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COMMENT

Via Facsimile to (202) 418-5521

April 29, 1999

Jean A. Webb, Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Room 9106
1155 21st Street N.W.
Washington, D.C. 20681

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Re: Access to Automated Boards of Trade

Dear Ms. Webb:

This letter is respectfully submitted on behalf of Interactive Brokers LLC ("Interactive Brokers") to comment on the Commission's proposed rules relating to Access to Automated Boards of Trade.

Interactive Brokers 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. Interactive Brokers provides its customers with electronic order routing and execution of domestic and foreign futures, options, securities and related derivative products through its proprietary screen-based computer and communications technology and the Internet (the "IB System").

The IB System was designed to provide retail customers with the same state of the art technology, access to live market data, and fast, flexible trade execution as is now used by some in the modern professional investing community. Interactive Brokers' customers can open on-line trading accounts by accessing Interactive Brokers' Internet Web Site: <www.interactivebrokers.com>, and as permitted by law, complete almost the entire account opening process, which includes review of trading principles, product information, risk disclosure as well as a required on-line examination to assure that the customer is a sufficiently knowledgeable investor.

Customers using the IB System can trade not only on-line, but also "**Interactively**" in the markets they choose to access through the IB System. Interactivity performs several functions: (a) it assures that the customer can obtain the best execution possible; (b) it puts the customer on an even playing field with other market participants; and (c) it maximizes customer protection from unlawful conduct -- e.g., frontrunning and unfair execution. To fulfill the mandate of best execution, it is necessary to offer the fastest available speed for the receipt of market data and message transmission. Such speed decreases the ability of market insiders to hit or take the customer's resting orders before there is an opportunity to change them. Best execution principles also require that customers who do not prefer a full range of services be provided with low transaction costs by the elimination of human involvement to the extent reasonably possible. Automated services also decrease the chance of error and misconduct.

Interactivity provides Interactive Brokers' customers with "live" bid and offer prices for the products offered on those exchanges which reasonably permit the dissemination of such market data. These live prices are updated instantaneously on the customer's Trader Work Station. (As indicated below, real time transparency of market data is absolutely necessary for customers to participate in the market on a level playing field).

With the click of a mouse, the customer can transmit an order to an electronic exchange and, prior to execution, see on his screen the order's arrival in the marketplace in about 2 seconds. On a real time basis, the customer can instantly react as his market judgment changes by continuously "working the order interactively in the market" by modifying or canceling it. If the customer places a marketable order for a product at the indicated price, the order will generally be filled in seconds and an electronic confirmation will instantly appear on the customer's screen.

Each step of the trade execution process is fully observable on the customer's screen, and is subject to an audit trail and time recordation to the nearest second. All order modifications and cancellations are similarly subject to the audit trail and time recordation. See generally, Commission Advisory: Alternative Method of Compliance with the "Written" Record Requirements, pp. 6 - 10 (February 12, 1997).

Prior to the entry of every order, the customer is identified to the order¹; credit checking is performed; and trading limits are monitored and enforced. In view of the customer's financial position, trading limits and net position limits are established, as well as limits for the number of contracts that can be transmitted in a single order. These limits are monitored and can be updated. Interactive Brokers' technology permits these functions to be performed electronically in a fraction of a second and without human intervention. This feature substantially reduces the possibility of error; it permits efficient pricing and the best execution available; it increases speed of order delivery; and it enhances customer protection beyond what has been previously available to the general investing public. Human intervention is available with respect to an order as necessary, but Interactive Brokers is sensitive to the principle that as the extent of human intervention increases, the ability to offer best execution and customer protection is reduced.

Customers may monitor the equity in their accounts on a real time basis. Accordingly, they know their margin requirements at all times and can maintain sufficient funds in their accounts to avoid a close-out. For this reason, margin calls are not made, and accounts are not expected to be in deficit. Just at the moment that an account would become under-margined, which the customer can observe on the trading screen, the IB system automatically closes the customer's positions to the extent necessary to maintain it within margin requirements. This feature benefits the entire investment community because, as we have seen in recent years, deficit accounts can lead to failures in the markets which can have widespread catastrophic consequences.

¹ Interactive Brokers agrees with the Commission's conclusion that this requirement is critical for such systems in order to satisfy the account identification requirements of Regulation 1.35. See generally, Commission Advisory: Alternative Method of Compliance with the "Written" Record Requirements, at footnote 25 (February 12, 1997).

The features of the IB System were developed to maximize customer protection to the extent possible with the use of modern technology: to maximize market transparency, confidentiality and anonymity, to reduce transaction cost, to increase execution speed and Interactivity; and to place every customer on an even playing field with the institutional or professional trader.

Interactive Brokers does not maintain foreign exchange computer terminals in the United States. Rather, it offers customers the ability to communicate, via the Internet or proprietary communications facilities, with its domestic facilities which provide the customer protection and best execution features set out above. Interactive Brokers' domestic facilities, in turn, communicate with facilities located outside the United States.

Interactive Brokers believes the regulations as proposed by the Commission are carefully aimed at providing global market access to retail customers, without unduly burdening them, but permitting them to secure the best execution and customer protection features now available by reason of advances in technology; and without impeding future innovation or unreasonably micro-managing the regulated participants in the marketplace.

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CUSTOMER PROTECTION FEATURES: Interactive Brokers believes that maximum customer protection for all customers who participate in the market (even those of other FCMs) benefits all market participants. Systems which help diminish fear of frontrunning and unlawful or unfair execution, and enhance the retail customer's ability to compete effectively, encourage greater market participation. This, in turn, causes more competitive pricing and market liquidity. Interactive Brokers agrees with the Commission's view that it is appropriate to mandate that certain specific, minimum controls be present in any qualified AORS, and it believes that those suggested by the Commission are appropriate. Interactive Brokers would suggest the following modifications:

Required Audit Trails: Detailed audit trails and time recording of all messages to foreign exchanges can be easily implemented by all market participants for their customers by use of technology now readily available in the market. See generally, Commission Advisory: Alternative Method of Compliance with the "Written" Record Requirements (February 12, 1997). Opportunities for abuse by holding or re-ordering customer orders, or re-allocating executions, are clearly greater if orders must reach foreign markets, unless maximum speed is available and message transmission is monitored by high-resolution audit trails, including customer account identification and time recordation.

As a condition to being permitted by the Commission to use handheld trading devices to receive customer orders in, and report executions from the Chicago Mercantile Exchange, Interactive Brokers implemented an audit trail and time recording system which memorializes (and archives for 5 years) the time, at least to the nearest second, of every step in the placement, modification, cancellation or fill or partial fill of every order. This audit trail was developed in collaboration with the Commission and audited by Deloitte & Touche. The Interactive Broker's experience has proven beneficial to the markets and the audit trail created has proven extremely beneficial in responding to customer inquiries.

As a condition to handling customer orders, all AORS's should be required to create detailed audit trails which include customer account identification (to satisfy the requirements of CFTC Regulation 1.35) and time recordation features for all orders, executions, modifications and cancellations.

FINANCIAL INTEGRITY OF MARKET PARTICIPANTS: The Commission has emphasized its heightened concern about the protection of customer funds in accounts carried by FCMs by reference to the failure of Griffin Trading Company, and its origin in foreign automated trading systems outside the United States. Interactive Brokers believes that the market turmoil caused by this and similar events, (e.g., the chain of problems caused by Long Term Capital Management which was active in the futures markets), coupled with the additional danger presented when there is easier and faster access to markets, particularly foreign markets, mandates that all AORSs be required to have minimum safeguards in place. All AORS's should, at a minimum, be required to capture customer account identification; pre-execution credit-vetting; and trading limits; as suggested by the Commission.

Interactive Brokers suggests one additional requirement. All AORS's should be required to maintain systems which also assure that customers will not violate margin requirements. Margin violations and deficit accounts are the root causes of many financial failures. Interactive Brokers believes that if the customer is provided with the tools available to monitor the equity in the account on a real time basis, it should be the customer's responsibility to assure that the account is funded appropriately, and in that event, FCM's should not be permitted to carry under-margined accounts for any period at all. This will reduce the problems caused by customer defaults, and hopefully reduce the cost of trading.

FAIR ACCESS TO FOREIGN EXCHANGES AND MARKET DATA: The Commission has discussed its obligation to assure that any exchange accessible from the United States should secure and provide fair access for U.S. customers on a nondiscriminatory basis, *i.e.*, U.S. customers must not be placed at a competitive disadvantage to others trading on the foreign exchange. Timely access to live data -- real time price information, including the size of all at the market orders -- to the extent disseminated to any market participants, must be provided to all market participants. This will assure fair access; an even playing field; and a marketplace which offers sufficient price transparency to meet best execution obligations. Otherwise, U.S. customers will become the easy prey for the foreign markets' institutional, professional and local participants.

Foreign exchanges should not be permitted to maintain "pricing power" over elementary and required market data. This power can be used to make real time pricing available only for the large professional and institutional investors and their local trading community, or those who have direct access to foreign terminals, severely disadvantaging the U.S. retail customer community.

Exchanges can be expected to reply by suggesting that all market participants can have the same data at the same time to assure a level playing field -- if they all pay for it. This is not an acceptable answer. Rather, it is the theory of monopoly pricing power. It is immaterial to the professional or institutional trader if a charge is imposed to secure real time price data and data reflecting the depth of the book (the number of contracts offered at various market prices). But for the individual retail customer, who may trade only occasionally on the foreign market, payment of such a charge would be prohibitive. A data charge will discourage purchase of the data by retail customers, it will not keep the customer out of the market. Charging for such data thus works predictably to disadvantage the retail customer in a way that will systematically allow professionals to reap unjustified rewards at their expense.

Similarly, a charge for market data will encourage the retail investor, who cannot pay the data charge, to operate blindly by transmitting market orders rather than limit orders; and this, of course, does not permit the customer to engage in interactivity with the market (so that they can modify their orders as market conditions change) and it requires retail customers to automatically sacrifice the bid/ask spread to the advantage of the other market participants.

As an additional standard condition to permitting foreign markets to allow access from, and place terminals in the United States, the Commission should require that the foreign market provide a fair and even playing field by making all market information available to all market participants free of charge. If a foreign exchange invites U.S. investors into their markets, it should be for the purpose of providing a fair chance to succeed. This would not be the case if the individual retail customer is not provided with the same market data, at the same time as the exchange's other market participants who would trade against these invited orders.

* * *

The IB System is currently available to, and used by institutions, large professional traders and retail customers of other FCMs.

Interactive Brokers would be pleased to provide any further information which the Commission believes may be helpful in formulating an appropriate regulatory scheme with respect to the important question of access to automated boards of trade and foreign markets.

Respectfully submitted,

Earl H. Nemser, Director

David G. Downey, Vice President