on effective home country regulation is as effective for AORS as it is for the systems covered under Rule 30.11. Therefore, a consistent regulatory approach to both types of systems would seem to be reasonable.

I would like to emphasise that the members of FESCO are of course fully committed to the just adopted IOSCO Objectives and Principles on Securities Regulation with regard to the supervision of regulated markets and other relevant areas.

Again, I appreciate the possibility, on behalf of the members of FESCO, to comment on the Proposed Rules and I hope that my concerns will be adequately reflected in the final rule.

Please do not hesitate to contact me or the Secretary General of FESCO, Fabrice Demarigny, should you require further elaboration of certain points, or should you have any questions with respect to the above.

Yours sincerely,


Georg WITTICH

The Forum of European Securities Commissions

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1997 APR 27 P 13

Date: 23 April 1999

Number of pages 4
(this one included):

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Re.: Access to Automated Boards of Trade

Please refer to the attached.