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Jean Webb
Secretary
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, N.W
Washington D.C
20581

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20 April, 1999

COMMENT

Dear Ms Webb,

OM London Exchange Limited ("OM London"), previously known as OMLX, The London Securities and Derivatives Exchange Limited wishes to make the following comments in response to the draft rules re: Access to Automated Boards of Trade published by the Commission on 16 March 1999 concerning Order routing and Electronic access to futures exchanges operating primarily outside the US.

OM London submitted comments to the Commission dated 21 September 1998 in response to the Concept Release on the subject published by the Commission on 24 July 1998 and is grateful for the consideration given to those comments by the Commission.

There are certain aspects of the Commission's current proposals which OM London Exchange welcomes. We welcome the pragmatic treatment proposed for applications to be made by a number of exchanges using a common system. We also support the removal of the test contemplated in the Concept Release which would have deemed an exchange to become a US exchange if the volume traded by way of screens located in the US exceeded a given percentage of the exchange's volume. OM London Exchange also welcomes the Commission's acceptance of the suggestion that exchanges should not be required to file financial statements and the important principle that would ensure that confidential proprietary information is protected from publication.

There are many aspects of the Commission's proposals which continue to concern OM London Exchange.

OM London is disappointed to note that in the respects identified below the framework of regulation outlined by the Commission in its release of 24 March 1999 is inimical to the stated aim of fostering growth of the global marketplace and appears to be based on false premises as to the nature of the regulatory issues raised by the use of electronic trading systems for "host jurisdictions", i.e. jurisdictions in which an exchange established and supervised in another state provides terminals to members.

We believe that the medium used by an exchange to enable orders to be entered in any of its markets is not a material question for a supervisor in a host jurisdiction. Whether an order is entered by way of telephone or keyboard, directly or indirectly, is not material. The relevant questions for the Commission to consider are:

- (i) whether the products on the overseas exchange are suitable for US users
- (ii) whether appropriate limitations are or will be applied regarding the category of persons to whom access to the market will be provided
- (iii) whether the regulatory jurisdiction in which the exchange operates is sufficiently robust and comparable to that applied in the US in relevant respects.

OM London believes strongly that the Commission should have sufficient faith in the regulatory standards provided by the applicable legislation in the United Kingdom and by the Financial Services Authority to render unnecessary any further inquiry by the Commission into the standards and technical features of electronic trading terminals used by members of a Recognised Investment Exchange ("RIE") in the United Kingdom. A RIE is required as a condition of its continuing recognition as such, inter alia, to "ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors". In that case, the only justification for the Commission examining the technical features of a UK RIE's trading system would be the belief that the inquiries and reviews conducted by the FSA were inadequate. It must follow that the RIE's continuing status as such must mean that it and its electronic trading system is considered to be satisfactory by the FSA. We believe that the Commission should place suitable confidence in the standards applied by the FSA and other regulators in sound and appropriate jurisdictions and recognise that a system which is recognised as acceptable by the FSA or other such regulator is acceptable to the Commission without further ado.

We also believe that it is entirely without logic for the Commission to consider it necessary for it to inquire into the suitability of an electronic trading system provided by an overseas exchange on which US persons are already trading. If the trading system is suspect, a US user will be exposed to the same jeopardy whether its orders are entered into the orderbook directly by keyboard instruction from New York or indirectly as a result of an instruction given by telephone to an agent in London or elsewhere.

OM London Exchange believes that the circumstances which the Commission should properly take into account in considering whether to grant exemptive relief to an overseas exchange are correctly stated in the final paragraph of section 1a (General Approach). Unfortunately, the framework proposed by the Commission fails to follow the method suggested in the cited paragraph by providing for specific inquiries into matters which are not necessary in order to satisfy the conditions of the framework set out in section 1a.

OM London notes that the Commission does not propose to introduce a procedure for granting interim relief to exchanges pending formal introduction of the proposed rules. OM London has urged the adoption of a form of interim relief since it was advised of the Commission's decision to suspend the issuance of no-action letters in this area in 1997 in order to avoid the problems caused by the regulatory hiatus and in particular the unfair competitive position created by the status quo. OM London believes that these concerns are no less real today. It is evident that the proposed regulations will produce considerable public comment and that the different points of view which are likely to be expressed mean that the early adoption of rules and the early granting of exemptions to applicants under such rules are improbable. For this reason, OM London believes that it is vitally important for the Commission to adopt a procedure for granting interim relief. It is equally important for the Commission to ensure that any such measures provide an effective, expeditious means for applicants to secure such interim relief. OM London Exchange

commends to the Commission a framework in which the Commissioners would grant interim relief to bona fide overseas exchanges seeking to place electronic trading terminals in the United States for the trading of contracts that may be lawfully traded by US persons.

For the purposes of such interim relief process, OM London Exchange believes that it should be sufficient for exchanges which satisfy the above criteria to confirm their ability and willingness to comply with specified conditions of material importance such as suitable arrangements for controlling terminal operators/users. The Commission could consult with the Regulator responsible for the supervision of the exchange in question to confirm any matters relevant to the interim relief process and to satisfy itself that appropriate arrangements were in place for the sharing of regulatory information.

OM London believes that it is of the utmost importance that the procedures for interim relief deliver a mechanism which provides applicants with a realistic opportunity of achieving expeditiously their long-delayed objective of providing electronic trading terminals in the United States. The Commission should take maximum benefit from work already undertaken by regulators of recognised standing and to minimise the time required to be taken by the Commission in considering any application while, at the same time, avoiding any risks to US investors.

In conclusion, OM London Exchange believes that the Commission's proposals are flawed because:

- (i) they treat electronic trading terminals as a problem requiring specific and different treatment rather than simply an alternative means of communicating orders to a market
- (ii) they are based on the false premise that the fact that a US person has electronic access to a non-US exchange renders the exchange subject to US regulation
- (iii) they fail to place proper weight on work already done by the applicant's regulator and thereby devalue international regulatory co-operation undertaken in IOSCO and other fora
- (iv) they fail to hold out the prospect of a workable and sensible regulatory framework being delivered to the international exchange community in a realistic timeframe.

For these reasons we urge the Commission urgently to reconsider its position and to adopt a different approach which recognises that the provision of a trading terminal in itself should not be treated as an event of great regulatory impact provided that the contracts available for trading on the terminal are appropriate, that the market served by the terminal is proper and that the US persons to whom such terminals are provided are professional authorised users.

We also emphasise again the fact that time is of the essence in the Commission's work. The excessive delay in adopting the new regulations is in itself inhibiting the growth of the global marketplace to which the Commission is committed. For this reason we urge the Commission to adopt an efficient means of providing interim relief as outlined above as a matter of urgency.

We thank the Commission for its consideration of these comments. We would be happy to discuss any aspects of the matters covered in this letter or any other matters relating to the Commission's proposals with the Commission at its convenience.

Yours sincerely,

Derek Oliver
Director of Legal Affairs