

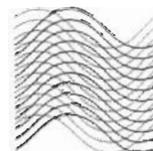
COMMENT

Bundesanstalt für
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Mr Reuben Jeffery III
Chairman
U.S. Commodity Futures Trading Commission
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Received CFTC
Records Section

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Boards of trade located outside of the United States and the requirement to become a designated contract market or derivatives transaction facility / no-action letters

Request for Comment Related to CFTC June 27, 2006,
Hearing on Foreign Boards of Trade (5186-06)

Dear Mr. Jeffery,

the Commodity Futures Trading Commission (CFTC) has addressed itself to the question on how to deal with certain issues with respect to boards of trade established in foreign countries and located outside the U.S which I would like very much to comment on.

I understand that the CFTC is examining the question, under which circumstances a foreign board of trade (FBOT) that makes its products available for trading in the U.S. by permitting direct access to its electronic trading system from the U.S. should no longer be considered as "located outside the U.S." and - in consequence - may be required to become a designated contract market (DCM) or derivatives transaction execution facility (DTEF). The considered regulatory change would certainly affect the German jurisdiction so that it is of great interest to me to express the point of view of the German Federal Financial Supervisory Authority (BaFin).

It is my understanding that presently access to the U.S. market is granted following a due diligence review of markets and trading systems as well as the examination of the home country regulation.

Since the issue of the first no-action letter by the CFTC to the Deutsche Terminbörse in 1996 an efficient co-operation between BaFin and the CFTC has been established. BaFin has, as well as the former BAWe, expressed its willingness to fully co-operate with the CFTC and

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has concluded bi- and multilateral information sharing agreements with the CFTC. These arrangements allow for the most extensive exchange of information and mutual assistance concerning market surveillance and enforcement of securities laws in cases of suspected violations. Until now BaFin and the CFTC have been able to provide each other with all the assistance requested by the respective authority.

In addition to an information exchange that seems to be working well, detailed information obtained in the course of the no-action letter process has allowed the CFTC to gain the needed insights regarding the structure of German markets concerned and standards of surveillance and supervision in Germany. To my understanding the level and form of surveillance of the respective markets under German law have been considered as equivalent or, at least, sufficient for the purposes of the supervisory needs of the CFTC.

In my view this current practice of the CFTC regarding market entry requirements for entities under supervision of BaFin and the German Exchange Supervisory Authorities has proved to be appropriate and reliable.

More generally, this principle of pre-admission, due diligence review and deference to the home regulator, which is presently applied likewise in Germany and in the U.S., has become an international practice used in many jurisdictions and is in the view of many securities regulators a starting point for the ongoing work of international standard setters like CESR and IOSCO. It provides similar treatment for cross-border activities of exchanges in the sense that for example U.S. exchanges wishing to place terminals in Germany or many other EU-jurisdictions have an admission process that is broadly similar to the present CFTC approach regarding EU-FBOTs, which again is based on the reliance on and trust in the home country regulator.

Past has shown that foreign exchanges doing business in Germany and admitted pursuant to the German "no-action relief" (Section 37i of the German Securities Trading Act) granted after detailed study of the home regulator of the respective foreign exchange, have been regulated in an appropriate and reliable manner by their competent home state regulator. Where market surveillance and supervision issues arose, such issues could be dealt with by cooperative efforts among the authorities concerned.

Furthermore, the recognition of "home regulator"-supervision based on equivalent supervisory standards and the exchange of information that relies on mutual trust and understanding between regulatory authorities

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can avoid overlaps and regulatory conflicts between various competent regulators that ultimately lead to disadvantages for the markets concerned and for the investors. In such systems regulatory responsibilities of the regulators concerned are allocated in a way that is transparent to the market and market participants. This will have a stabilizing effect further enhancing the safety and efficiency of market operations in the interest of investors. It is my conviction that this basic supervisory approach is capable both of safeguarding investors' interests and market integrity, and at the same time of adequately supporting worldwide growth of the trading volume for all derivatives markets – a process which we as regulators should not impede.

The Commission is considering adopting objective standards that would identify a threshold level of presence in the U.S. at which an FBOT would no longer be considered to be located outside the U.S. I have the impression that even if the general legal problems of classification and of definition would be solved in a consistent manner, such a regime could suffer with regard to flexibility, resulting in limited market access for FBOTs which effectively have their closest contact and locus of activity outside the U.S.

The present regime in my view is part of an international level playing field that provides good operating conditions for FBOTs and market participants on both sides of the Atlantic and thus for reasonable worldwide growth of the derivatives markets under adequate supervisory control.

I would be most happy to enter into a direct dialogue with you on this issue and I am prepared to discuss how regulatory concerns, that we both may have in this regard, could be addressed appropriately.

Sincerely yours,



Karl-Burkhard Caspari
- acting president -