From: Carl M. Zapffe [mailto:cmzapffe@comcast.net]
Sent: Wednesday, December 17, 2003 10:38 PM
To: CFTC
Cc: CBOTTradeTalk
Subject: Re: Eurex Application to Become US Futures Exchange, LLC

FROM:

Carl M. Zapffe

TRIPLE NICKEL TRADING COMPANY

141 W. Jackson Blvd., Suite #4238

Chicago, IL 60604

312-427-1044

cmzapffe@comcast.net

TO:

Mrs. Jean Webb,

Secretary,

Commodity Futures Trading Commission

Dear Ms. Webb:

I have been a Member of the Chicago Board of Trade since 1973, now 30 years. During that time I also served as a member of the Board of Directors of the CBOT for seven years, from 1985 until 1991. The last year of those seven

years (1991) included my being a Vice Chairman of the Exchange and a member of the Executive Committee of the CBOT under the then Chairman, William F. O'Connor.

During this period of time all the CBOT members and staff having to do with the governance of the CBOT were consumed by a number of crises, the two most important of which were the Ferruzzi scandal, an attempt to corner the market in deliverable soybeans in 1989, and the FBI "sting" of 1988, in which a few of my fellow soybean traders were convicted of mishandling customer orders.

There was, and still is, a guiding philosophy in both of these situations that the customer order is sacrosanct and that the broker-agent filling that order may not under any circumstances misuse or abuse the filling of that order in our open outcry auction markets.

The second most important guiding philosophy of our futures markets is the often abused and misunderstood concept of "transparency." In effect, this means that the little guy, the retail customer, should have access to the same market information as the big guys. It is this transparency, and ONLY this transparency, that gives definition to the word "open" in our futures auction markets.

I have been gravely disturbed by a number of actions over the last few years that have corroded this definition

of market openness by our large FCM members and proprietary trading firms. While we members of the trading pits are still held to the old standards of non-disclosure mentioned above, many off floor traders now have information available to them in the electronic versions of our futures markets, information that if I possessed on the floor could result in my being fined, penalized, and the forfeiture of my CBOT membership.

For example, some electronic markets disclose the size of the bids and offers going up and down the price scale of our futures markets to as far away as 10 ticks from the current market price at which business is being conducted. Why is this illegal in the trading pits but entirely legal in the electronic versions of these same markets?

I am outraged that the CFTC and Congress are even considering the Eurex application that includes as positive(?) goals several forms of pre-arranged trading. You, are, of course, familiar with all the terms and the descriptions of the types of transactions involved: "Cross Trading," "Block Trading," Call Around Trading," "Internalization of the Order Flow," "Payment for Order Flow," and others, all of which are only the more egregious examples of this method of conducting business.

In each and EVERY example of the above, the method of order filling is done strictly for the convenience of the few participants involved, usually only two, to the detriment of every single other participant in that futures market place.

It must be noted that your agency, the CFTC, has since 1975 specifically barred ALL kinds of pre-arranged trading. Pre-arranged trading of Futures in the U.S. has been a Felony under CFTC rules since 1977

(re: Johnson/Kirkland, Ellis).

In the mid-1970s and early 1980s, the CFTC, Justice, the FBI, the IRS and Congress attacked over 1500 members of the Chicago futures community for pre-arranged trading. The IRS levied huge fines on thousands of Merrill and other non-Member market participants. Millions of dollars were spent by the CFTC and the Feds to prove pre-arranged trading offences carrying jail time. Defendants spent millions of dollars defending themselves from these often unfounded charges.

The IRS laws regarding long term capital gains for futures were changed in 1981 on the basis that spreading for tax advantage involved pre-arranged trading, which was, and is now, illegal for futures exchange members and their customers. It was during this period under Treasury Secretary Donald Regan, who, it must be noted, was a former executive with Merrill Lynch, that the laws were changed to the "mark to the market" concept. It must also be noted that Merrill Lynch profited handsomely by the marketing of these transactions for many years, but as soon as Regan moved to the Treasury Department under President Reagan, he all of a sudden "found religion," and attacked this as an abuse of the tax code.

Pre-arranged trading as a felony has been the backbone of Federal Regulation of futures markets for 28 years. Why is it now okay for foreigners and large Wall Street broker/dealers to engage in pre-arranged trading? I am assuming that pre-arranged trading is still a felony carrying a $5,000 Fine and 5 years in jail for every count proved against a Member of any organized U.S. Futures exchange. Why is anyone even thinking about approving an exchange that will allow and promote felonies as a standard operating procedure of their business plan?

What am I missing here? Why is this not a major issue? Or, to put it more bluntly, why is this proposal even being considered by anyone who has been charged with protecting the integrity of the futures markets? After all, there are even now ex-CBOT members still under sanction for allegedly pre-arranging trades in the 1980's and you are now being asked to sanction this as an accepted course of doing business in 2003?

What is this - a "Hail, Mary" business plan, and you are now going to give all of these former traders a "get out of jail and go free" business pass? Or was that then and this is now?

And all of this from the former Salomon firm that tried to corner the Treasury market in 1991? Merrill Lynch that nearly ran Orange County, California into bankruptcy? Practically every firm on the Street that was accused of rigging the bids of the municipal bonds they helped underwrite? Practically every firm on the Street that paid $900 million in fines for rigging the bids on the NASDAQ market for 30 years up until the mid-Nineties? Practically every firm on the Street even today that is corrupting, or has corrupted, the mutual fund business by demanding stock transaction orders for fund recommendations, and the ability to conduct "after hours" in and out trading of mutual funds? I could go on and on here.

I am outraged that the prosecutors, the CBOT OIA and the CFTC are not bringing this up to Congress as a major issue. Pre-arranged trading is okay for Goldman, Merrill, Morgan and Eurex, but CBOT Members go to jail? In essence, what I am reading here is that if you are a little guy and you steal hundreds from a customer, you will go to jail, but if you are a big Wall Street FCM, you can steal millions from the markets and this is supposed to be just fine with the CFTC?

The corruption in the financial markets is real and it is systemic. Why? Because no one ever goes to jail, that's why. The firms write off these huge fines as their cost of doing business, and then they go about searching for new ways to rig the system and rob their customers and the other market users blind.

God bless New York States Attorney, Elliott Spitzer. Finally, someone with backbone attacking the way these thieves do business. You will note that these sanction actions didn't originate with the SEC.

Do you want to be the government agency blind sided by an Illinois States Attorney 10 years from now for being soft on futures market corruption and being made to look as foolish and as ineffectual as the SEC is today?

And as irrelevant? It's easy, all you have to do is listen to the sweet talk of these large firms who want to make life easier. For themselves. They don't give a damn about market integrity. It's all about the money, and how much they can steal and how easily they can steal it.

I should know. They just stole the Board of Trade Clearing Corporation out from under me and all the other small clearing members. I was a clearing member for 20 years. We were forced to vote for these rule changes three years ago because it was considered "good corporate governance." It only took them three years to stack the BOTCC Board and sell out to Eurex. And it didn't cost them a penny. Just like the merger between Daimler-Benz and Chrysler was a "merger of equals."

I believe that it was Kruschev who opined that "we (Communists) will sell you (Capitalists) enough rope to hang yourselves." Well, Eurex, Merrill Lynch, Goldman Sachs, J. P. Morgan, Citibank, Refco, Goldenberg-Hehmeyer, and other large firms are all standing upstairs at the newly renamed "The Clearing Corporation" with all the rope we need to hang ourselves and the integrity of the Chicago futures markets with us.

Respectfully submitted,

Carl M. Zapffe,

CBOT Full Member, 1973