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U.S. COMMODITY FUTURES TRADING COMMISSION

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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING & MARKETS

May 9, 1997

Volker Potthoff, Senior Vice President
Dr. Ekkehard Jaskulla
Deutsche Borse AG
Borsenplatz 7-11
60284 Frankfurt/Main
Germany

Re: Placement of DTB Terminals in Member Firm Booths at the CME

Dear Messrs Potthoff and Jaskulla:

By letter dated March 18, 1997 you requested that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") confirm that it would not recommend that the Commission initiate an enforcement action against the Deutsche Terminborse ("DTB") in connection with the installation of DTB terminals on the floor of the Chicago Mercantile Exchange ("CME") in booths of DTB member firms who are also CME members, pursuant to a Letter of Intent ("LOI") signed on January 13, 1997 by the CME and the Deutsche Borse AG, the operating company for the DTB.[1]

As you note in your letter, on February 29, 1996 the Division issued a no-action letter (the "DTB Letter") that permitted DTB members to install and operate DTB computer terminals in the offices of DTB members in the United States and execute transactions in certain DTB contracts without the DTB being designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA"). The relief issued pursuant to the DTB Letter, however, was expressly limited to the placement of DTB terminals in the U.S. offices of DTB members (see DTB Letter, condition no. 1). You now propose that the relief granted in the DTB Letter be expanded in order to permit the installation of DTB terminals in DTB member firm booths on the floor of the CME.

Based on your March 18th letter, the January 13, 1997 LOI and a March 10, 1997 letter submitted by the CME concerning the same matter, we understand the following. Only DTB contracts authorized or permissible for trading by United States persons will be eligible to be traded from the DTB terminals located in booths at the CME. The terminals will be located in the booths of firms that are members of the DTB. The persons operating the terminals must qualify

[1] By letter dated May 9, 1997, the Division issued a letter to the CME confirming that the CME will not be required to amend its rules to accommodate the LOI.

as "registered traders" of a DTB member firm under DTB rules. The trading of the DTB contracts from these terminals, and the clearance and settlement of such contracts, will be governed by DTB rules.

No CME contracts will be traded on the DTB terminals. The CME will not apply to be designated as a contract market for trading the DTB contracts. There will be no open outcry trading of such contracts on the CME floor. Trades in the DTB contracts will not be submitted to the CME Clearing House for clearance and settlement, and the CME Clearing House guarantee will not apply to such contracts.

CME individual members will be able to trade DTB contracts only in the following ways. If the CME individual member is qualified under DTB rules as a registered trader affiliated with a DTB member firm, then the CME member can act as a terminal operator to enter his own orders from the DTB member firm's terminal. If the CME individual member is not qualified as a registered trader under DTB rules, then he can enter orders as a customer by giving the orders to an employee of the DTB member firm who is a registered trader under DTB rules and who will enter the orders into the system. DTB members soliciting or accepting customer orders must be registered with the Commission as a futures commission merchant ("FCM").

CME Rule 505 provides that only CME clearing members can have booth space on the CME trading floor, and the CME stated in its March 10, 1997 letter that it did not intend to amend that rule. Therefore, in order for a firm to be eligible to install a DTB terminal in a booth on the CME floor, the firm must be both a CME clearing member and a DTB member firm.

The Division believes that the regulatory purposes of the CEA and the DTB Letter would not be adversely affected if DTB member firms installed DTB terminals on the floor of the CME at booths of CME members who are also members of the DTB as described above and subject to compliance with the terms and conditions of the DTB Letter as modified herein. For example, no customer trading will be permitted from the DTB terminals unless the DTB member firm is registered as a FCM.

We also note that DTB terminals located in the United States have a systems capability to electronically "time-stamp" the execution of customer orders so that an electronic "audit trail" can be maintained. It is our understanding therefore that FCMs utilizing the relief set forth herein will be able to meet the requirements of Commission rule 1.35(a-1) concerning the receipt and transmittal of orders for execution by FCMs (and introducing brokers ("IBs"))[2] and to maintain an electronic record of order execution consistent with the DTB system's capabilities.

Accordingly, the Division will not recommend any enforcement action against the DTB in connection with the placement of DTB computer terminals in the booths of DTB member firms located

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[2] Commission rule 1.35(a-1)(1) requires each FCM and IB that receives a customer order to prepare a written record of such order immediately upon receipt of the order. The record must contain the account identification, the order number, the date and time (to the nearest minute) that the order was received, and, for option customer orders, the time (to the nearest minute) that the order was transmitted for execution.

on the floor of the CME who are also CME members as described above, subject to compliance with all of the terms and conditions set forth in the DTB Letter and as extended herein.

The views expressed in this letter are based on the representations that you have made in your March 18, 1997 letter and our understanding of the facts as described above. Any different, changed or omitted facts or conditions might require the Division to reach a different conclusion and we therefore request that you notify us immediately if the facts change in any way from those as represented in your letter and as presented in this letter. You are reminded that the DTB Letter requires quarterly volume reports with respect to all DTB screens located in U.S. locations. In addition, the Commission may reassess the no-action position from time to time in connection with its evaluation of this and other information. In all other respects, the terms and conditions of the DTB Letter continue in effect. The DTB must continue to comply with all applicable Commission rules, regulations and orders and the terms and conditions set forth in the DTB Letter. In addition, DTB members who are also registered FCMs must comply with all the provisions of the CEA and Commission rules thereunder applicable to FCMs engaged in foreign futures and options transactions. Moreover, the position herein is strictly limited to issues arising under the CEA, 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 position adopted herein is solely that of the Division and does not necessarily represent the position of the Commission or any other office or division of the Commission's staff. If you have further questions, please do not hesitate to contact me, Jane C. Kang or Warren Gorlick of the Division at (202) 418-5430.

Very truly yours,

Andrea M. Corcoran
Director