Deutsche Bank Securities

Deutsche Bank Futures Inc.
31 West 52nd Street
New York, NY 10019

Telephone: 212-469-5000

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COMMENT

October 26, 1999

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

Re: Foreign Futures and Options Transactions, 64 Fed. Reg. 46613 (August 26, 1999); Exemption from Registration for Certain Foreign FCMs and IBs, 64 Fed. Reg. 46618 (August 26, 1999)

Dear Ms. Webb:

Deutsche Bank AG and its wholly-owned subsidiary, Deutsche Bank Securities Inc., a registered futures commission merchant ("FCM") (collectively referred to herein as "Deutsche Bank"), respectfully submit this comment letter in response to two proposed rulemakings by the Commodity Futures Trading Commission ("Commission" or "CFTC"):

(a) Proposed Rule 30.12 ("Proposed Rule 30.12"), 64 Fed. Reg. 46618 (August 26, 1999), which would amend Part 30 of the CFTC rules to codify procedures pursuant to which certain institutional customers of FCMs may place orders directly with a foreign futures broker that carries the FCM's customer omnibus account (i.e., foreign order transmittal); and

(b) Amendments to CFTC rules ("Proposed Amendments"), 64 Fed. Reg. 46613 (August 26, 1999), which would, among other things: (i) add the definition of a "foreign futures and options broker" ("FFOB") to CFTC Rule 30.1; (ii) clarify which FFOBs do not need to register pursuant to CFTC Rule 30.4(a) as an FCM or obtain an exemption under Rule 30.10, and (iii) codify the procedures pursuant to which FFOBs with bank branches in the United States may qualify for a Rule 30.10 exemptive order.[1]

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[1] Both the Proposed Rule and Proposed Amendments would apply only to foreign futures and options transactions governed by Part 30 of the CFTC's rules. In this regard, we seek clarification that the Proposed Rule would not apply to procedures such as "passing the book" pursuant to which a US FCM may pass its customers' order book to its foreign affiliate so that the FCM's customers may place orders directly with the FCM's foreign affiliate for the trading of US exchange contracts on a US exchange's direct execution system. See CFTC Interpretative Letter No. 92-11, Comm. Fut. L. Rep. (CCH) ¶25,325 (June 25, 1992), as modified by CFTC Interpretative Letter No. 93-83, Comm. Fut. L. Rep. (CCH) ¶25,849 (August 9, 1993).

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 major international futures exchanges. Deutsche Bank's United States customers trade on foreign futures and options markets around the world. The Proposed Rules will 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. With certain exceptions, we direct our comments to Proposed Rule 30.12 and comment on the Proposed Amendments to CFTC Rules 30.1, 30.4 and 30.10 to the extent the proposed definitions or clarification of registration requirements impact on Proposed Rule 30.12.

I. General Comments and Proposal for Additional Rulemaking on Part 30

a. Endorses Proposed Rule 30.12 and the Proposed Amendments

Deutsche Bank welcomes Proposed Rule 30.12 and believes it represents a significant improvement over current procedures governing foreign order transmittal. The current procedures are set forth in two advisories issued by the CFTC's Division of Trading and Markets. [2] The Advisories require, among other things, that the US FCM and the foreign futures broker be affiliated, and that the foreign futures broker either obtain an exemption from registration pursuant to CFTC Rule 30.10 or that "designated persons" employed by it who act in other than a clerical capacity register as associated persons of the affiliated FCM.[3]

The Proposed Rule eliminates both the affiliation requirement and registration requirement and focuses instead on what we believe to be the four key issues relevant to permitting US customers to have contacts with certain eligible FFOBs in these circumstances: (i) the sophistication of the customer; (ii) appropriate disclosures to customers; (iii) the financial exposure to the US FCM; and (iv) the bona fides of the foreign clearing/executing firm.

We also welcome the Proposed Amendment to Rule 30.4(a) to, among other things, provide relief from the FCM registration requirement for FFOBs that accept orders from or carry

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[2] See Advisory 93-115, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,932 (December 20, 1993) (procedures FCM and its affiliate must follow if the affiliate has qualified for Rule 30.10 exemption); and Advisory 95-08, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,300 (December 22, 1994) (procedures for those affiliates that have not qualified for an exemption under Rule 30.10) (hereinafter referred to as the "Advisories").

[3] Id.

a US FCM's proprietary account, as that term is defined in Rule 1.3(y). Specifically, while the current CFTC approach permits an FFOB to carry any FCM's customer omnibus account [4] and the FFOB's own "proprietary" accounts [5] without registering with the CFTC, it does not permit the FFOB to carry the "proprietary" account of a US FCM that is not proprietary to the foreign firm.[6]

In proposing this expansion, the Commission notes that US FCMs are professionals in the commodities industry and should be familiar with the risks of trading foreign futures and options.[7] It further notes that FCMs do not need the added protections afforded by requiring the foreign firm to register as an FCM, provided that the foreign firm is a member of a foreign board of trade or a registered affiliate of the US FCM.[8] The Proposed Amendment to Rule 30.4(a) benefits US FCMs in that they can determine which foreign firms will carry their proprietary accounts, and removes a significant regulatory impediment for foreign firms such as Deutsche Bank AG that today are able to carry an unaffiliated FCM's customer omnibus account but cannot carry that same FCM's proprietary trading account. In this connection, we further urge the Commission to permit FFOBs to carry "proprietary" accounts of the US FCM in the broader sense of the term, as defined in CFTC Rule 1.3(y), and not just the FCM's house account.[9]

b. Seeks Further Expansion of Registration Relief and Proposes Framework

We commend the Commission for reevaluating its approach to Part 30 to ensure that an approach developed in 1987 continues to address core regulatory issues in a manner that is appropriate for the nature of the customer and the circumstances of the transaction. We also welcome the Commission's recognition that in a 24-hour global trading environment, it cannot

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4 CFTC Interpretative Letter No. 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (November 17, 1987).

5 See CFTC Rule 3.10(c) and CFTC Interpretative Letter No. 88-15, Comm. Fut. L. Rep. (CCH) ¶24,296 (August 10, 1988).

6 For example, under Securities and Exchange Commission Rule 15a-6, foreign broker-dealers who engage solely in transactions with certain types of US persons such as registered broker-dealers, whether acting as agent or principal, are exempt from the SEC's broker-dealer registration requirement.

7 64 Fed. Reg. 46613, 46615.

8 Id.

9 Id., at 46616.

and should not impose its registration and other regulatory requirements on every entity that comes into contact with a US person.

The Proposed Rule and Proposed Amendments represent important progress for the benefit of US customers that we endorse. However, Deutsche Bank believes that the Commission has an opportunity in the context of these proposals to provide US customers even more flexible, efficient and cost-effective access to foreign markets than is proposed, without compromising core customer protections. In particular, we urge the Commission to expand the registration relief in Rule 30.4(a) to permit certain US customers (in addition to those permitted by the Proposed Amendment to Rule 30.4(a), i.e., FCMs), to elect to have their accounts carried with a registered FCM or with the FCM's affiliated FFOB. In particular, Deutsche Bank believes that the approach of the Proposed Amendment that will permit FCMs to open accounts with any foreign firm that meets the definition of an FFOB, and the Proposed Rules that will permit certain institutional customers of US FCMs to have direct contacts with eligible FFOBs, could also provide the basis for permitting the same US institutional customer to open a foreign futures and options account directly with an FFOB that is affiliated with a US FCM, rather than with the US FCM.

The Commission notes that FCMs acting in a principal capacity do not need the protections afforded by requiring that foreign firms be registered. It further suggests that authorized customers as defined in Proposed Rule 30.12(a) may not need all the protections afforded by registration and that they can deal with unregistered foreign futures brokers based on the risk disclosures required by Proposed Rule 30.12(b). Deutsche Bank agrees with these positions. Moreover, we also agree with the Futures Industry Association ("FIA") who noted in urging the reforms resulting in Proposed Rule 30.12 that US customers want the operational and economic efficiencies associated with having their futures and option transactions carried by a well-capitalized FCM.[10] However, we also believe that those same customers would prefer to have as another option the opportunity to open their foreign futures and options trading account with the foreign affiliate of a US FCM in cases where the foreign affiliate is much better-capitalized than the US FCM, or for other operational/economic reasons.

It is not clear to us that certain US institutional investors are not as professional as FCMs in the commodities industry, and are not as capable of evaluating the risks of trading foreign futures and options. Indeed, Proposed Amendment Rule 30.4(a) would permit US customers that are not themselves FCMs but are affiliated with FCMs and, therefore, trading an account proprietary to an FCM, to open an account with an FFOB. We, therefore, suggest that the

[10] 64 Fed. Reg. 46618, 46620.

rationale on which Commission has issued the Proposed Amendments and Proposed Rule 30.12, with certain modifications of the type noted below, could also provide the basis upon which to implement rules to permit authorized customers to elect whether their foreign futures and options accounts are carried by a US FCM that would then operate pursuant to Proposed Rule 30.12, or directly with an FFOB that is affiliated with the FCM.

The framework we contemplate for expanding registration relief could be based on, among other things, the requirement that the FFOB: (i) be affiliated with a US FCM; (ii) provide a mandatory risk disclosure statement and any other material disclosures to customers; (b) be registered, licensed or otherwise authorized in its home jurisdiction; (c) represent that applicable laws in its home jurisdiction would not bar such firm from providing information to the CFTC or to the customer upon request; (d) be a clearing member of one or more foreign futures or options market; and (e) submit to US jurisdiction and appoint its US FCM affiliate as its agent for service of process from appropriate US regulatory authorities. Once approved/certified under this program, the FFOB would be able to carry the account of any US person who satisfied the CFTC's authorized customer test.

Deutsche Bank does not propose that such FFOBs should not be subject to the CFTC's jurisdiction. Rather, we believe our proposed conditions would address the Commission's core concerns in providing the relief requested in the same manner that the Proposed Amendment to Rule 30.4(a) contemplates de minimis requirements for FFOB's permitted to carry an FCM's proprietary accounts and Proposed Rule 30.12 proposes certain additional conditions for eligible FFOBs that deal with a broader category of US customers (i.e., authorized customers) whose activities could put the US FCM at financial risk. In fact, by permitting authorized customers to open their accounts directly with the FFOB, the Commission could minimize the internal control issues associated with foreign order transmittal.

We appreciate that this matter is not an issue on which the Commission seeks comment. However, we urge the Commission in its continuing efforts to update and modernize the Part 30 rules to give careful consideration to our proposal for further rulemaking on the Part 30 rules as outlined herein. We would be pleased to work with the Commission on this proposal and to respond to any additional questions you may have.

II. Specific Comments

In addition to our request for additional rulemaking, we also have the following particularized comments on Proposed Rule 30.12:

a. Authorized Customers – Proposed Rule 30.12(a)

Proposed Rule 30.12(a) enumerates the "authorized customers" who would be eligible to act pursuant to the Proposed Rule. The Commission believes that the risks inherent in the procedures require a "distinct, more narrowly-defined class of sophisticated investors. . . ." [11] The Commission, therefore, has proposed a definition of "authorized customers" in Proposed Rule 30.12(a) that is narrower than the definition of an "eligible swap participant" and the definitions currently set forth in the Advisories. We will not elaborate on this issue as we generally endorse the comments made by FIA in this regard, except to note the following.

In the Proposed Amendment to Rule 30.4(a), the Commission would authorize any firm meeting the definition of FFOB as set forth in Proposed Amendment Rule 30.1(e) to carry the account of any FCM or an account deemed a proprietary account of the FCM. Yet, Proposed Rule 30.12(a) imposes much higher thresholds for an authorized customer of an FCM that is itself an FCM to have any direct contacts with the FFOB. It seems anomalous that the Commission would propose more stringent requirements for indirect access by an FCM to an eligible FFOB through another registered FCM than for direct access to an FFOB by an FCM.

The Advisories include within the class of authorized customers certain foreign persons that perform functions similar to US registrants and are subject to foreign regulation, a category not included in Proposed Rule 30.12(a). While we appreciate that such foreign persons may not be included in the definition of "authorized customers" because foreign persons are not "foreign futures or foreign options customers," as defined in Commission Rule 30.1(c), Deutsche Bank notes that the recent failure of Griffin Trading Company referred to by the Commission was caused by the acts of foreign customers of the US FCM. If compliance with the Proposed Rule is mandatory as to US customers but discretionary as to foreign customers of the FCM, we believe that that objective of the Proposed Rule would be severely compromised. We, therefore, recommend that the Commission clarify its intent in this regard.

b. Capital and Disclosure Requirements for FCMs – Proposed Rule 30.12(b)

The Commission proposes to impose additional capital requirements on FCMs that wish to authorize their customers to take advantage of the order transmittal procedures. In addition, an alternative minimum capital requirement would allow smaller FCMs that may not meet this additional capital requirement to seek no-action relief from the Division, provided they maintain a proportionate amount of excess capital to mitigate the risk associated with the activities of their customers. However, the Commission has not proposed any standards or guidelines that it would expect the Division to take into account in determining proportionality. If certain FCMs will be

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[11] Id., at 46621- 622.

permitted to engage in activities pursuant to Proposed Rule 30.12 under less onerous requirements than other FCMs, the Commission should provide an explanation as to the reasons why it believes those less onerous requirements are justified and why such standards should not apply across the board.

Further, the Commission proposes a disclosure requirement for FCMs that act pursuant to Proposed Rule 30.12, Direct Order Transmittal Client Disclosure Statement. Although the Commission proposes text, on which we have no comment, it also provides that the risk disclosure must be furnished in a form acceptable to the Commission. In this regard, we would urge the Commission to permit firms to have the option of providing the disclosure as a separate document or as additional prescribed text in the customer account agreement.

c. Eligible Foreign Brokers – Proposed Rules 30.12(c) and (d)

Under Proposed Rules 30.12(c) and (d), authorized customers may transmit orders only to an eligible FFOB that is either a clearing member of the foreign exchange on which the trade is executed, a majority-owned affiliate of such a clearing member, or an affiliate of the US FCM that is carrying the customer's account. First, we are not convinced that these restrictions that require that the clearing member must be a clearing member of the exchange on which the trade is executed, or that the eligible FFOB be affiliated with the US FCM that is carrying the customer's account, are warranted. A foreign clearing member will be more highly capitalized than a non-clearing member firm, irrespective of the market on which it may be entering into transactions. With respect to FCM affiliation, as an alternative to requiring that the FFOB be affiliated with the FCM that is carrying the customer's account, the Commission could require that any such eligible FFOB be materially affiliated with a US FCM, thereby bringing the FFOB within the scope of the CFTC's risk assessment rules.[12] The fact that the FFOB is a clearing member of any exchange and, therefore, highly capitalized, or is materially affiliated with any FCM, or is affiliated with the FCM carrying the customers' accounts, should be sufficient for purposes of Proposed Rule 30.12.

Second, any firm that is exempted under Rule 30.10 should also qualify as an eligible FFOB for purposes of Proposed Rules 30.12 (c) and (d), irrespective of whether it is a clearing member of a foreign exchange or affiliated with a US FCM. The Commission has determined that such firms may carry the accounts of any US customer based on the customer protection requirements and financial safeguards applicable to that firm in its home jurisdiction. Under such

[12] See CFTC Rules 1.14 and 1.15.

circumstances, we see no reason why such firms should not qualify as eligible FFOBs for purposes of Proposed Rule 30.12.

d. Procedural Safeguards

(i). Indirect Foreign Order Transmittal with Eligible FFOBs

The Advisories had confirmed that the order transmittal procedures would apply in cases where an FCM maintains a customer omnibus account with a single foreign affiliate and the affiliate, in turn, maintains customer omnibus accounts with clearing brokers at various foreign exchanges. In the preamble to Proposed Rule 30.12, the Commission notes that the relief will extend to those FFOBs that accept orders directly from an authorized customer of a US FCM that maintains a customer omnibus account with a single foreign affiliate of the US FCM who, in turn, maintains customer omnibus accounts with FFOBs on various foreign exchanges.[13] In such circumstances the US FCM must satisfy the capital requirement prescribed by Proposed Rule 30.12(b) and the US FCM, its foreign affiliate and the FFOB must otherwise comply with the requirements of the Proposed Rule.[14] Deutsche Bank welcomes this clarification.

(ii). Application of Proposed Rule 30.12 to Rule 30.10 Firms

In the preamble to Proposed Rule 30.12, the Commission also notes that the relief will not be available to any FFOB that directly carries the customer account for any US customer unless that FFOB has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures or is registered with the Commission. Deutsche Bank seeks clarification of whether by this statement the Commission intends: (1) that any foreign firm in order to qualify as an eligible FFOB must otherwise be in compliance with all other applicable CFTC requirements (e.g., apply for Rule 30.10 relief in order to carry the direct accounts of US customers); or (2) to apply the requirements of Proposed Rule 30.12 to firms exempted under Rule 30.10 that wish to permit its US customers to have direct contacts with foreign clearing/executing firms that carry the Rule 30.10 firm's customer omnibus account.[15] The latter

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[13] 64 Fed. Reg. 46618, 46624.

[14] Id.

[15] For example, the UK Rule 30.10 Order permits UK firms so exempted to engage in transactions on exchanges outside the UK for US customers. See 54 Fed. Reg. 21599 (May 19, 1989).

interpretation would appear to be consistent with the Commission's objectives in Proposed Rule 30.12 although not consistent with the text of the Proposed Rule.

III. Automated Order Routing Systems

Finally, the Commission notes that Proposed Rule 30.12 will apply to the transmittal of orders to an eligible FFOB by telephone, facsimile and electronic mail messages and that it would not permit an authorized customer to place orders with a foreign broker using an automated order routing system ("AORS").[16]

When the Commission issued its order in June 1999 withdrawing the CFTC's proposed rules governing access to automated boards of trade,[17] the Commission stated that "further consensus among the various parties must be sought before rules or guidelines may be finalized in this area."[18] Subsequently, however, in issuing Proposed Rule 30.12 and in certain other contexts,[19] the Commission appears to have determined that FCMs may not make AORSs available to their customers for foreign futures and options transactions, except in connection with transactions executed on foreign exchanges that have received a no-action letter from the CFTC's Division of Trading and Markets to place their direct execution terminals in the US ("No-Action Letters").

It is difficult to reconcile the position on AORSs in Proposed Rule 30.12 and in the No-Action Letters, among other places, with the Commission's earlier determination in June 1999 to engage in further consultation before proceeding with any rules or guidelines governing AORSs. We urge the Commission in adopting final rule 30.12 to recognize the use of AORSs, or, at a minimum, to clarify that the use of such systems would not violate Proposed Rule 30.12. Under current rules, FCMs may not use, or permit their customers to use, AORSs that would impair the FCMs' ability to comply with any applicable regulatory requirements to which they are subject. Moreover, as the Commission is aware, AORSs can provide FCMs with sophisticated, real-time risk management tools that could enhance their ability to control the transactions effected by their customers. We urge the Commission not to impede the use of technology that can make trading more safe, efficient, transparent and cost-effective and to permit FCMs to have the

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16 64 Fed. Reg. 46618, 46624.

17 64 Fed.Reg. 14159 (March 24, 1999).

18 64 Fed.Reg. 32829, 32830 (June 18, 1999).

19 See, e.g., 64 Fed.Reg. 50248 (September 16, 1999).

latitude necessary to make commercial and operational judgements about how they will meet regulatory requirements.

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

Very truly yours,

Michael R. Communiello , Director

Kevin Collins ,Director

cc: The Honorable William J. Rainer
The Honorable Barbara P. Holum
The Honorable David D. Spears
The Honorable James E. Newsome
The Honorable Thomas J. Erickson
C. Robert Paul, General Counsel
Phyllis J. Cela, Acting Director, Division of Enforcement
John C. Lawton, Acting Director, Division of Trading and Markets
John Mielke, Acting Director, Division of Economic Analysis