

**BUNDESAUFSICHTSAMT FÜR DEN
WERTPAPIERHANDEL**

The President

Dear Ms Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N W ,

Washington D.C. 20581

Fax: 001 - 202 - 418 - 5521

COMMENT

**Access to Automated Boards of Trade;
Rule Proposal 17 CFR PARTS 1 and 30**

Dear Ms Webb,

Thank you for the opportunity to comment on your above-referenced Rule Proposal.

I welcome the CFTC's initiative to develop uniform rules concerning the setting up of trading screens in the U.S. by foreign boards of trade, thereby making a contribution to promoting legal certainty and the creation of equal competitive opportunities. Generally speaking, I am in favour of the CFTC's proposal to exempt foreign exchanges wishing to set up trading screens in the U.S. from the requirement to be designated as a contract market.

Please find in the following a few remarks which I would like to add in respect of the Rule Proposal:

I. Comparability of regulatory systems

According to the Rule Proposal, the regulatory system of the exchange's home country must be comparable to that in the U.S. and must ensure investor protection and market integrity. The BAWe takes it for granted that exchanges are subject to a regulatory system which ensures the protection of investors and the integrity of the markets. However, there are different possible ways to attain this aim. Due to historical developments and traditions different countries may have different supervisory systems and regulatory structures. The proposed rule should therefore require in the first place that foreign exchanges are subject to a regulatory system in their home country that ensures comparable standards of investor protection and market integrity.

60391 Frankfurt am Main, 23 April 1999

P.O. Box 50 01 54
Telephone (069) 95 95 2 - 0
Contact person Ms Woller
Direct (069) 95 95 2 - 1 85
Facsimile (069) 95 95 2 - 2 99

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Examination to this effect would only be required once in respect of each home country. This should be made clear.

2. Enhanced recognition of home country regulation

Recognition of home country regulation has the great advantage that expensive duplicative regulation of exchanges can be avoided. After examination as to whether regulatory systems or regulatory standards designed to ensure investor protection and market integrity (see above, no. 1) are comparable, additional supervision by the CFTC, such as proposed for instance in respect of IT systems, appears not to be necessary. Specifically, recognition of home country control should also apply to AORSs.

Also to be mentioned in this context is the requirement on foreign exchanges to submit themselves to the jurisdiction of the CFTC and the U.S. courts. The extent to which exchanges would have to do so according to the Rule Proposal seems to enable U.S. authorities to conduct investigations in cases where, for example, violations of the prohibition of market manipulation have occurred exclusively in the jurisdiction of the exchange's home country. Cases where the CFTC has an interest to obtain specific information concerning actions that have taken place in the home country of the exchange should therefore be dealt with via the information sharing arrangements that are in effect with the competent supervisory authority. The BAWe would of course be prepared to fully cooperate in these cases under the terms of the MoU concluded with the CFTC.

3. Different treatment of exchanges that cooperate with U.S. exchanges and exchanges that do not

According to the Rule Proposal, exchanges of foreign countries which have concluded cooperation agreements with U.S. exchanges are neither required to be a designated contract market nor do they need an exemption from this requirement. This different treatment of foreign exchanges does not appear to be justified and may lead to a distortion of competition to the detriment of those exchanges which do not have a cooperation agreement with any U.S. exchange.

4. Contract market designation on the basis of the trade volume within the U.S.

The Rule Proposal stipulates that a foreign exchange will be required to receive contract market designation if its trades in the U.S. reach a certain, unspecified volume. Such a provision would conflict with the general principle of the comparability of regulatory structures. Once the CFTC has confirmed the comparability of a regulatory scheme when issuing an exemption order, there remains no obvious reason for requiring a foreign exchange to become a designated contract market upon reaching a certain trading volume and thus subject it to full supervision by the CFTC. Additionally, such a procedure would lead to unnecessary and expensive duplicative supervision.

5. Conditions under which further information can be requested and an exemption order can be terminated, restricted, modified, suspended or conditioned

The Rule Proposal does not specify the conditions under which the CFTC may request further information from a foreign board of trade and the conditions under which an exemption order can be terminated, restricted, modified, suspended or conditioned. For reasons of legal certainty such conditions should be mentioned in the Rule.

I hope it will be possible to come to a final decision soon after the 30-day consultation period has elapsed. In particular, I would like to lay emphasis on the fact that regulated markets including Eurex are interested in a decision after the consultation procedure already has consumed considerable time. There has been significant clarification concerning the comparability of the German regulatory system in connection with the issuance of the no-action letter to the Deutsche Terminbörse ("DTB" or "Eurex") and I therefore trust this will facilitate further examinations by the CFTC.

Sincerely yours,



Georg Wittich