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1999 MAY -3 P 2:07

COMMENT

OFFICE OF THE SECRETARIAT

April 30, 1999

Ms. Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20581

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**Re: Proposed Rules Governing Access to Automated Boards of Trade  
64 Fed.Reg 14159 (March 24, 1999)**

Dear Ms. Webb:

Goldman, Sachs & Co. ("Goldman Sachs") is pleased to submit this letter in response to the Commodity Futures Trading Commission's ("Commission's") request for comments on the Commission's proposed rules governing access to automated boards of trade. 64 Fed.Reg. 14159 (March 24, 1999). Goldman Sachs is a full service investment bank, offering a wide variety of financial services on a global basis to corporate and governmental issuers and to institutional investors. Goldman Sachs is registered with the Commission as a futures commission merchant ("FCM"), a commodity pool operator and a commodity trading advisor. We are also registered with the Securities and Exchange Commission as a broker-dealer and as an investment adviser.

Goldman Sachs is a member of the Futures Industry Association ("FIA") and, in that connection, we have had the opportunity to review FIA's April 19, 1999 letter to the Commission, in which FIA encouraged the Commission to withdraw the proposed rules. We agree with FIA that the proposed rules are fatally flawed, both as a matter of law and policy and, therefore, should be withdrawn. Further, if the Commission believes it is necessary, we also support the adoption of an interim order of the type FIA has suggested that would establish separate interim guidelines governing (1) the use of automated order routing systems by FCMs and (2) the approval of foreign exchanges that seek to permit direct, non-intermediated access from the US.

As the Commission is well aware, with the exception of the US futures exchanges, derivatives exchanges worldwide have embraced electronic trading systems in lieu of floor-based trading systems. The practical effect of the proposed rules, therefore, is to bring within the ambit of the Commission's jurisdiction every non-US exchange that permits US FCMs to transmit

orders for execution on that exchange through the use of automated order routing systems. As a matter of regulatory policy, this is a mistake. Technology holds the promise of more efficient and economical markets, benefiting US FCMs and their customers alike. This same technology will facilitate both the implementation of improved risk management systems among market intermediaries and the development of enhanced surveillance systems among regulatory and self-regulatory authorities. The Commission's regulatory policy, therefore, must be designed to encourage and accommodate new technology, including automated order routing systems. The proposed rules and the concept release that preceded it, however, have already inhibited the development and use of proprietary order routing systems in the US.

The Commission's existing rules governing foreign futures and foreign options transactions properly regulate only the offer and sale of such contracts in the US. These rules have been successful in permitting US FCMs and their customers to be active participants in the growth and development of the international futures markets and to take advantage of the products these markets offer. Goldman Sachs submits that, by effectively requiring all foreign exchanges that allow direct access from the US, whether directly or through an intermediary, to submit to the Commission's jurisdiction, the proposed rules will have the opposite effect and impede the ability of US FCMs and their customers to participate in these markets.

Moreover, the Commission's position fails to give proper recognition to the comprehensive regulatory programs that other nations have implemented over the past decade, for which the Commission has often served as an example. The Commission has been a leader in encouraging the development of structure to enhance international cooperation and coordination. By proposing unilaterally to bring under its jurisdiction every foreign exchange that provides electronic access to US customers, whether directly or indirectly, the Commission has effectively turned its back on these same international structures.

In its April 19 letter, FIA expresses serious reservations over the Commission's interpretation of its authority to adopt the proposed rules under sections 4(a) and 4(c) of the Commodity Exchange Act ("Act"). FIA also notes that the Commission's interpretation runs counter to the provisions of section 4(b) of the Act and the interpretations of this latter provision by the Commission itself as well as the Commission's staff. Goldman Sachs supports FIA's analysis of these provisions of the Act.

In particular, we note that section 4(b) of the Act focuses the Commission's international regulatory authority on the regulation of "any person . . . who engages in the offer and sale of contract of sale of a commodity for future delivery" on or subject to the rules of a foreign exchange, *i.e.*, market intermediaries. This section of the Act further explicitly prohibits the adoption of any rule that requires Commission approval of the rules or regulations of a foreign exchange. Goldman Sachs respectfully suggests that the practical effect of the proposed rules will be to require the Commission's implicit, if not explicit, approval of foreign exchange rules, in direct contravention of the provisions of section 4(b).

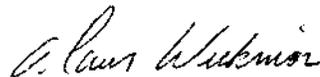
Ms. Jean A. Webb  
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We further submit that the Commission's position is contrary to the clear intent of Congress when, in 1992, it adopted the provisions of section 12(g) of the Act. This section of the Act directs the Commission to "facilitate the development and operation of computerized trading." As important, section 12(g) further directs the Commission to "cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce and the Department of State to remove any trade barriers that may be imposed on the international use of electronic trading systems." Congress could not have intended to deploy the full force of the government's international trade agencies to this end for the sole purpose of clearing the way for the Commission to erect its own barriers to the international use of electronic trading systems. The Commission's position as expressed in the proposed rules, therefore, lacks any statutory basis.

For all of the above reasons, Goldman Sachs respectfully requests that the Commission withdraw the proposed rules. We support FIA's recommendation that the Commission instead adopt interim orders of the type FIA has suggested, while the Commission works with other international regulators, through the International Organization of Securities Commissions or otherwise, to develop common standards in this area that each member jurisdiction could endorse.

Goldman Sachs appreciates the opportunity to submit these comments on the proposed rules governing access to automated boards of trade. If the Commission or any member of the staff has any questions regarding these comments or would like to discuss these issues in greater detail, please contact the undersigned at (212) 902-5008 or Bonnie Litt at (212) 902-1212.

Sincerely,



A. Carver Wickman  
Managing Director

cc: Honorable Brooksley E. Born ✓  
Honorable Barbara P. Holum  
Honorable David D. Spears  
Honorable James E. Newsome