DEUTSCHE BÖRSE

Ms. Elizabeth M. Murphy
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May 18, 2010

Re: Concept Release on Equity Market Structure, File No. S7-02-10

Dear Ms. Murphy:

Deutsche Börse appreciates this opportunity to comment on the Securities and Exchange Commission's ("SEC") Concept Release on Equity Market Structure (the "release"). We applaud the SEC's initiative in reviewing the structure of the equity markets in the United States in light of the SEC's sweeping market reforms over the past decade, the ongoing development and deployment of new trading technologies and the recent financial market crisis from which the world's major economies are just now emerging. As described in greater detail below, Deutsche Börse operates several equity and derivatives markets that have pioneered the use of technology in financial markets. In fact, as the largest exchange operator in Europe, Deutsche Börse is participating in similar market consultations by the European Union.

As discussed in more detail below, Deutsche Börse's marketplaces manifest our commitment to directing the positive forces of competition toward innovation and fairness. In the markets which it operates, Deutsche Börse establishes a platform for trading as well as rules to assure fair practices. The result has been increasing levels of liquidity, improved conditions for new issuances and lower costs for investors. We would like to share some of our experience and insights with the SEC which we believe are applicable to the U.S. market. Our letter is organized in the following way: first, we begin with an overview of the stock and derivatives exchanges that are owned and/or operated by Deutsche Börse and then we respond to selected questions contained in the SEC's release.

I. About Deutsche Börse's operations.

Deutsche Börse is a publicly listed financial services provider headquartered in Frankfurt, Germany, with a market capitalization of more than $14 billion.[1] Deutsche Börse operates the Frankfurt Stock Exchange ("FSE"), whose electronic trading platform Xetra is directly accessed by 256 Xetra members located in 19 different countries.[2] The third largest stock exchange in Europe, FSE lists approximately 10,800 tradable instruments and is fully compliant with the European Union's Markets in Financial Instruments Directive[3], commonly referred to as "MiFID." Deutsche Börse and its subsidiaries also provide technology services, securities settlement services and market data products to customers worldwide. For example, Clearstream Banking S.A., a 100%-owned subsidiary of Clearstream International S.A., is the international central securities depository linked to markets in 45 countries. Clearstream International S.A. is a 100%-owned subsidiary of Deutsche Börse.

Deutsche Börse indirectly owns 50% of Eurex Frankfurt AG which operates Eurex Deutschland (together "Eurex"), the largest derivatives exchange in the world for euro denominated products.[4] Eurex has almost 420 member firms located in 24 countries on four continents (Australia, Asia, Europe and North America), with 74 members located in the U.S. Eurex is the center of trading for all types of derivative products on European interest rates, equities and equity indexes.

Deutsche Börse is active in the U.S. primarily through Eurex, which has been a prominent fixture on the U.S. financial markets landscape for more than ten years.[5] In 1996, Eurex's predecessor entity, Deutsche Terminbörse GmbH, received a no-action letter from the Commodity Futures Trading Commission ("CFTC") which allowed it to install trading screens in the U.S. without an additional registration as a board of trade in the U.S. This was the first of many such no-action letters that foreign

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[1] Deutsche Börse's market capitalization on April 20, 2010 was measured as €10.65 billion.

[2] As of May 2010.

[3] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

[4] Deutsche Börse and SWX Swiss Exchange equally and jointly own Eurex Zurich AG which fully owns Eurex Frankfurt AG. Eurex Frankfurt AG owns 100% of U.S. Exchange Holdings, Inc., Eurex Clearing AG , and Eurex Repo as well as 79% of Eurex Bonds.

[5] Deutsche Börse's indirect subsidiary, U.S. Exchange Holdings, Inc. ("USEH"), holds a significant non-controlling share in the Clearing Corporation as well as 100% of the shares in the International Securities Exchange, an SEC-regulated equity options exchange.

exchanges have received from the CFTC in the following years. Since that first letter was received, Eurex has worked closely with the CFTC. Today, Eurex is valued by its U.S. members for its technological prowess as well as the safety, reliability and transparency it provides its members and customers.

As noted above, Eurex has extensive business dealings in the U.S. It publicly solicits to attract members in the U.S. and actively markets Eurex's trading opportunities offered to the public. All of the products for which Eurex provides access to U.S. residents are "foreign" in that they are based on government or corporate securities that are not registered in the U.S., indexes based on these, or money market interest rates outside of the U.S.

II. Responses to questions in the release.

(In this section questions from the release are paraphrased and followed by the page number in the release where the question appears.)

1. **How does global competition for trading activity impact the U.S. market structure? Should global competition affect the approach to regulation in the U.S.? How should the SEC consider these globalization issues in its review of market structure? (page 31)**

Characterized by numerous listings, broad investor participation, and a fluid organizational structure, the U.S. equity markets are leaders in many senses as a result, in part, of competitive forces, albeit U.S. domestic forces. Due to several provisions of the Exchange Act, the SEC has never registered a non-U.S stock exchange to do business in the U.S. competing directly with U.S. exchanges and platforms. In order to optimize the use of internally created intellectual property (e.g. trading algorithms) U.S. businesses go to the expense and risk to establish operations abroad to trade on non-U.S. exchanges.

When it contemplates rulemaking in light of the comments collected in response to the release, the SEC should be aware that traders can easily shift their activities and capital out of the United States into other jurisdictions if the burden of regulation becomes too great. Trading firms and broker-dealers will maintain their levels of activity in the United States provided that the new regulations have the effect of enhancing market opportunities.

Non-U.S. exchanges currently provide trading services, trading rules, and communication and execution technologies that may differ from those in the U.S. but current U.S. policy isolates from competing directly even those – like FSE and Eurex – which are regulated in their home jurisdictions according to internationally agreed best standards of practice. We believe that the U.S. market and its participants would benefit from direct competition between U.S. and non-U.S. exchanges because it would lead to greater, more rapid technological advancement, provide investors and traders with more choices, and increase the transparency of international trading.

Both Eurex and the FSE have petitioned the Commission to begin to permit U.S. broker-dealers to trade on our exchanges in a limited way. Such trading would serve the SEC as a pilot in cross border trading and would not only let the SEC observe such new trading that is brought under its oversight but also allow it to assess better the potential effects of well-regulated and supervised cross border trading on U.S. markets.

2. **Has the current market become so dispersed and complex that only the largest institutions can afford to deploy their own highly sophisticated trading tools? If this is true, are smaller institutions able to trade effectively? How available are the sophisticated trading tools offered by some broker-dealers (e.g., smart routing and algo trading) to smaller institutions? Are the costs so high that these tools are effectively inaccessible? (page 35)**

As an exchange operator, Deutsche Börse is acutely aware of the cost concerns of members and their customers. With the growth of the popularity of alternative trading systems in both the United States and Europe, the focus on cost has become even more pronounced. At the same time, we note that the numbers of institutions participating on our markets are staying roughly the same. Electronic trading itself seems to give rise to impulses to disintermediate as location advantages disappear and the kinds of services brokers can valuably offer evolve. While general economic forces are giving rise to consolidation among brokers, at the same time we observe some investors becoming direct members.

Rapid technology adoption by all size firms is observed on Deutsche Börse's markets. At Eurex, for example, there are a number of trading institutions which have reached the pinnacle in terms of both size and sophistication. A number of small operations which trade algorithmically and in co-location on a high frequency basis also participate. In fact many relatively small U.S. member firms trade this way on Eurex, taking advantage of advances in computing and communications. In Deutsche Börse's experience all kinds of traders are able to trade profitably in our equity and derivatives markets thereby generating the liquidity that allows investors and risk managers to enter and exit the markets efficiently. Furthermore, at Eurex sophisticated pre- and post-trade tools that allow monitoring and management of risks in real time are made available by the exchange to all members and are integrated into the trading system.

3. **Does the competitive advantage of having these trading tools help to promote and enable competition, beneficial innovation and enhanced market liquidity? Is there a risk that certain competitive advantages may reduce competition or lead to detrimental innovations? To what extent is it important for market participants be allowed to gain competitive advantages, such as by using more sophisticated trading tools? (page 35)**

Deutsche Börse strongly urges the Commission not to interfere with or try to re-direct the forces of market innovation which are driven by competition. Deutsche Börse has been and continues to be committed to fairness, and it therefore operates neutral trading environments. Unlike some other markets Eurex and Xetra provide no trading privileges to any member. The flipside of this policy is that all members, whether representing customers or only their own business, compete for order executions. Brokerage members compete for end-user customer business by offering speedier and more reliable connections, and market making firms compete to execute against them by deploying ever more sophisticated trading and quoting algorithms.

We note that at Deutsche Börse, while our neutral stance vis-à-vis market structure assures that business development is not steered through outside forces, the costs of our members' investments into trading software, communications infrastructure and hardware seem to be borne by the members themselves and not shifted to customers. During the current period of rapid technology adoption we have observed that trading commissions have been reduced, bid-ask spreads have mostly narrowed, and liquidity has generally improved.

4. **Is it necessary or economically feasible for long-term investors to expend resources on the very fastest and most sophisticated systems or otherwise obtain access to these systems? (page 41)**

Investments in the fastest, most sophisticated trading technologies would likely be impractical for investors and would not represent economic efficiency due to the low likelihood that long-term stock market investors would sufficiently exploit such systems to generate positive returns on investing in them. The SEC can reliably expect that broker-dealers will efficiently deploy technology on their investor-customers' behalf.

5. **If not, does the fact that professional traders likely always will be able to trade faster than long-term investors render the equity markets unfair for these investors? Or do the different trading needs and objectives of long-term investors mean that the disparities in speed in today's market structure are not significant to the interests of such investors? (page 41)**

As measured in today's markets at fractions of a second, relative speed of execution is irrelevant to the investment goals of long-term investors. Instead, investors benefit from the liquidity that the professional traders generate and that is fostered by the professional traders' ability to execute orders rapidly.

6. **Is it unfair for market participants to obtain a competitive advantage by investing in technology and human resources that enable them to trade more effectively and profitably than others? (page 41)**

Rewarding such competitive initiatives is the reason market capitalism succeeds in generating technological progress as well as enhancing the productivity of human capital. Competitive forces of market capitalism should be harnessed in the securities markets as they are in the rest of the economy.

7. **Do long-term investors and their brokers have the tools they need to protect their own interests in a dispersed and complex market structure? Do broker-dealers provide routing tools to their agency customers that are as powerful and effective as the routing tools they may use for their proprietary trading? (page 42)**

Deutsche Börse believes that whether broker-dealers provide the same tools to their customers as they might use in their own trading is a matter appropriately negotiated between the broker and its customers and provides a valid basis for competition among brokers for customer business.

8. **Or is a broker-dealer's ability to develop and use more powerful and effective trading tools a competitive advantage that spurs competition and beneficial innovation? (page 42)**

The ability of a broker-dealer to innovate as well as to deploy and enhance trading technology is a boon to beneficial innovation. Like the innovation by proprietary trading firms that is spurred by competition, it should be encouraged by the SEC.

9. **Does co-location provide proprietary firms an unfair advantage because they generally will have greater resources and sophistication to take advantage of co-location services than other market participants, including long-term investors? If so, specify how this disparity harms long-term investors. Conversely, does co-location offer benefits to long-term investors? For example, do co-location services enable liquidity providers to operate more efficiently and thereby increase the quality of liquidity they provide to the markets? Please quantify any harm or benefits, if possible. (page 59)**

The motivation for, and the practice of, co-location mimic traditional exchange organization – be as close to the action as possible. Proprietary traders needed to be on the trading floor in order to execute their orders or they relied on brokers who were present. Brokerage houses located their offices nearby to the exchange floors to assure better speed of execution. Co-location benefits U.S. members of Eurex by enabling them to trade on the same basis – in particular with regard to issues like network latency – as members from locations closer to Frankfurt. In fact, after co-location was introduced at Eurex, trading volumes by U.S. members grew faster than they had previously.

Electronic traders simply want to be closer to the exchange matcher to similarly minimize time to execution. Deutsche Börse offers co-location on a strictly non-discriminatory basis. Pricing for co-location is identical and independent of the number of transactions a member executes, nation of origin, financial wherewithal of the member, and whether the member trades customer and/or proprietary business.

Long-term investors benefit not only directly from co-location to the extent that it forms part of a broker's infrastructure and is integral to the broker's strategy to speed execution but also indirectly through the improved liquidity that co-location facilitates.

10. **Is it fair for some market participants to pay to obtain better access to the markets than is available to those not in a position to pay for or otherwise obtain co-location services? (page 59)**

In Deutsche Börse's long experience operating electronic markets, it has noted that members and their customers demand a wide spectrum of services, among which are proximity services,[6] and that they are willing to pay very different amounts to achieve their goals. Demand for immediacy and speed of execution varies according to the business strategies of the member or customer, whether motivated primarily toward high frequency, high speed, low market impact, price quality or other performance standards. In order to assure that co-location remains financially feasible for members, Eurex discounts line charges for members receiving proximity services. The third party providers charge – again, on a non-discriminatory basis – fees for differing levels of service. It is up to the individual member to determine whether the value of co-location would be economically realized.

In light of our successful experience, Deutsche Börse encourages the SEC to maintain a neutral position regarding access to co-location services.

11. In addition, are brokers generally able to obtain and use co-location services on behalf of their customers? If so, are long-term investors harmed by not being able to use co-location directly? (page 59)

As noted above, on Deutsche Börse's markets there is no discrimination between brokers and proprietary traders in accessing co-location services. In light of their relatively high volumes of trades and the importance of speed of execution to their strategies it logically seems to be more valuable to proprietary traders than to brokers and consequently fewer brokers use co-location services. At the same time, brokers have customers which want to trade in proximity to the hosts and some brokers avail themselves of the services on behalf of algo or high frequency customers.

In contrast to the practice in the U.S. and as an additional example of Deutsche Börse's neutrality with regard to market structure, there is no barrier to long-term investors becoming a member on Xetra or Eurex. In practice, relatively few investors actually become members ostensibly because, among other things, their low volumes of trading and demands for ancillary services make brokerage economically more attractive than direct trading, and they value the services that brokers provide.

12. Are co-location fees so high that they effectively create a barrier for smaller firms? (page 59)

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[6] In light of physical constraints on utilization of space at its own physical plant, Deutsche Börse itself does not provide the physical setting for co-location but instead has agreements with several preferred service providers which rent space for co-location in very close proximity to the exchanges' servers. Deutsche Börse essentially out sources its co-location services. Through contractual requirements with its service providers, Deutsche Börse assures that there is no discrimination among members.

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Co-location fees are affordable for even small firms trading on Xetra and Eurex. Deutsche Börse, in fact, charges reduced network fees for co-location as a partial offset for charges from the firms that provide space at the co-location facilities (which, in our current physical layout, do not belong to Deutsche Börse).

Furthermore, certain third party technology firms rent space from our proximity services providers and deploy their own technology to members. These technology firms leverage their geographic position to offer multiple members co-location services. Without any regulatory mandate, this market-driven approach helps keep co-location services affordable for all members, including Eurex members based in the United States. We understand this approach is also commonplace on U.S. exchanges.

13. **Do commenters believe that co-location services fundamentally differ from other respects in which market participants can obtain latency advantages, particularly if co-location services are not in short supply and are available to anyone on terms that are fair and reasonable and not unreasonably discriminatory? (page 59)**

Co-location services do not fundamentally differ from other measures that members may take to reduce network latency as it affects their trading. Latency arises in many different points both inside and outside the trading firm. Member firms can choose to invest more or less in the solutions available to them in order to mitigate latency. The availability of these other solutions is generally non-discriminatory and the SEC may wish to assure that co-location services are provided on a similar basis. Deutsche Börse does not discriminate in its provision of co-location services.

14. **If exchanges and other trading centers were no longer permitted to provide the services, would third parties, who may be outside the SEC's regulatory authority, be encouraged to obtain space close to an exchange's data center and rent such space to market participants? (page 59)**

Yes. If the SEC were to ban co-location for U.S. markets, exchanges and ATSes might operate as Deutsche Börse currently does. Third parties could be actively encouraged by the exchanges to rent nearby space to exchange members in accordance with their requirements.

On the other hand, a demand for space near exchange data centers driven by organic competitive factors would arise. To the extent that exchanges are "unaware" of trading situated in nearby locations, neutrality can hardly be assured.

Any total ban on co-location would likely drive it underground away from the regulatory controls of the SEC and the SROs, would cause co-location to be rationed to those members who could afford the most desirable real-estate, and might give rise to opaque trading practices that the SEC could not monitor.

15. Alternatively, could exchanges and other trading centers batch process all orders each second and, if so, what would be the effect of such a policy on market quality? (page 60)

The immediate effect would be to discourage quoting as it would impede the ability of firms to provide accurate bids and offers in light of continuously changing market conditions as well as increase the risks of quoting. Reduced levels of quoting would tend to cause wider bid-ask spreads and thus drive up the costs of trading for long-term investors. Such a market mechanism might not obviate the demand for co-location since traders would still want to freshen their bids and offers as soon as possible before every second-by-second auction.

16. Do the high speed and enormous message traffic of automated trading systems threaten the integrity of trading center operations? (page 63)

Like exchanges in the U.S., Deutsche Börse's markets have been "flooded" with messages over the past few years. Such high volumes of messages were anticipated and our technological development focused not only on reducing latency but also on increasing network and processing capacity.

For example, when the load on the Eurex system peaked at the height of the financial crisis in 2008, the system processed up to 1.3 million trades and 850 million quotes a day. Order-related (i.e., add/change/delete) processing times averaged between 5 and 10 ms. Just two years earlier the system processed only about 100 million quotes per day and between 200 and 300 thousand trades a day with average order response times between 10 and 20 ms. The improvements have been achieved through continuous investments in hardware (e.g. twice the number of CPUs in the back-end, faster network connectivity) and new performance-optimized ways for customers to connect to the system and receive market data (Enhanced Transaction Solution and Enhanced Broadcast Solution) as well as a focus on speed and capacity improvements with every new release of our trading software which continues today.

These investments and developments were driven by the demand of our customers and Deutsche Börse's commitment to provide reliable trading at the highest possible speeds.

17. Does the 2008 experience indicate that systemic risk is appropriately minimized in the current market structure? (page 64)

The market turbulence of 2008 tested exchange systems, broker-dealer networks, clearing and settlement infrastructures, and the current market structure. In fact, exchanges like FSE and Eurex continued to operate smoothly throughout the period and provided members and customers with a safe port in the storm. On Deutsche Börse's markets, all types of firms were negatively affected by the 2008 turbulence, but firms of all sizes and types also discovered opportunity. And all of our member firms valued the reliability, transparency and security that FSE and Eurex provided. However, it may not be appropriate to conclude that systemic risk has been minimized in the current market structure.

18. Do dark pools and OTC market makers offer substantial advantages in order execution quality to long-term investors? Do individual investor orders receive high quality executions when routed to OTC market makers? (page 67)

Deutsche Börse believes that both long-term and individual investor orders should be assured of the full protections and considerable benefits offered by regulated markets and trading platforms. It is difficult to characterize the quality of executions against such individual orders due to the (intended) lack of transparency surrounding them. There is a major risk that predominantly uninformed order flow is executed by OTC market makers and that the public markets increasingly become venues only for informed order flow. As this becomes more characteristic of market organization, market makers on public markets will have less incentive to quote, spreads will widen, and costs will increase.

Deutsche Börse endorses efforts to assure that all investor orders have the greatest possible opportunity to interact with the broadest possible marketplace. Any shift of liquidity from exposed to private marketplaces affects price formation for the relevant instruments and can lead to increased vulnerability to market abuses.

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On behalf of Deutsche Börse, we would like you thank you and the Commission for considering our comments on equity market structure. If you have any question or if we can assist you in any way please do not hesitate to contact Mr. Michael Peters, Member of Eurex Executive Board (+49-69-2111-5649), Mr. Vassilis Vergotis, Executive Vice President, U.S. Exchange Holdings (1-312-544-1058) or either of us directly.

Very truly yours,

Reto Francioni

Reto Francioni

Andreas Preuß