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COMMENT

OFFICE OF THE SECRETARIAT

October 6, 1998

Via Facsimile to: (202) 418-5521
and by Federal Express

Jean A. Webb, Secretary
Office of the Secretariat
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

COMMODITY FUTURES
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Re: Foreign Board of Trade Terminals

Dear Ms. Webb:

This letter is written on behalf of Interactive Brokers LLC ("IB") to comment on the Commission's Concept Release with respect to issues regarding foreign terminal placement and usage in the United States. This comment addresses issues related to the manner in which IB conducts business--essentially the issues raised by Sections II.A.2, II.B.1 and II.C.2 of the Concept Release. IB is a Futures Commission Merchant, and a member of The Timber Hill Group of Companies which, along with its affiliated companies, are members of most commodities and securities exchanges in the United States, and several foreign exchanges.

The Timber Hill Group has encouraged widespread use of advanced technology in all facets of the commodities and securities industries. It has also encouraged the elimination of artificial barriers which have impeded the development of efficient markets. With respect to the issues raised by the Concept Release, we generally believe that the guiding principle should be that the availability of efficient global market access is in the best interests of all market participants. We emphasize three points:

1. It is essential that the Commission encourage broad market transparency, and as a condition to the placement of foreign computer terminals in the U.S., it should require foreign boards of trade to provide an even playing field and make all market information available to all those who may access the market, including all FCMs and their customers.

2. "Intermediation" should not require human involvement when U.S. FCMs can provide equal or better customer protection features by the use of advanced technology—any attempt to encourage a modern form of featherbedding would be a step backward; it would artificially reduce transaction speed, increase transaction cost and unnecessarily retard the development of efficient markets.

3. Global access to all markets, whether or not the Commission would sanction particular terminal placements in the U.S., should not be restricted so long as a U.S. registered FCM can provide better customer protection and more efficient access than that which is now available through the use of antiquated facilities (overseas telephone) which are not regulated at all.

* * * * *

IB provides its customers with electronic order routing and execution of domestic and foreign futures, options, securities and related products through its proprietary screen-based computer and communications technology. IB's cross-border services provide access to foreign markets which, as a practical matter, were not generally accessible; and since these services are delivered through the use of high-speed technology, with a minimum amount of human intervention, they are cost efficient and they permit IB to meet its obligation to provide customers with the best execution possible. IB's technology driven features, including its extensive audit trail which identifies the customer to every order, automated credit checking, and trading limit control substantially reduce the chances of error and enhance customer protection beyond what has been previously available to the general investing public. IB provides human intervention through its Help Desk as necessary to facilitate use of its technology.

IB does not maintain foreign exchange computer terminals in the United States. Rather, IB offers its customers the ability to communicate, *via* the Internet or proprietary communications facilities, with IB's domestic facilities which provide the customer protection features set out above. IB's domestic facilities, in turn, communicate (electronically instead of by telephone) with foreign IB or affiliated facilities and foreign exchange computer terminals located outside the United States.

Prior to the development of electronic order routing and execution systems, U.S. customers wishing to trade foreign futures and options were severely disadvantaged because they were required to use antiquated facilities which were expensive, unreliable and slow. As a result, executions were not satisfactory and errors were too common. Price information was inadequate and stale before it could be acted upon. The process of telephoning a U.S. FCM, who would then telephone a foreign broker in an inconvenient time zone to secure price information, then submit an order, and then secure a confirmation, was unsatisfactory. Not only were prices stale, but importantly, the depth of the market, necessary to evaluate price data, was often (and in some markets remains) unavailable.

As a result, technology was developed to streamline the process; and to make it efficient, reliable and widely available. Now, by substituting the telephone with electronic facilities, in a matter of about 3 seconds (or less), real time cross-border bids and offers can be viewed and acted upon, so that U.S. customers can make more informed market judgments and secure the best fill available, while receiving state of the art customer protection features. In order to better serve the investing public, Commission registrants and those offering services in the U.S., including foreign boards of trade placing terminals in the U.S., should be encouraged to provide services of this sort, including all available market information.

The Commission's Concept Release recognizes that in order to properly hedge or diversify their portfolios, many U.S. investors need to access foreign markets in a more efficient manner, and on an even playing field. Such market access is easily and safely facilitated for only certain investors. Generally, it is IB's submission that the Commission should facilitate broader access to cross-border trading and adopt a flexible regulatory approach which affords customer protection features on an even playing field. To the extent that automation and technology can contribute to these goals, its use should be encouraged with the ultimate goal of permitting efficient and reliable market access, market transparency and the best execution possible. The use of antiquated practices which provide customers with unfair and inefficient services should be correspondingly discouraged.

II.A.2. As a Condition to U.S. Placement of Foreign Terminals, Boards of Trade Should be Required to Establish and Even Playing Field, To Make All Market Information Available to All Market Participants, and To Eliminate Any Other Artificial Barriers to Market Access. The Commission continuously recognizes the need to maximize market transparency. In order to achieve the Commission's goal of providing fair and efficient market access to the investing public, all Commission orders conditioning foreign board of trade terminal placement (or terminal access) in the U.S. should require that the foreign board of trade provide fair access to all available market information. That is, all U.S. customers, without limitation or discrimination, should be provided with full access, and artificial barriers, such as unrealistically high fees or arbitrary prerequisites, should not be permitted. To permit foreign boards of trades to limit the provision of all market information to only selected market participants, who could either afford to pay high fees or have arbitrary credentials, allow the creation of licences to take unfair advantage of the general investing public. Thus, in addition to the seven conditions set out on pages 26-27 of the Concept Release, we submit that full, timely and otherwise equal access to all market information, and the elimination of any other artificial barriers that advantage only a segment of the investing public be required.

II.B.1. Definition of Computer Terminal: IB submits that an exchange's matching engine can only be accessed through an exchange sponsored "portal". Only after an order passes through this portal does it face the risk of execution. We respectfully submit that it is access to this portal that should be of concern to the Commission in the Concept Release and not what form of collection system the FCM uses. The Commission should insist that U.S. customers' access to matching engines should be restricted to portals that are registered for U.S. FCMs or their Part 30 exempted affiliates.

IB further submits that any U.S. FCM provided mechanism that enables a U.S. customer order to be submitted electronically to an FCM and subsequently to a foreign board of trade, including those particular foreign markets which *do not meet* the regulatory requirements adopted by the Commission, without the necessity for human intervention at the FCM, should *not* be considered a "computer terminal" for regulatory purposes if appropriate customer safeguards are provided by the FCM's non-human facilities.

That is, if (a) customer orders are routed by registered FCMs; and (b) the extent of "intermediation"--whether automated or through human involvement-- (such as audit trail benefits; credit checking; trading limit checking and risk disclosure) is such that customer safeguards are maintained, no benefit would result from denial of efficient access to all foreign markets. Rather, such denial of access would merely create artificial barriers which relegate customers to antiquated business practices offering significantly less effective customer protection facilities. The Commission appears to fully recognize the impact of this issue, as indicated by footnote 30 appearing on page 30 of the Concept Release. In that footnote, the Commission equates "transmission which does pass through an employee of an FCM" with a transmission which passes through a "system operated by an FCM", so long as the "system" can provide the same customer safeguards as can be provided by the "employee".

II.C.2. Order Execution and Order Routing Issues. The Concept Release suggests that the Commission's approach does not contemplate that the rules would permit U.S. customers to have "direct" access to "computer terminals" to place a trade directly on a foreign board of trade without the use of an intermediary. IB agrees that the use of a U.S. regulated intermediary should be required, but, as the release further suggests, that the function of the U.S. regulated intermediary can be sufficiently fulfilled, indeed, fulfilled in an even better fashion, without the requirement that an employee of the FCM review and accept orders or take some other undefined, affirmative non-automated action to transmit such order to a foreign board of trade. To set out an artificial requirement that human intervention be provided would set back the advances achieved with technology, and would deprive customers of more efficient and better execution, without any resulting benefits--*so long as the same or better customer safeguards are provided by automated facilities.*

U.S. customer access through an automated order routing system should not be limited to foreign boards of trade which receive Commission exemptive orders, or through an FCM which is a member of, or has secured certification from the foreign board of trade. Rather, automated customer access should be permitted to any foreign exchange--(a) if access is provided through a U.S. registered FCM; and (b) so long as the automated access provides sufficient customer safeguards--credit control and trading limit checking, appropriate audit trails which include account identifiers and risk disclosure. A regulatory scheme which would prevent such access will, as previously indicated, merely limit efficient access to such exchanges to only certain market participants, relegating others to the use of antiquated business practices (multiple telephone calls) which will result in delays, unnecessarily higher execution costs, less rigorous customer safeguards, and less efficient order execution.

Respectfully submitted,

David Downey by BLS
David Downey