

CFTC Letter No. 00-78

June 30, 2000

Statement of Policy

Division of Trading & Markets

6351-01

COMMODITY FUTURES TRADING COMMISSION

Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States.

AGENCY: Commodity Futures Trading Commission

ACTION: Statement of Policy

SUMMARY: The Commodity Futures Trading Commission ("Commission") has issued a Statement of Policy in which it expresses the view that foreign boards of trade that have placed automated trading systems in the U.S. pursuant to a Commission staff no-action letter shall be permitted to list certain additional futures and option contracts without obtaining supplemental no-action relief, subject to specified filing and certification requirements.

EFFECTIVE DATE: This Statement of Policy is effective immediately.

FOR FURTHER INFORMATION CONTACT: Jocelyn B. Barone, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5450.

SUPPLEMENTAL INFORMATION:

On June 2, 1999, the Commodity Futures Trading Commission ("Commission") issued an order which, among other things, withdrew proposed rules that would have governed automated access to foreign boards of trade ("June 2 Order").^{[1](#)} The June 2 Order also instructed the Commission staff to "begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general

guidelines included in the Eurex (DTB) no-action process,² or other guidelines established by the Commission³ In accordance with these instructions, Commission staff has issued seven no-action letters that permit foreign boards of trade to place in the U.S electronic trading devices that provide access to those boards of trade, without obtaining contract market designation ("Foreign Trading System No-Action Letters").⁴ The relief is subject to the terms and conditions set forth in each no-action letter and applies exclusively to the futures and option contracts delineated therein. Foreign boards of trade that wish to list additional futures and option contracts for trading through their U.S.-located trading systems are required to request and receive supplemental no-action relief ("Supplemental Relief") from Commission staff prior to doing so. To date, Commission staff has granted two requests for Supplemental Relief.⁵

Almost one year has passed since the first Foreign Trading System No-Action Letter was issued.⁶ In that time, Commission staff has not learned of any significant problems or concerns regarding the operation of U.S.-located foreign trading systems nor has Commission staff learned that foreign boards of trade are listing impermissible products through such systems. Also within the past year, the Commission has promulgated Rule 5.3 which generally permits domestic boards of trade to list new futures and option contracts for trading without acquiring Commission approval of such contracts or their respective terms and conditions.⁷ In light of Commission staff's successful experience with the relief provided by the Foreign Trading System No-Action Letters and in consideration of the relief provided to domestic boards of trade via Rule 5.3, the Commission believes that it is appropriate to permit foreign boards of trade that are operating electronic trading devices in the U.S. pursuant to Commission staff no-action relief to be permitted to list certain new futures and option contracts for trading through those devices, without requiring additional regulatory action. Accordingly, it has issued the following Statement of Policy setting forth this view.

Issued in Washington, D.C. on June 30, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

U.S. Commodity Futures Trading Commission

Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

STATEMENT OF POLICY OF THE

COMMODITY FUTURES TRADING COMMISSION

REGARDING THE LISTING OF NEW FUTURES AND OPTION CONTRACTS BY FOREIGN

BOARDS OF TRADE THAT HAVE RECEIVED

STAFF NO-ACTION RELIEF

TO PLACE ELECTRONIC TRADING DEVICES IN THE U.S.

In light of newly-adopted Commodity Futures Trading Commission ("Commission") Rule 5.3⁸ and the lack of difficulties that have arisen regarding the placement of the automated trading systems of foreign boards of trade in the U.S. pursuant to no-action relief issued by Commission staff, the Commission believes that foreign boards of trade generally should be

permitted to list additional futures and option contracts through such systems, without obtaining supplemental no-action relief from Commission staff ("Supplemental Relief"). Specifically, the Commission believes that, subject to the exceptions and conditions listed below, a foreign board of trade that has received a no-action letter from Commission staff permitting it to place electronic trading devices in the U.S. that provide access to that board of trade ("Foreign Trading System No-Action Letter") should be permitted to list new futures and option contracts for trading through the devices that are the subject of the particular no-action letter, without requesting or receiving Supplemental Relief.

In order to list new futures and option contracts without acquiring Supplemental Relief, a foreign board of trade should file the following with the Commission's Division of Trading and Markets at the Commission's Washington, D.C. headquarters no later than the close of Commission business on the business day preceding the initial listing of such futures and option contracts for trading through electronic trading devices located in the U.S.: (1) a copy of the initial terms and conditions of the additional futures and option contracts the foreign board of trade intends to list for trading through its U.S.-located electronic devices and (2) a certification from the foreign board of trade that it is in compliance with the terms and conditions of the Foreign Trading System No-Action Letter that it has received and that the additional futures and option contracts will be traded in accordance with such terms and conditions. This Statement of Policy does not apply to futures and option contracts that are covered by Section 2(a)(1)(B) of the Commodity Exchange Act.⁹ Foreign boards of trade continue to be required to seek and receive written supplemental no-action relief from Commission staff prior to offering such contracts through U.S.-located trading systems.

This Statement of Policy applies only to those foreign boards of trade that have received a Foreign Trading System No-Action Letter from Commission staff. It is intended exclusively to express the Commission's view that foreign boards of trade that have received a Foreign Trading System No-Action Letter be permitted to list futures and option contracts other than those specifically delineated therein without obtaining Supplemental Relief. The trading of all contracts through electronic trading devices that provide access to foreign boards of trade from within the U.S. continue to be subject to the terms and conditions of the Foreign Trading System No-Action Letter issued to the particular foreign board of trade. Moreover, this Statement of Policy does not alter the analysis that the Commission staff uses when considering requests for Foreign Trading System No-Action Letters, dictate the result of that analysis, or

alter the authority of Commission staff to condition, modify, suspend, terminate, or otherwise restrict the no-action relief that it issues.

This Statement of Policy is effective immediately. This Statement of Policy and the Foreign Trading System No-Action Letters will cease to be effective in the event that the Commission adopts generally applicable rules or guidelines regarding the issues addressed therein, and foreign boards of trade would be subject to those rules or guidelines.

Chairman William J. Rainer
June 29, 2000

Commissioner Barbara P.
Holum June 29, 2000

Commissioner David D. Spears
June 29, 2000

Commissioner James E.
Newsome June 28, 2000

Commissioner Thomas J.
Erickson June 28, 2000

Dissent of Commissioner Erickson to Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States.

I respectfully dissent from the Commission's determination to expand, by today's policy statement, the no-action relief previously granted to certain foreign exchanges listing contracts on terminals located in the United States. On June 2, 1999, the Commission issued an order that provided for the issuance of staff no-action relief for the placement of terminals in the United States by foreign boards of trade. Although the June 1999 Order directed staff to "begin immediately processing no-action requests," it also committed the agency to "proceed[ing] expeditiously toward adoption of rules and/or guidelines." Since then, the Commission's staff has issued no-action relief to seven foreign exchanges, yet the Commission has taken no steps to initiate a public rulemaking process. Rather, the Commission today validates staff no-action as the appropriate vehicle for granting relief.

The no-action process is typically used to provide limited relief on discreet matters for individual

petitioners. Today's relief extends to numerous exchanges that have not formally petitioned the Commission's staff for the expanded relief. While the expanded relief ultimately may be appropriate, the public policy issues raised by today's Commission action warrant notice to the public and an opportunity for comment. Today's policy statement sanctions a closed process to address matters of broad public policy. One of the fundamental obligations of any federal agency is to ensure that the public and interested parties have the opportunity to comment on policy actions of broad effect. I believe that today's decision fails to uphold that basic tenet of regulation and that the time has come for the Commission to propose rules that would foster the public debate and provide unified guidance through rules, rather than relief on a case-by-case basis.

Dated: June 28, 2000.

Thomas J. Erickson

1 *Access to Automated Boards of Trade*, 64 FR 32829 (June 18, 1999).

2 In February 1996, Commission staff issued no-action relief to Deutsche Termibourse ("DTB"), an automated international futures and options exchange headquartered in Frankfurt, Germany, that permitted DTB, subject to certain terms and conditions, to place computer terminals in the U.S. offices of its members for principal trading. See CFTC Interpretative Letter No. 96-28 (1996-1997 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 26,669 (Feb. 29, 1996). In June 1998, DTB changed its name to Eurex Deutschland.

Access to Automated Boards of Trade, 64 FR 32829 (June 18, 1999).

4 Commission staff has issued Foreign Trading System No-Action Letters to Eurex Deutschland; the Hong Kong Futures Exchange Ltd.; the International Petroleum Exchange of London Limited; LIFFE Administration and Management ("LIFFE"); Parisbourse^{SBFSA}; the Singapore Exchange Ltd. (formerly known as the Singapore International Monetary Exchange); and, collectively, the Sydney Futures Exchange Limited and the New Zealand Futures and Options Exchange Limited. The text of these letters may be accessed through the Commission's website, located at www.cftc.gov. See Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Edward J. Rosen, Esq., Cleary, Gottlieb, Steen & Hamilton (Aug. 10, 1999); Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP (June 9, 2000); Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (Nov. 12, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (July 23, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Catherine Langlais, Senior Vice President, Parisbourse^{SBFSA} (Aug. 10, 1999); Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission to Jane Kang

Thorpe, Esq., Brown & Wood LLP (Dec. 17, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom (Aug. 10, 1999).

5 Commission staff has granted two separate requests from LIFFE to list additional futures and option contracts through LIFFE CONNECT™, its automated trading and order matching system. See Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (Dec. 10, 1999) and Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (Mar. 14, 2000).

The first Foreign Trading System No-Action Letter was issued to LIFFE on July 23, 1999. See Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (July 23, 1999).

7 Rule 5.3 allows a domestic board of trade that has been designated as a contract market in at least one non-dormant commodity to list new futures and option contracts for trading upon satisfaction of specified filing and certification requirements. A domestic board of trade is permitted, but not required, to list new contracts through this filing and certification procedure in lieu of compliance with either the regular or fast-track procedure for contract market designation. *Revised Procedures for Listing New Contracts*, 64 FR 66373 (Nov. 26, 1999).

8 *Revised Procedures for Listing New Contracts*, 64 FR 66373 (Nov. 26, 1999).

9 7 USC § 2a (1994). For example, this Statement of Policy does not alter the requirement that a foreign board of trade seeking to offer in the U.S. a futures or futures option contract based upon a stock index receive a no-action letter from the Commission's Office of General Counsel.