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U.S. COMMODITY FUTURES TRADING COMMISSION
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February 29, 1996

DIVISION OF
TRADING & MARKETS

Lawrence H. Hunt, Jr. Esq.
Sidley & Austin
One First National Plaza
Chicago, Illinois 60603

Re: No-Action Request to Permit DTB Screen Trading in the United States

Dear Mr. Hunt:

This is in response to your letter dated November 14, 1995 on behalf of your client, the Deutsche Terminbörse ("DTB"), in connection with DTB's plans whereby DTB members would install and utilize DTB computer terminals in their offices within the United States[1/] in order to purchase and sell certain DTB contracts[2/] for principal trading purposes,[3/] and, in the case of any DTB member who becomes a registered U.S. futures commission merchant ("FCM"), on behalf of foreign futures and options customers as well.[4/]

In particular, you have requested that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission") issue no-action relief so that DTB terminals providing access to the German regulated

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1/ For purposes of this letter, the term "United States" is used to refer to the United States, its territories and possessions.

2/ These contracts only include futures and options on futures subject to regulation under the Commodity Exchange Act ("CEA").

3/ With respect to what constitutes a "principal" account, you have represented (citing DTB Rules and Regulations, Conditions for Trading, §1.4.2.), that unlike Commission regulation §1.3(y), which includes certain affiliates in the definition of "proprietary," a "principal" position on DTB is limited to the DTB member that enters the trade.

4/ The term foreign futures and options customer is defined under 17 C.F.R. § 30.1(c) as any person located in the United States, its territories or possessions who trades in foreign futures or foreign options as those terms are defined in 17 C.F.R. § 30.1(a) and (b), and which are subject to regulation under the CEA.

market may be placed in locations in the United States without the DTB being deemed a U.S.-based board of trade required to be designated as a contract market pursuant to section 5 of the CEA.[5/] Preliminarily, DTB has represented that approximately ten DTB members currently have expressed interest in having access to DTB terminals located in the United States for purposes of conducting principal trading. Presently, there are no DTB members who are registered with the CFTC as FCMs, although the relief requested contemplates that FCMs could become DTB members and obtain access to DTB terminals in U.S. locations.

In connection with your request, DTB has provided the following information to the Division:

- An overview of the DTB, including the German regulatory structure applicable to the operation of the DTB and transactions thereon;
- A description of the order processing network utilized by the DTB;
- A description of the clearing process;
- A description of the system integrity and architecture of the DTB system, including security arrangements and procedures regarding system failures; and
- A description of the contracts which will initially be traded on the DTB through computer terminals located in the United States and a discussion of the rules and regulations governing such contracts.

Moreover, in reviewing this application we have also relied on the submissions, and attached materials thereto, provided by the DTB in connection with its application, dated April 10, 1995, on behalf of its members for a general exemption pursuant to Commission rule 30.10, 17 C.F.R. Part 30.10 (1995), and application, dated June 12, 1995, requesting authorization for the offer and sale of certain options contracts traded on the DTB pursuant to rule 30.3(a),[6/] and the issuance of a no-action

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[5/] The DTB, along with the Frankfurt Stock Exchange, is one of many operating units within Deutsche Börse AG. Clearing, margining and settlement functions for DTB are accomplished by Deutsche Börse AG.

[6/] In this connection, the DTB has submitted the following documents in support of its Part 30 applications:

letter permitting the offer and sale in the United States of the DTB's DAX index futures contract in the United States.[7] Each of the Part 30 applications are currently pending at this time, and are not affected by the issuance of this no-action letter.[8]

-- German Securities Trading Act
-- German Exchange Act
-- DTB Rules
    - General Rules
    - Conditions for Trading
    - Clearing Conditions
    - Fee Regulations
    - Arbitration Rules
    - Other Regulations
-- DTB Membership Application
-- German Banking Act
-- Commercial Code (relevant excerpts)
-- Customer Confirmation Statement (sample)
-- Customer Risk Disclosure Form (sample)
-- Letter from Georg Wittich, President of the BAWe, to Chairman Mary Schapiro, dated May, 1, 1995
-- Letter from Dr. Jörg Franke, Exchange Director of DTB, to Brandon Becker, Director, Division of Market Regulation of the Securities and Exchange Commission, dated October 28, 1994
-- Specifications for Options on futures on the Bund (long-term debt securities of the German Federal Government or the Treuhandanstalt), Bobl (medium-term debt securities of the German Federal Government or the Treuhandanstalt), DAX (Deutscher Aktienindex (German stock index)), and FIBOR (three-month Frankfurt Interbank Offered Rate).

[7] Specifically, on July 6, 1993, DTB requested that the Office of the General Counsel ("OGC") of the CFTC issue a no-action letter whereby OGC would agree not to recommend enforcement action with respect to the offer and sale of DTB's DAX stock index futures contract in the United States. In connection with that no-action request, DTB set forth a detailed explanation of both the DAX futures contract itself and the regulatory environment in which DTB operates. On December 20, 1994, in response to DTB's request, as supplemented, OGC granted the requested relief thereby allowing DTB's DAX index futures contract to be offered and sold in the United States. Such relief became effective on January 5, 1995.

[8] In a notice of proposed rulemaking, the Commission proposed to amend rule 30.3 to eliminate the requirement that the CFTC authorize the offer and sale of a particular foreign commodity

Based on the foregoing materials, we understand the following:

I. OVERVIEW OF THE DTB AND THE GERMAN REGULATORY STRUCTURE

A. Introduction

The DTB, located in Frankfurt, Germany has been in operation since January 26, 1990, and is a fully automated international options and futures exchange on which all trades are executed and cleared electronically. In 1994 59,208,630 contracts were traded on the DTB, establishing the DTB as the seventh largest futures and options exchange in the world in terms of volume. Approximately 50% of the DTB's total 1994 and 1995 volume was and is comprised of trading in Bund, Bobl, Fibor and DAX futures and certain options thereon.

In contrast to traditional open outcry exchanges, trading at the DTB is conducted via computer terminals. The market participants' computers and terminals (i.e., User Devices) are linked to the DTB computer center via a wide ranging telecommunications network. As a result, exchange participants can trade in options and futures directly from their offices within a matter of seconds. Currently, DTB maintains its electronic trading screens in Germany, the Netherlands, France, Switzerland, Finland and the United Kingdom. The location of its electronic terminals outside Germany permits efficient order transmittal procedures.[9/]

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option before it can be offered or sold in the United States. See 60 Federal Register 63472 (Dec. 11, 1995). In the event that the Commission determines to adopt this proposal, the necessity for the 30.3(a) authorization for certain DTB option products will be obviated. However, the current restrictions set forth in the CEA and rules thereunder concerning offers and sales of foreign stock index and foreign government debt products to U.S. persons would remain in effect.

9/ DTB has noted that the Chicago Mercantile Exchange ("CME") contracts are traded on GLOBEX terminals located in non-U.S. offices of foreign affiliates of CME members registered as futures commission merchants, and that the Division granted "passing the book" relief to permit U.S. customers to place orders for CME contracts on Globex by contacting such FCM's affiliates during hours which the CME floor is closed. See Interpretative Letter 92-11, Comm. Fut. L. Rep. (CCH) [1990-1992 Transfer Binder] ¶25,325 (June 25, 1992) and superseded in part by Interpretive Letter 93-83, Comm. Fut. L. Rep. (CCH) ¶25,849 [1992-1994 Transfer Binder] (Aug. 9, 1993). It further notes

DTB terminals located in the U.S. would function in the same manner and be subject to the same restrictions as DTB terminals located elsewhere. All trading on DTB terminals is subject to DTB's clearing, audit, compliance, market surveillance and information dissemination systems. The Federal Securities Supervisory Office ("BAWe"), which was established pursuant to the Securities Trading Act (*Wertpapierhandelsgesetz*) (the "Securities Act"), has comprehensive authority for the supervision of German securities and derivative markets. The Securities Act contains provisions regarding prohibitions on insider trading and "Rules of Conduct" which provide a framework for the protection of customer interests in the trading of derivatives on DTB. Among other things, the Rules of Conduct forbid advising customers to enter transactions contrary to their interests and proscribe activities generally known as "frontrunning" or "trading ahead" of customer orders. Pursuant to its supervisory authority, the BAWe may demand information and documents from DTB members that trade on behalf of customers, their management personnel, their employees who are responsible for trading execution, analysis or investment advice, and affiliated enterprises. The BAWe also has authority under the Securities Act to share information with foreign securities and futures regulators relevant to supervision of securities and futures markets and transactions.

DTB also is regulated pursuant to the Exchange Act (*Börsengesetz*). The Exchange Act provides that each exchange must be supervised by the highest competent state authority -- the Exchange Supervisory Authority -- and further requires that each exchange must establish its own separate trading supervisory office as an exchange body. The Exchange Supervisory Authority of the State of Hesse (the "Exchange Authority") supervises DTB and the Frankfurter Wertpapierbörse for compliance with exchange regulations and orders, the orderly conduct of trading on the exchange and the settlement of exchange transactions. To monitor compliance, the Exchange Authority may, without specific reason, demand information and documents from the exchange and market participants and, further, may conduct its own inspections. The Exchange Authority also has the power to issue orders to an exchange or a trading participant to prevent violations of regulations or orders of an exchange or to eliminate or prevent abuses which might impair orderly trading or settlement of transactions on an exchange.

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that although they are not yet located in Germany, there is no prohibition under German law to GLOBEX terminals being installed in Germany.

DTB has established its own trading supervisory office to monitor trading on the DTB and the settlement of exchange transactions. The trading supervisory office is part of the exchange and reports to the managing board of DTB. Moreover, independently of this relationship, the trading supervisory office must report to and comply with requests of the Exchange Authority. The trading supervisory office is required to systematically and completely record and evaluate data regarding exchange trading and settlement of exchange transactions and, further, conduct necessary investigations. The head of the trading supervisory office must regularly report to the Exchange Authority. If the trading supervisory office discovers facts that justify the conclusion that violations of exchange regulations or orders are occurring or that other abuses exist which may impair the orderly conduct of trading on the exchange or settlement of exchange transactions, it must notify the Exchange Authority and the exchange's Board of Management.

As a self regulatory organization, DTB has its own comprehensive set of rules that include general rules ("Exchange Rules"), trading conditions, clearing conditions, fee regulations, arbitration rules and other regulations. DTB's rules are approved by the Exchange Authority. To protect all market participants, DTB observes and documents all market activity via complex computer programs. Thus, it is not only possible to intervene immediately in the event of any irregularities, but also to verify the propriety of past market activities. DTB maintains jurisdiction over its members and their authorized User Devices located outside of Germany.[10/] DTB also conducts the same surveillance and monitoring activities over its members and User Devices outside Germany as those located within Germany.

The members of the DTB are comprised of two membership categories. One category consists of members permitted to trade on behalf of customers. This group includes firms that have been granted a banking license pursuant to the German Banking Act (i.e., German banks) and, under certain circumstances, banks domiciled in other EEC countries. Only banks within the meaning of the Banking Act are permitted to trade on behalf of customers and are supervised by the Federal Banking Supervisory Authority. The second group consists of members that trade solely for their own accounts. Various members of both groups have affiliates in the United States.

10/ As set forth in condition 5 below, the DTB members operating terminals in the United States have consented to U.S. jurisdiction for purposes of the instant no-action letter.

The DTB trading system adheres to the "Principles for the Oversight of Screen-Based Trading Systems for Derivative Products" developed by the Technical Committee of the International Organization of Securities Commissions, as more fully described herein.[11/]

B. Functional Overview of Order Processing

DTB's electronic trading system is designed to ensure the equitable availability of accurate and timely trade and quotation information, and to operate in a manner which is equitable to all exchange participants. All orders and quotes are entered in DTB's electronic order book where they are automatically sorted by type, price and entry time. Market orders are always matched first. Limit orders and quotes are sorted with the highest bid price and lowest ask price ranked first. Orders entered at the same price are executed on a first-come, first-serve basis. According to the Rules of Conduct applicable to Investment Enterprises under the German Securities Trading Act, exchange participants which trade on behalf of customers are obligated to ensure that all customer orders are "executed with due regard to the interest of the customer." When buy and sell orders match, as stipulated in the Exchange's Conditions for Trading, the system automatically executes the transaction. Orders that cannot be carried out immediately or only in part are stored in the order book to await execution.

[11/] Germany was one of eight jurisdictions which participated in Working Party 7 of the Technical Committee of the International Organization of Securities Commissions ("IOSCO") whose mandate included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns relative to screen-based trading systems, the Working Party identified and addressed the following issues: transparency; order execution algorithms; operational issues; security and system vulnerability; access; financial integrity; surveillance; disclosure; and the role of system providers. The Working Party considered these issues and articulated for each a broad principle which can assist regulatory authorities in overseeing screen-based trading systems. These Principles, of which there are ten, were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the ten Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products on November 21, 1990.

The ten best bid and ask prices, the number of contracts and other market-relevant data can be called up at any time during trading. Market participants can thus keep abreast of price trends and changes in market depth and react to them in the market. All information and other data are fed to the exchange participants' back-office systems via the main interface. Trading data can be transferred in real time to front office systems via further interfaces. These systems enable market participants to conduct an analysis of options and futures prices, which makes it easier for them to price their own orders and quotes.

C. Clearing

Deutsche Börse AG, which has integrated security and control mechanisms with DTB, manages the clearing, margining and settlement, in cash or securities, of all transactions executed on DTB. The overall structure for the clearing of trades executed on DTB provides protection for both DTB members and their customers. The Deutsche Börse AG becomes the counterparty to each contract traded through its system. Thus, cleared transactions on the exchange are made between Deutsche Börse AG, in its capacity as the clearinghouse for DTB, and the member firm which holds a clearing license. A Non-Clearing Member may enter transactions on DTB, but must clear its transactions through a General Clearing Member which guarantees the trades of the Non-Clearing Member. Therefore, just as on exchanges in the United States, counterparty risk is centralized because the only parties to transactions at the clearinghouse are Deutsche Börse AG and the respective clearing member.

A bank is eligible to obtain a general clearing license ("General Clearing Member"), which allows it to clear trades for itself, as well as for DTB Non-Clearing Members and exchange participants without clearing licenses, if its liable equity capital (as defined in § 10 of the Banking Act) exceeds DM 250 million. A bank is eligible for a direct clearing license ("Direct Clearing Member"), which allows it to clear only its own transactions, if its liable equity capital (as defined in § 10 of the Bank Act) exceeds DM 25 million. Clearing members holding general clearing licenses also must provide third-party clearing guarantees of DM 10 million. Clearing institutions holding direct clearing licenses must provide third-party clearing guarantees of DM 2 million.

In addition, Deutsche Börse AG, in its discretion, may use funds from its annual surplus to set aside reserves to contribute to the performance of commitments of any clearing member that might default on an obligation to the clearinghouse. Therefore, in the event of a default by a clearing member of Deutsche Börse

AG, losses resulting from a default would be covered from the following sources in the following order of priority:

- Margin funds of the clearing member in default;
- The clearing guarantee of the clearing member in default (*i.e.*, DM 10 million for General Clearing Members and DM 2 million for Direct Clearing Members);
- The discretionary reserve fund created by Deutsche Börse AG (approximately DM 31.4 million at October 31, 1995); and
- The clearing guarantees of the other clearing members of Deutsche Börse AG.

Moreover, according to section 1.6.3 of DTB's Clearing Conditions, any clearing guarantee that has been drawn upon shall be raised to its original amount within ten trading days.

D. System Integrity and Architecture

The DTB system is based on three components: a central host processor, network access devices (Communication Servers and External Interfaces), and User Devices at DTB member sites. All computers are linked via a private wide area network based, within Germany, on leased lines from Deutsche Telekom and, outside Germany, on transmission lines leased from other telecommunications companies. The host cluster performs transaction processing, such as trade matching, order maintenance, clearing functions and information inquiry. Price changes and market information are collected and distributed to the Communication Servers using a broadcast mechanism. Additionally, a price feed is generated and distributed for external dissemination to the External Interfaces, and external data providers feed prices from the underlying market via the External Interface into the DTB system.

Communication Servers are network computers currently located in Frankfurt, Hamburg, Düsseldorf, Munich and Paris. It is not anticipated that a Communication Server will be installed in the United States. User Devices are evenly distributed among the available Communication Servers within an access point when they connect to the DTB system. The broadcast messages coming from the host are replicated and distributed to all connected User Devices. Similarly, asynchronous messages, such as back office data, are forwarded to the corresponding customer User Device. User Devices are located at a member's site and provide

the trader interface, including screen handling, order entry, and local validation processing. One of the main tasks of the User Device is to provide interfaces to members' in-house applications. The DTB User Device software supports an electronic on-line interface for back office applications and pricing models, as well as an interface for direct order routing into the system. Furthermore, a file interface is available for trade confirmations and reports. Orders and quotes transmitted from terminals located in the United States as well as market information and back office data transmitted to User Devices located in the United States may, due to reasons resulting from the length of the cross-border transmission lines, take longer to transmit than the same kind of transactions transmitted from terminals located in Europe. In any event, all differences of transmission time will be less than normal human reaction time.

All transactions are processed synchronously, i.e., confirmed after successful completion. Host processing time is less than a quarter of a second, even in peak load situations. This results in response times of less than two seconds (99% of the synchronous transactions). Furthermore, many transactions (*e.g.*, matched trades) trigger asynchronous processing, such as creation of back office data or updating member positions. Batch processing is executed after trading hours and performs tasks such as reporting, margining, exercise and assignment, notification, allocation, and database maintenance. Based on DTB's cluster consisting of four machines, the DTB application software allows an immediate fail-over of processing without losing any transactions. Moreover, this fail-over mechanism has been tested by the DTB on several occasions. The retransmission facility built into the communications architecture, together with the transaction logging onto the hosts, guarantees that any transaction entered by a trader is processed and processed only once. In order to avoid a single point of failure, the DTB system relies on hardware component redundancy. All components such as communication lines, routes, communication servers, etc. are at least doubled. Furthermore, most DTB members have two leased lines to two different access points to be able to cope with line drops as well as communication server failures.

Within the DTB system, security features are implemented in three different layers: network, communications architecture, and application. The DTB network is private, without outside access. Only authorized persons, identified by DTB members to -- and approved by -- DTB, are permitted access to the User Devices and may enter trades. Unauthorized access to the DTB host system or between customers is denied by appropriate network parameter and security router configurations. The communication architecture uses a software password approach to ensure that only authorized User Devices can connect to the host system. The

software password is assigned by the exchange, and neither visible nor changeable by the members. Furthermore, the transaction data (*i.e.*, messages) are compressed by a bit level data compression algorithm before they are sent over the network. This reduces network load and provides a means of encryption. Other data sent to customers via the network (*e.g.*, files or reports) are encrypted using the customer specific software password.

In the DTB application, different resources and access levels are defined. DTB can use these resources to allow members to trade specific products only, as well as to restrict access to certain screens or functions. DTB members located in the United States will be permitted to enter trades for, and access trading screens of, only those contracts permissible for trading by U.S. persons (*i.e.*, initially, Bund, Bobl, Fibor and DAX futures, and, upon receipt of CFTC approval of DTB's pending petition pursuant to CFTC Reg. §30.3(a), options on Bund, Bobl and DAX futures). Member security coordinators, in turn, use these features to tailor product assignments and trading permission according to their needs within the restrictions set by DTB. In addition to the software security, there are operational security features. The customers have no interactive access to the host system or any Communication Server. Furthermore, traders log in directly to the application, and have no access to the User Device command level.

Pursuant to the Implementation Regulations of DTB's Exchange Rules, DTB is not liable for injury or damage caused by disruption in its service as a result of force majeure or events resulting from war, natural disaster or other circumstances beyond DTB's control.[12/]

II. INFORMATION SHARING BETWEEN GERMANY AND THE UNITED STATES

Pursuant to section 7 of the German Securities Act, the BAWe has authority to cooperate with competent authorities of other countries with respect to the supervision of securities and futures markets and transactions, including sharing relevant non-public information. BAWe has confirmed in connection with the placement of DTB screens in the United States that it will cooperate with the CFTC regarding the exchange of information

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12/ For a more detailed discussion of the DTB electronic network, the system's integrity, and the order execution algorithm applied by the system, see the Appendix to the Exchange Rules, "Implementation Regulations of the Deutsche Terminbörse Concerning Technical Equipment," filed with the DTB's Part 30 application.

with respect to the activities covered by the no-action request.[13]

III. ANALYSIS

Section 4(b) of the CEA provides:

> The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for futures delivery that is made or to be made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions . . . . No rule or regulation may be adopted by the Commission under this subsection that (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange or market.

Consistent with section 4(b), the Commission has not asserted jurisdiction over the terms and conditions of contracts traded on foreign exchanges, the rules governing the trading of such contracts, or the organization of foreign exchanges. The Commission has taken the view that the mere presence of terminals in the United States would not cause the Commission to deem any bona fide foreign exchange for which products are listed through that system to be a domestic exchange, that is, a board of trade

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[13] See, e.g., letter dated January 5, 1995 from Mr. Wittich to Chairman Schapiro, and letters from Mr. Wittich to Ms. Corcoran dated October 25, 1995, November 23, 1995 and February 29, 1996, and letter from Ms. Corcoran to Mr. Wittich dated February 29, 1996.

designated as a contract market by the Commission pursuant to section 5 of the CEA.[14/]

However, the relationship or interface between DTB's computer terminals and persons located in the United States may raise regulatory concerns that are unrelated to the internal operations of the DTB or its computer terminals located in the United States. Proposals to trade the contracts of a foreign exchange through a computer terminal must be reviewed by the Division in light of the Commission's obligations under the CEA and rules thereunder to maintain the integrity of United States markets and to provide for the protection of United States customers. For example, the Commission's Part 30 rules govern the manner in which futures and option contracts traded on foreign exchanges may be offered or sold in the United States. Moreover, the Commission has an interest in information sharing arrangements generally where a foreign market can have an impact on a United States market.

The Division has reviewed the material and other information provided by the DTB. Based on this information, the Division understands and you have confirmed that the DTB, and/or the relevant state or federal regulatory authorities, have rules or systems and compliance mechanisms in place which address:

(a) the DTB's continued compliance with its statutory obligations under German law;

(b) the equitable availability of accurate and timely trade and quotation information to all DTB members and persons authorized to place orders through DTB terminals and the processing, prioritization and display of quotations on the computer terminals;

(c) system vulnerabilities, including system security and system failures and procedures for back-up facilities;

(d) the processing, including prioritization and execution, of orders, that is, DTB's order execution algorithm;

14/ See, e.g., the Commission's approval on September 25, 1992 of Chicago Mercantile Exchange ("CME") Rule 575 permitting the CME to implement a cross-exchange access program with the Marche a Terme International de France ("MATIF") through the Globex trading system. See also letter dated May 26, 1989 from Ms. Corcoran to Carl Royal, Vice President and General Counsel to the CME, and letter dated May 7, 1990 from Ms. Corcoran to Gerard Pfauwadel, President of the MATIF.

(e) the competence, integrity and supervision of DTB users;

(f) the additional risk management exposures pertinent to the DTB system, including interfaces with the clearing system;

(g) the timely availability of information necessary to conduct adequate surveillance of the DTB system for supervisory and enforcement purposes;

(h) the liability of the DTB to its members arising from transactions occurring through trading on the computer terminals; and

(i) the responsiveness of the DTB to the directives and concerns of the applicable regulatory organizations.[15/]

With respect to DTB members who limit their use of DTB terminals located in the United States to trading for their "principal" accounts in connection with otherwise approved DTB futures and option products, you have stated that such DTB members would not, necessarily, be registered U.S. FCMs. However, you have also represented that to ensure that trading will be conducted strictly on behalf of principal accounts as that term is defined in the DTB rules, and that the other conditions set forth in this letter have been met, DTB members who maintain and use DTB computer terminals in their U.S. offices will agree to provide access to the books, records and premises of such U.S. offices to the CFTC or the National Futures Association ("NFA"). Upon request, the CFTC and NFA would have access to such books, records and premises to ensure, among other things, that transactions conducted on DTB terminals located in the U.S. by non-FCM DTB members would be limited to principal accounts.

DTB has represented that any DTB member who solicits foreign futures and options customers to trade otherwise approved DTB futures and options products will be registered as a U.S. FCM. As FCMs, such DTB member firm would be subject to the full scope of the CFTC regulatory requirements applicable to registrants, including segregation, proper trading requirements (Commission rule 155.3), sales practices, and recordkeeping and reporting.

Finally, the BAWe has confirmed in connection with the placement of DTB screens in the United States that it will

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15/ See IOSCO Principles for Screen-Based Trading Principles, discussed above.

cooperate with the CFTC regarding the exchange of information with respect to the activities covered by this no-action request.[16/]

Based upon the foregoing, including the information provided by DTB as set forth herein, and subject to compliance with the conditions set forth below, the Division has determined not to recommend enforcement action so that DTB terminals providing access to the German regulated market may be placed in locations in the United States without the DTB being deemed a U.S.-based board of trade required to be designated as a contract market pursuant to section 5 of the CEA. In reaching this determination, the Division has considered the fact that the DTB, as the seventh largest futures market in the world, is an international market with international participation and which is subject to oversight by the relevant German regulatory agencies. The Division also has considered, among other things, that the DTB has consented to provide information on the location of terminals in the United States on at least a quarterly basis, provide information reflecting the volume of trades originating from the United States, and to keep us informed of material DTB rules changes which may have an impact on the issuance of this no-action letter.

Moreover, no public interest would be adversely affected by permitting access to DTB terminals located in the United States to DTB members. No customer trading would be permitted from DTB terminals in the United States, unless such DTB member firm were registered as an FCM. The CFTC's ability to have access to relevant books and records maintained at the U.S. offices of DTB members, whether or not registered as FCMs, as well as the premises where DTB terminals are installed in the United States, in combination with the information sharing assurances referred to herein, will provide an adequate basis for supervision of such trading.

Accordingly, subject to the following conditions, the Division will not recommend any enforcement action against DTB in connection with the placement of DTB computer terminals in the United States in order to permit DTB members to execute transactions involving DTB futures and option products which are otherwise approved for trading by U.S. persons, subject to compliance with the following terms and conditions:

(1) DTB terminals will be located in U.S. offices of DTB members only;

16/ See letter dated November 23, 1995 from Mr. Wittich to Ms. Corcoran.

(2) All DTB members that intend to operate pursuant to the relief granted herein will be identified to the Commission and the NFA. Such members' ability to enter into DTB transactions from trading terminals in the United States will become effective five business days from the date at which the DTB member firm is identified to the Division unless the Division informs DTB otherwise during this five day period;

(3) Pursuant to DTB's Exchange Rules, DTB members must apply for and identify the location and connection of User Devices to DTB's electronic trading system. Upon request, DTB shall provide information received from its members and in its possession to the CFTC regarding the location of all such terminals in the U.S., and shall update such information on a periodic basis upon reasonable request;

(4) All orders executed pursuant to the relief requested herein will be for "principal" accounts (as that term is defined above) if executed by a non-FCM DTB member firm and the Division will be notified promptly in the event that there is a change under applicable German laws or rules of the DTB concerning the definition of the word "principal";

(5) Participating DTB members will provide, upon the request of the Commission or NFA, prompt access to original books and records, and to the premises where DTB terminals are installed, in the United States, and will consent to CFTC jurisdiction for purposes of ensuring compliance with the conditions of the no-action relief;

(6) DTB will continue to adhere to the "principals for Oversight of Screen Based Trading Systems for Derivative Products," a statement of regulatory policy recommended by the International Organization of Securities Commissions and adopted by the Commission on November 21, 1990;

(7) DTB will submit to the CFTC, on at least a quarterly basis, information reflecting the volume of trades originated from U.S.-based computer terminals compared to DTB's overall trading volume; and

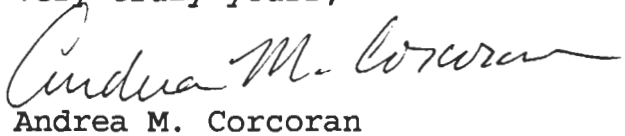
(8) DTB will undertake to provide the Division with prompt notice of all material changes to DTB rules, the Exchange Act, the Securities Act, and other German laws

relevant to futures and options which may impact on the issuance of this no-action letter.

The position taken above is limited solely to the placement of DTB computer terminals in the United States and is based on the information provided to the Division and subject to compliance with the conditions as set forth above and the Commission's ability to access relevant information through the arrangements referred to above. Any different, changed or omitted facts, or noncompliance with the conditions set forth above, might require the Division to reach different conclusions. Moreover, the position herein is strictly limited to issues arising under the Commodity Exchange Act, and in this respect, we note particularly that this letter does not address any issues which might arise under the Securities Act of 1933, the Securities Exchange Act of 1934, and other applicable federal securities laws or rules thereunder.

The positions adopted herein are solely those of the Division and do not necessarily represent those of the Commission or any other unit of the Commission's staff.

Very truly yours,



Andrea M. Corcoran
Director