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Deutsche Bank Securities



April 30, 1999

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REG. OF COM. TRADE

Ms. Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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COMMENT

Re: Proposed Rules Governing Access to Automated Boards of Trade

Dear Ms. Webb:

Deutsche Bank AG and its wholly-owned subsidiary, Deutsche Bank Securities Inc., a registered futures commission merchant (collectively referred to herein as "Deutsche Bank"), respectfully submit this comment letter in response to the Commodity Futures Trading Commission's ("Commission") Proposed Rules Governing Access to Automated Boards of Trade ("Proposed Rules"). 64 FR 14159 (March 24, 1999).

As a participant in the global brokerage business, Deutsche Bank has numerous offices throughout the world and is a member, either directly or indirectly, of both United States and international futures exchanges. The Proposed Rules would have a direct material impact on the manner in which Deutsche Bank conducts its global futures operations and it is in this context that we provide the comments below.

I. General Comments and Interim Measures

Deutsche Bank commends the Commission for its efforts to develop a framework for addressing the controversial regulatory issues related to the increasing globalization and automation of futures markets. We endorse the Commission's desire to develop an approach that will foster growth of the global marketplace while satisfying the Commission's obligations under the Commodity Exchange Act ("CEA") to ensure customer protection and market integrity. We do not believe, however, that the concepts and principles underlying the Proposed Rules, or their likely consequences, are compatible with these aims. We, therefore, respectfully oppose adoption of the Proposed Rules in their current form.

While our main concerns with the Proposed Rules are set forth below, Deutsche Bank believes it is imperative that the Commission, in whatever form it deems appropriate, take prompt corrective action to address two issues that are a direct consequence of the rulemaking process on this matter initiated by the Commission:

1. Lift the current moratorium on the placement of foreign terminals in the United States and immediately consider requests from foreign exchanges to place (or to expand access to) their trading terminals in locations in the United States.

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2. At the same time, address the legal uncertainty created by the Proposed Rules concerning the current use by regulated intermediaries of automated order routing systems ("AORS") and clarify the circumstances under which such firms may use, or permit the use by their customers of, AORSs from US locations to access automated foreign futures exchanges that have not sought approval to place their trading terminals in the United States. In the absence of a withdrawal of Proposed Rule 1.71 or further guidance by the Commission on this issue, we are concerned that there will be lingering doubt concerning the existing authority of US futures commission merchants ("FCMs") to use or provide these systems in the US.

Deutsche Bank appreciates and is sensitive to the competitive and regulatory parity issues raised by the United States futures exchanges at the recently held Roundtable on Proposed Rules on Access to Automated Boards of Trade ("Roundtable") chaired by Chairperson Brooksley Born. Indeed, we agree with many of their comments questioning the continuing need for many of the Commission's rules and CEA provisions that currently apply to them.

But their concerns, however legitimate, should not be used as the basis to deny or further delay US users of global futures and US regulated intermediaries immediate access to the technologically most advanced, efficient and cost-effective means of accessing international futures markets. For this reason, Deutsche Bank supports the proposed interim guidelines contained in Attachments A and B of the Futures Industry Association's ("FIA") comment letters dated April 19 and 20, 1999 on the Proposed Rules, as well as the proposal of Commissioners Barbara Holum and James Newsome to apply a EUREX-type no-action procedure to lift the moratorium on the placement of foreign terminals in the US. Indeed, we would support any pragmatic proposal(s) or process(es) that would immediately progress the two matters identified above, and at the same time provide the Commission an opportunity to re-evaluate its approach to the important issues raised by technology and globalization.

II. Specific Comments

A. Proposed Rule 1.71

As a clearing member of various US and international futures exchanges, Deutsche Bank shares the concerns of the Commission that new technology not be used by customers or firms in a manner that would jeopardize the financial well-being of the firm or put the market itself at risk. With one proviso, our objection is not with the aim of Proposed Rule 1.71 but rather its form.

1. Jurisdiction

The one proviso relates to the requirement in Proposed Rule 1.71(b)(1) that every automated foreign exchange that is accessed via an AORS from a US location is deemed to be located in the US and must be exempted irrespective of whether the foreign exchange places

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trading terminals in the US. Deutsche Bank objects to the Commission's position in the Proposed Rules that if contracts of a foreign exchange are accessible from within the US via either a direct execution facility or AORS, the foreign exchange is no longer "located outside the US" for purposes of section 4(a). We see no jurisdictional basis for the Commission to determine that any automated foreign exchange that is accessed via an AORS located in the US must itself be a designated contract market, a foreign exchange that is linked with a US exchange or an exchange that is exempted under Proposed Rule 30.11.

2. Regulation of Technology

Proposed Rule 1.71 has been criticized both for being too prescriptive and at the same time creating an unacceptable level of legal uncertainty. Although seemingly contradictory, these criticisms result from the Commission's proposal to start from a vacuum, i.e., no guidance, interpretations, advisories, and to proceed to final rulemaking in an area that will determine the future of markets and market access, without the benefit of permitting practice and experience to shape or guide any final rules.

Experience may indeed dictate that final rules are necessary. But it is bad regulatory policy to prescribe parameters for the system and impose technological constraints and vague standards as rules in advance of any practical experience with such systems, or in the absence of any reported problems with the use of such systems in those jurisdictions where such systems are currently widely used. Moreover, FCMs are already on notice pursuant to existing rules and regulations as to their internal control and compliance obligations in their use of such systems.

We believe it is premature for the Commission to develop a regulatory framework based on final rules with regulatory consequences for noncompliance when the use and operation of such systems is likely to create legal uncertainties as to a firm's compliance with the specific requirements of a vague rule. For example:

1. Proposed Rule 1.71(b)(3) requires regulated intermediaries to take reasonable steps to ensure that the system is and remains sound and secure and fit for the purpose for which it is intended. What is meant by the term "reasonable steps" and how will the Commission determine whether a firm has failed the "reasonable steps" test? How frequently should the firm review and test the system to satisfy this standard in the rule?
2. Proposed Rule 1.71(b)(4) requires order-related times to be captured to the nearest second. This could create practical difficulties, as it would require various exchanges to synchronize their systems' internal clocks as a group and for each FCM to synchronize its AORSs to the exchanges' clocks.
3. The requirements of Proposed Rule 1.71(b)(5) for credit, trading or position limit checks to be done pre-trade may not be feasible in the context of give-up arrangements.



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In circumstances where existing Commission rules and regulations address the core issues related to the use of any system by an FCM for market access, in the absence of any prior guidance on, or practical experience with, AORSs that access foreign exchanges, and in the absence of any reported problems concerning their use in those jurisdictions that currently permit the use of such systems, we urge the Commission to phase in its regulatory framework in this important area by first issuing general guidelines along the lines suggested by the FIA.

In conclusion, we urge the Commission to immediately confirm that AORSs that permit a firm to remain in compliance with existing Commission rules and regulations may be used, and to issue the FIA's proposed guidelines in Attachment A to its April 19 comment letter as further guidelines the Commission would consider in evaluating whether a firm is in compliance with existing requirements.

B. Proposed Rule 30.11

We note that there was considerable discussion at the Roundtable concerning the use of the term "comparable" and do not feel that any further comments are necessary on this topic other than to take note of your statement at the Roundtable concerning the "comparability" of the German regulatory system established in connection with the issuance of the February 29, 1996 no-action letter to EUREX concerning access to its terminals from locations in the US.

Deutsche Bank appreciates the opportunity to comment on this matter. If the Commission or its staff has any questions regarding this letter, please contact the undersigned at 212-469-6607.

Very truly yours,

Michael Communiello,
Director

Kevin Collins,
Director

cc: The Honorable Brooksley E. Born
The Honorable Barbara P. Holum
The Honorable David D. Spears
The Honorable James E. Newsome
I. Michael Greenberger
Daniel R. Waldman
Geoffrey Aronow