



NATIONAL FUTURES ASSOCIATION

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Via Facsimile and U.S. Mail

Ms. Jean A. Webb
Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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SECRETARIAT

COMMENT

Re: Rule Proposal on Access to Automated Boards of Trade

Dear Ms. Webb:

On March 24, 1999, the Commodity Futures Trading Commission requested comments on a rule proposal regarding access to automated boards of trade. 64 Fed. Reg. 14159. National Futures Association ("NFA") welcomes this opportunity to comment on the Commission's rule proposal. As the Commission's recent roundtable discussion on this topic made clear, the issues covered by the proposal are important and complex and need to be addressed promptly. As always, we look forward to working with the Commission to provide whatever assistance we can.

NFA notes that the Commission responded to the comments filed in response to its concept release concerning the need to differentiate between electronic exchanges and automated order routing systems in its proposed rules. Though the proposed rules set forth separate definitions for "direct execution systems" and "automated order routing systems," they fail to distinguish between the two for regulatory purposes. Evolving technology has had a profound impact on the way that exchanges and intermediaries do their business, but it has not altered the fundamental difference between the functions performed by each. Electronic exchanges match orders and execute trades. Electronic order routing systems may interface with electronic exchanges, and in some cases may be owned and operated by the exchange, but they are not the actual system that matches the orders and executes the trades – they are simply one means, among several, of getting the order to the exchange "floor," be it an open outcry pit or a computer. The Commission should base its regulatory approach on the functions performed by the parties to the transaction, not on the medium of communication used to complete the transaction.

If a customer phones an order for a contract on an exchange to an FCM, which then phones the order to the relevant exchange, the Commission rightly focuses its attention on regulation of the FCM, imposing no particular obligations on the exchange. That basic construct should not be altered merely because a different medium of communication is used by the customer and the FCM. Transmittal of the order to or by the intermediary by computer rather than by phone should not trigger



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additional regulatory obligations on the part of the exchange. The same point is true if the order is placed not with an FCM but with an intermediary exempt from registration under CFTC Regulation 30.10.

With respect to the proposed standards for automated order routing systems, NFA agrees that an FCM offering an automated order routing system to its customers has a supervisory responsibility to ensure that the system meets certain basic standards. We also agree that it may be appropriate to provide guidance to FCMs on the applicable standards. We question, however, whether such guidance is best provided through a rule making process and, even if it is, we feel that it should be dealt with separately from the basic issue of when a foreign exchange should be required to be designated as a contract market or exempt from such requirement.

We also feel strongly that the Commission should ensure that its regulatory approach does not place U.S. markets at a competitive disadvantage. The Commission's Federal Register release points out that U.S. treaty obligations under General Agreement on Trade in Services may prohibit the Commission from conditioning relief granted to any foreign exchange on reciprocal treatment for U.S. markets from the foreign exchange's host jurisdiction. The Commission can and should, however, compare its own regulatory regime for exchanges with those of comparable foreign jurisdictions to identify and remove unnecessary regulatory burdens on U.S. as well as foreign exchanges. As our markets become more global and international competition more intense, this project assumes much greater urgency. The magnitude of the task should not daunt the Commission from undertaking a review of its oversight functions with respect to exchanges and promptly making changes necessary to ensure that its regulatory objectives are achieved without placing U.S. markets in an untenable competitive position.

NFA appreciates the opportunity to comment on the Commission's approach to regulation of these markets. NFA urges the Commission to give serious consideration to these comments and to the comments of entities that participate in these markets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel J. Roth', written over a horizontal line.

Daniel J. Roth
General Counsel