Ministry diluting SEC, founder says
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By Alex Friedrich

The blueprints for the Securities and Exchange Commission (SEC) aren't even unrolled yet, and already one of its architects doesn't like the foundation.

After looking at the May 22 draft changes that the Ministry of Finance made to the bourse's plan, Commerzbank custody manager Jan Muller said he is afraid the ministry is watering down the powers of the commission.

Muller was a member of the now-disbanded working group charged with designing the commission, which is intended to be a watchdog body similar to the U.S. Securities and Exchange Commission.

Those changes, combined with a lack of government support, have prompted Muller to consider staying away from the SEC once it comes into force early next year. Other members of the working group share some of Muller's concerns, although they are less convinced of an overall negative outlook for the SEC.

Last month Prague Stock Exchange Chairman Tomas Jezek said the draft contained mainly cosmetic changes. But Muller said modifications to SEC powers and funding threaten to create an administrative swamp that could bog down the commission and tie its hands.

Muller said the commission "wouldn't be completely helpless, but almost."

Jezek was out of the country and could not be reached for comment.

He's hoping, however, that the proposed changes will be reversed by June 19, when the Finance Ministry presents the draft to Parliament.

Muller's biggest concern is that the ministry has altered wording that, in effect, would have prevented dealers from trading outside of the country's organized markets. Allowing off-market trading, Muller said, severely reduces SEC's ability to monitor all securities transactions.

Eliminating secret trading is a key to transparency and successful regulation of the capital markets, analysts say. Under the Banking Act, Muller said, banks' brokerage divisions are not allowed to trade off-market.

Though state officials have said they want to extend the ban to cover all brokerages, Muller said, "I don't see any specific action leading to that point."

Other administrative hassles threaten the smooth functioning of the organization, he said.

The ministry has proposed changing the commission's income structure. Instead of receiving a regular income through a system of flat fees, it has allowed variable fees that Muller said would make budgeting difficult. The amount of the fees has not yet been determined.

Variable fees would discriminate against the more successful companies, Muller said. Flat fees would weed out the weaker brokerages.

And bureaucratic hassles would only grow, he claims, if the government doesn't agree to have its self-regulatory organizations (SROs) take on some of the SEC's administrative and enforcement work.

"The commission couldn't fulfill all of its tasks, and it wouldn't be efficient," he said. "It would be too large and too expensive."

Not all of Muller's allies share his alarm, however.

Michael Hobbs, a partner at Atlantik financni trhy brokerage and another member of the SEC working group, said, "All these are serious issues, but they're not disastrous at this point."

Many countries, including the United States, allow off-market trading because such trades come with the requirement of full and immediate disclosure of all transactions. Mechanisms ensuring such disclosure could be implemented here, he said.

Although Hobbs supports SROs, he said, "I'm not convinced that getting rid of provisions transferring state power to SROs is the problem. It depends on what they're replaced by. I don't think the tasks the commission needs to do can be done any better by SROs at this point."

There are plenty of things that SROs can do better than the SEC - such as advising the ministry in cases of forced administration of investment funds. These don't require a formal transfer of power, he said.

Though Hobbs sees the advantages of flat-rate fees, he said the commission need not fear using variable, transaction-based fees as one of a range of income sources.

Deputy Finance Minister Jiri Spicka, said much of the ministry's proposed changes can be defused at the parliamentary level. Parliament must first create legislation empowering the SROs and forcing the trading onto the regulated markets. Legally speaking, the SEC "is insufficiently prepared for the transfer of powers," Spicka said, but could hand over authority within two or three years.

Spicka said he prefers variable fees, but added that the financing question is still up in the air.

Muller remains skeptical. "I have already experienced ... many activities of the government and Ministry of Finance, from which I've learned that the government is not really interested in the capital markets."

Ever since the April 16 economic package called for the quick establishment of the commission, he said, the Finance Ministry has been under the gun to meet "very short deadlines." Government officials continue to show a "lack of knowledge and understanding of the problem," he said.