



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 08-18
September 26, 2008
No-Action
Division of Market Oversight

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Washington, DC 20004-1404

Re: BM&F Bovespa S.A. – Bolsa de Valores, Mercadorias e Futuros Sections 5 and 5a Request for No-Action Relief from Contract Market Designation and Derivatives Transaction Execution Facility Registration Requirements

Dear Mr. Architzel:

This is in response to your letter dated May 21, 2008 to the Division of Market Oversight (Division) of the Commodity Futures Trading Commission (CFTC or Commission).¹ By this correspondence, you request, on behalf of BM&F Bovespa S.A. – Bolsa de Valores, Mercadorias e Futuros (BM&F Bovespa or BM&F or the Exchange) that the Division confirm that it will not recommend that the Commission take enforcement action against BM&F Bovespa, its Trading Rights Holders or Settlement Rights Holders, or persons located in the United States² that have been authorized to directly access BM&F Bovespa's electronic trade matching system, the Global Trading System (GTS), if BM&F Bovespa does not seek designation as a contract market (DCM) pursuant to section 5 of the Commodity Exchange Act (CEA or Act) or registration as a derivatives transaction execution facility (DTEF) pursuant to section 5a of the Act or Commission rules thereunder. (no-action request).

Specifically, BM&F Bovespa wishes to make the GTS electronic trading and order matching system directly available through the installation and use of the GTS application programming interface (API) to entities that are so authorized. BM&F Bovespa requests that this no-action relief apply with respect to trading by:

¹ Letter from Paul M. Architzel, Esq., Alston & Bird LLP, to Richard A. Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (May 21, 2008).

² For purposes of this letter and the relief provided herein, the term "United States" shall include the United States, its territories and possessions.

(1) persons located in the United States that have been authorized by or under the rules of the Chicago Mercantile Exchange (CME) to have access to a CME Globex terminal and that, pursuant to the BM&F-CME Order Routing Agreement of which both BM&F and CME are signatories, have been granted the right to directly access BM&F's GTS through the use of a Globex terminal (CME Access Holders);

(2) a futures commission merchant (FCM) registered with the Commission that submits orders for execution to the trading system using the GTS API for its proprietary account or from or on behalf of U.S. foreign futures and options customers;³ and

(3) a foreign futures or options customer of an FCM or a firm that is exempt from such registration pursuant to Commission Rule 30.10 (Rule 30.10 Firm)⁴ (authorized customer) that is authorized by an entity with access rights to BM&F Bovespa (authorized entity) to enter orders directly into the trading system using the GTS API; and through the clearing relationship between such an authorized entity and a BM&F Settlement Rights Holder (clearing member), and as a requirement for and as a condition of the authorized entity's permitting direct access to the BM&F GTS API by the authorized customer, the BM&F Settlement Rights Holder:

a. guarantees and assumes all financial responsibility for all activity conducted through each authorized customer's direct market access connection;

b. assists BM&F in a timely manner in any investigation into potential violations of BM&F Rules, the CEA, or the terms and conditions set forth in the no-action relief,

³ As it is defined in Rule 30.1(c), "foreign futures or foreign options customer" means any person located in the U.S., its territories or possessions who trades in foreign futures or foreign options.

⁴ Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (SRO) can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the Act, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act.

Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief to a foreign regulatory or self-regulatory authority are the authority's: (i) requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States. Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules, 17 C.F.R. Part 30, Appendix A (2007).

On June 28, 2002, the Commission issued an order pursuant to Rule 30.10 granting an exemption to firms designated by BM&F from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority. 67 Fed. Reg. 45056 (July 8, 2002).

including, but not limited to, requiring the authorized customer to answer questions from BM&F, and/or appear in connection with the investigation; and

c. suspends or terminates the authorized customer's access if BM&F determines that the actions of the authorized customer threaten the integrity or liquidity of any contract, violate any BM&F Rule or the CEA, or if the authorized customer fails to cooperate in an investigation.

As you know, the Commission, on October 27, 2006, issued a policy statement that affirmed the use of the no-action process to permit foreign boards of trade to provide direct access⁵ to their electronic trading systems from the U.S. (Policy Statement).⁶ The Division has reviewed BM&F's no-action request and the materials submitted in support thereof in accordance with the Policy Statement and the June 2, 1999, Commission Order (June 2 Order) which first directed the Commission staff to consider requests from foreign exchanges for interim no-action relief to allow them to provide direct access to their trading systems from the U.S.⁷

In connection with its no-action request, BM&F has forwarded the following to the Division:⁸

- General information about BM&F, including its history, location and organization;
- Detailed information about the criteria governing access rights;
- Detailed information about various aspects of BM&F's trading system (including the order-matching system, the audit trail, response time, reliability, security, and adherence to the IOSCO Principles);
- Detailed information about the terms and conditions of the contracts proposed to be listed;
- Detailed information about settlement and clearing;
- Detailed information about BM&F's home country regulatory regime;

⁵ The term "direct access" as used herein refers to the explicit grant of authority by an exchange to an exchange member or other participant to enter trades directly into that exchange's trading matching system.

⁶ Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 Fed. Reg. 64443 (November 2, 2006).

⁷ Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, 64 FR 32829, 32830 (June 18, 1999).

⁸ In support of its no-action request, BM&F also submitted, as attachments, numerous documents including, among others, By-Laws, Instructions, Circulars, Letters, Laws, Rules and Rulebooks, Manuals, Listing Standards and Agreements.

- Information regarding BM&F's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance);
- A description of current information-sharing agreements to which BM&F and its regulators are parties; and
- Certification by an authorized representative of BM&F as to the truth and completeness of the material facts set forth in the no-action request and undertaking to notify the Commission staff if, prior to the issuance of the requested no-action relief, any material representation made in such request ceases to be true and complete.

The Division also received separately from the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*) (CVM), BM&F's regulatory authority, a representation regarding information-sharing with the CFTC in connection with the granting of direct access to BM&F's trading system from the U.S. This representation is described below in section VII.

Representations made by BM&F regarding the structure of BM&F, BM&F's activities in the U.S., BM&F's membership criteria, BM&F's electronic trading and order matching system, the regulatory regime in Brazil, and the information-sharing arrangements applicable to BM&F and its regulator are summarized in Sections I - VII below. For purposes of this response to the no-action request, the Division has relied upon BM&F's representations and information provided by BM&F and has not conducted an independent review to confirm their accuracy.⁹ Commission staff, however, did conduct an on-site visit at the Exchange to meet Exchange staff and discuss issues relevant to the request for no-action relief with respect to BM&F's activities. Separately, Commission staff met with representatives of BM&F's regulatory authority and discussed, among other things, the Brazilian regulatory approach to exchange licensing, ongoing oversight, and information sharing.

I. GENERAL INFORMATION REGARDING BM&F

A. History

BM&F S.A., located in São Paulo, Brazil, is the only futures exchange in Brazil and is the largest in Latin America based on number of contracts traded. Primarily a derivatives exchange, BM&F lists for trading and settlement both securities and derivatives products based on interest rates, foreign exchange, equity and inflation indices, financial indicators, commodities and energy prices.

⁹ As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by BM&F in support of its no-action request. Any materially different, changed, or omitted facts or circumstances may render the no-action relief void or cause the Division, in its discretion, to condition further, modify, suspend, terminate, or otherwise restrict the relief.

BM&F was incorporated in July 1985 as a not-for-profit organization and began operations in January 1986. In 1991, BM&F joined with the *Bolsa de Mercadorias de São Paulo* (São Paulo Commodities Exchange), a traditional commodity exchange founded in 1917. It subsequently acquired additional futures exchanges based in Rio de Janeiro and in 2002 launched a subsidiary, the Brazilian Commodities Exchange, which encompasses commodity exchanges located in a number of states within Brazil and serves to integrate the agricultural commodity market in Brazil. In 2007, BM&F initiated demutualization and was converted into a for-profit company. Following its recent initial public offering, BM&F's shares are publicly traded on the Bolsa de Valores de São Paulo SA-BVSP (São Paulo Stock Exchange or BOVESPA), primarily a cash equities exchange.

On May 8, 2008, BM&F and Bovespa Holding S.A. (the parent company of BOVESPA) began a process to merge the two companies into a single company and to integrate their structures. You represent that the integration of the two companies will most likely be a long and complex process and that during this period, the BM&F market will continue to operate as it did while administered by BM&F S.A.¹⁰ Under the restructuring plan, the new company will be a publicly listed and traded company registered with the Brazilian Securities and Exchange Commission (CVM), whose shares will be listed to trade on BOVESPA's *Novo Mercado*.¹¹ The Boards of Directors of the two companies have set up a Transition Committee, consisting of the chairmen of the boards of directors and the chief executive officers of both companies. This Committee will be in place through December 31, 2008.¹²

The main derivatives contracts traded on BM&F are interest rate futures contracts (interbank deposit futures, or ID futures), Brazilian *Real*/U.S. dollar futures contracts (U.S. dollar futures), equity index futures contracts, and local U.S. dollar interest rate futures contracts (U.S. dollar spread forward rate agreements or FRAs). The Exchange also offers its clients futures and option contracts based on agricultural commodities including coffee, livestock,

¹⁰ You represent that the restructuring of the corporate entity is not expected to have any material effect on the facts and circumstances detailed in the no-action request. However, to the extent that any future changes may materially affect any of the representations made in the no-action request, or BM&F's description of the facts and circumstances surrounding its no-action request, BM&F will promptly bring such facts to the attention of the Commission. Moreover, BM&F, on an on-going basis, will update the Commission with all relevant documentation with respect to the integration of the two exchanges.

¹¹ As discussed in greater detail below, the *Novo Mercado* designates those companies that meet enhanced listing standards of BOVESPA with respect to corporate governance practices and corporate transparency.

¹² Any proposed corporate restructuring of the exchanges must be submitted for approval by the CVM, the Central Bank of Brazil and the Administrative Council for Economic Defense (*Conselho Administrativo de Defesa Econômica*), or CADE.

feeder cattle, soybeans, corn, cotton, sugar and, more recently, ethanol.¹³ Clearing of derivatives is accomplished through one of three integrated exchange clearinghouses.¹⁴

B. Organization

As noted above, BM&F recently demutualized and is now a for-profit corporation. As of March 31, 2008, BM&F's total market capitalization was Brazilian Real (R\$)16,172,572,800 (US\$9,732,780,954). BM&F had 134,817 shareholders, all holding common stock, and the five largest shareholders owned approximately 27 percent of BM&F's shares. None of BM&F's shareholders owns greater than a ten percent ownership interest of the company.¹⁵ The CME Group is the largest individual shareholder.¹⁶

As of March 31, 2008, BM&F has a staff of 561 people divided into departments that report to the Chief Executive Officer (CEO). These departments are headed by the following respective Officers: (1) the Chief Clearinghouse Officer, to whom the clearinghouses (discussed in greater detail below) report; (2) the Chief Financial Officer; (3) the Chief Market Development Officer; (4) the Chief Corporate Officer, overseeing central corporate functions; (5) the Trading Officer; and (6) the Audit Officer. In addition, a Risk Committee reports to the CEO. As discussed below, the Self-Regulatory Department reports directly to the Self-Regulatory Board and operates independently of the CEO and his staff.

As a corporate entity, BM&F is governed by Brazilian Law #6,404 (December 15, 1976), which governs the formation and governance of corporations and joint stock companies. As a publicly-traded company, BM&F must also abide by the listing standards of BOVESPA's *Novo Mercado*, the exchange on which BM&F's shares are listed. *Novo Mercado* is a listing segment that requires companies listing their shares to abide by corporate governance practices and transparency requirements that are incorporated in the market segment's listing standards. These

¹³ In addition, BM&F registers and settles over-the-counter (OTC) derivatives contracts consisting mainly of interest rate swaps, exchange rate swaps, inflation rate swaps and equity index swaps, as well as exotic options based on these assets. BM&F also provides trading and settlement systems for spot contracts, such as U.S. dollar spot contracts (with physical delivery) and spot contracts based on government securities. BM&F offers a number of trading-relating services, including (1) trade execution; (2) clearing and settlement; (3) registration of OTC trades; and (4) custody systems for various assets and securities.

¹⁴ BM&F operates three clearinghouses: the Derivatives Clearinghouse, the Foreign Exchange Clearinghouse and the Securities Clearinghouse, as well as a settlement bank, the BM&F Settlement Bank. The Exchange's clearinghouses and the BM&F Settlement Bank are integrated to ensure the integrity and effective functioning of the Exchange.

¹⁵ Approximately 11 percent of BM&F's shares are held by Brazilian individuals and 44 percent by Brazilian legal entities (mostly former stockholders of the Exchange). The remaining shares are held by non-residents of Brazil: U.S. residents constitute the largest percentage of non-resident shareholders with 38.52 percent of the overall shares, followed by residents of the United Kingdom (1.31 percent) and Luxembourg (1.15 percent). The remaining shareholders are residents of various jurisdictions, each of which represents less than 1 percent of ownership of BM&F shareholdings.

¹⁶ On February 26, 2008, BM&F shareholders approved an agreement with the Chicago Mercantile Exchange Group (CME Group) wherein CME Group became the largest shareholder of BM&F with 10 percent ownership of BM&F's common stock.

practices are in addition to those required by Brazilian law and the CVM.¹⁷ BM&F designed its bylaws pursuant to the *Novo Mercado* listing rules and, on November 7, 2007, signed with BOVESPA the *Novo Mercado* membership agreement for adherence to the provisions of the listing rules, which became effective on November 29, 2007.

BM&F is governed by a Board comprised of eleven individuals, five of whom are independent members.¹⁸ The day-to-day management of BM&F is vested in the Officers that comprise the Executive Board, who are appointed for two year terms by the Board of Directors. BM&F's bylaws provide that the Executive Board, at a minimum, be composed of the following officers: (1) Chief Executive Officer; (2) Securities Clearinghouse Officer; (3) Foreign Exchange Clearinghouse Officer; (4) Derivatives Clearinghouse Officer; (5) Trading Officer; (6) Audit Officer; (7) Chief Financial Officer; and (8) Self-Regulatory Officer.¹⁹

Article 44 of BM&F's bylaws provides that there shall be a Regulatory Committee. This committee analyzes the compliance implications of new rules or legislation, recommends amendments to, or opines on changes in, BM&F rules, policies or guidelines, and makes recommendations with respect to improvements needed in BM&F's self-regulatory program. The members of the committee are nominated by the Board's nominating committee and elected by the Board and are required by the bylaws to be knowledgeable with respect to rulemaking and surveillance of the financial, capital and derivatives markets. At minimum, the Regulatory Committee must have three members, two-thirds of which must be independent. Members of the committee can only be removed for cause with a two-thirds vote of the Board.

BM&F's self-regulatory programs are overseen by the Self-Regulatory Board, which is composed of at least three members, at least two thirds of whom must be independent, who are elected by the shareholders' meeting for a three year term. The Self-Regulatory Board: (1) oversees the activities of the Self-Regulatory Department; (2) issues recommendation to the Self-Regulatory Officer; (3) decides on administrative proceedings carried out by the Self-Regulatory Department; and (4) instructs the CEO to apply penalties in connection with the self-regulatory functions of the Exchange, informing the CVM of such actions. The Self-Regulatory

¹⁷ Among these are the requirements that companies: (1) adopt offering procedures that favor widespread ownership of shares whenever making a public offering, such as issuing only common stock; (2) maintain a minimum free float equivalent to 25 percent of its capital; (3) maintain a Board of Directors (Board) with at least five Directors serving two year terms of office, 20 percent of whom must be independent; (4) issue annual disclosure of the company's balance sheet calculated using U.S. GAAP or International Financial Reporting Standards; (5) comply with minimum quarterly disclosure standards; (6) disclose, on a monthly basis, all transactions made by controlling shareholders involving securities issued by the company, including derivatives; and (7) provide for various shareholder protection provisions with respect to change of corporate control.

¹⁸ A transitional Board comprised of 18 members, 10 of whom are independent and eight of whom are market representatives, has been elected under the integration arrangement with BOVESPA. In addition to the boards and committees described below, the Board is assisted by an independent Nomination and Compensation Committee and an independent Audit Committee of the Board. The Board has also created a number of Advisory Committees, including the Technical Committee for Standardization, Classification and Appeals and the Ethics Committee.

¹⁹ This structure, which currently remains in place, is expected to be modified as an effect of the arrangements with BOVESPA.

Department, discussed in greater detail below, is responsible for supervising the Exchange, access rights holders, and transactions carried out on the Exchange, as well as BM&F's registration, clearance and settlement systems.²⁰

C. Products

BM&F offers for trading on its markets futures contracts, options on futures and options on physicals. Its product range includes contracts on agricultural commodities, gold, interest rates, exchange rates, sovereign debt, and equity and inflation indexes. BM&F intends to make available through GTS to persons located in the U.S. contracts in each of the above categories.

You represent that none of the contracts which provide for physical delivery have delivery points outside of Brazil or draw on U.S. grown or produced deliverable supplies. Accordingly, although some commodities that are traded on BM&F, like corn and soybeans, are also traded on DCMs, BM&F's contracts are not directly linked to a DCM's prices. Thus, such BM&F contracts would not create a need for enhanced market surveillance or additional information sharing to address market integrity issues with respect to the Commission's oversight of DCM contracts.²¹

D. Presence in the United States

BM&F currently maintains a representative office at 61 Broadway, Suite 2605, New York, N.Y. 10006, for the purpose of promoting and developing BM&F's products in the U.S.; carrying out representational activities with the Commission and the press; and providing information to existing and prospective members and to others. Its activities in the U.S. are limited to participation in various widely-attended industry conferences and trade shows for the purpose of acquainting the futures industry generally with BM&F, responding to inquiries from the press and the public, and providing information of a general nature to persons and industry groups who might seek information with respect to obtaining access to BM&F. BM&F may also conduct seminars and other educational programs relating to trading on the Exchange. You represent that BM&F does not provide investment advice or technical support from the U.S. and would not solicit, receive or direct orders with respect to the products traded on BM&F from a representative office.²²

²⁰ You represent that although the self-regulatory functions will not change as a consequence of the integration with BOVESPA, the formal structure under which self-regulatory functions are carried out likely will be modified. In this regard, you represent that the new corporate organization includes an independent self-regulatory division, segregating Exchange business-related activities from self-regulatory activities related to registration, trading, clearing and settlement systems.

²¹ "Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Board of Trade That Have received Staff No-Action relief to Provide Direct Access to Their Automated Trading Systems from Locations in the United States," 74 Fed. Reg. 19877 (April 18, 2006).

²² BM&F does not conduct trade matching or clearing operations in the U.S. However, as detailed below, BM&F Derivatives Clearing House and clearing participants and customers may hold collateral with respect to BM&F products in U.S. banks, and certain U.S. banks or financial institutions may act as settlement facilities in connection with those contracts and as custodians for collateral. The clearing of such positions, however, takes place in Brazil.

BM&F's English language website is located at: http://www.bmf.com.br/portal/portal_english.asp. BM&F's website includes general information relating to the Exchange, its corporate organization, the contracts traded thereon and the operation of the trading system and of the market.²³ In addition, BM&F's website includes the Exchange's bylaws and the Clearing House Rulebook.²⁴

II. ACCESS TO THE TRADING SYSTEM

A. Introduction

As a result of demutualization, the former BM&F memberships were converted into shares (ownership interests) and access rights (the right to trade on the Exchange). In order to ensure fair and efficient use of its market, as well as to ensure its financial integrity, BM&F permits only those entities with access privileges to trade directly on the Exchange. BM&F has two types of access rights: Trading Rights (DN), which may be either full or restricted, and Settlement Rights (DL). As discussed in greater detail below, BM&F requires that its access rights holders be fit and meet financial soundness requirements. An applicant to become a BM&F access rights holder must file an application with the Exchange and demonstrate its compliance with the applicable minimum requirements. Individuals or entities that do not hold access rights may trade on the BM&F market only through an entity having Trading Rights. In order to act as an agent for a customer, the Trading Rights Holder must be a licensed broker, designated as a "Commodities Brokerage House." Individuals holding full or restricted Trading Rights are denominated as "Locals."

B. Trading Rights

As stated above, Trading Rights are divided into full and restricted rights. Full DN rights permit the holder to execute transactions in any Exchange-traded product and to register OTC trades for all types of contracts and assets authorized by BM&F. Trading Rights may also be restricted to categories of products as specifically authorized by BM&F. For example, access may be restricted to, among others, derivatives on interest rates, foreign exchange, equity indexes, grains, livestock, coffee, energy, and metals. Full and restricted Trading Rights may be held by either individuals, who must be Brazilian and at least 21 years of age, or entities, which must be incorporated in Brazil and duly authorized under a CVM Instruction as eligible to trade for their own accounts and to intermediate for the accounts of customers.²⁵

²³ BM&F's website provides the public with access to various market data, including daily volume, historical archived volume information, open interest and settlement prices and monthly volume and open interest data. Its archived price data is available dating back to January 1990, and archived volume data is available beginning from October 1999.

²⁴ As explained in greater detail below, the Exchange Rulebook is currently being consolidated. Once that process has been completed, it is expected that the Exchange consolidated rulebook will also be available through BM&F's website.

²⁵ Full and restricted Trading Rights Holders are not limited with respect to the number of GTS trading terminals that they employ, although BM&F may impose a policy regarding the ratio of bids and asks entered into the trading system and the number of executed trades by such Trading Rights Holders. In contrast, full Trading Rights Holders

In order to maintain their access rights, DN holders must meet minimum professional standards with respect to their supervisory and compliance personnel, as well as desk, floor and electronic traders, and others. Such personnel must demonstrate their competence through a testing program administered by BM&F and by meeting minimum required documentation and educational standards. BM&F, as part of this program, issues professional certifications, valid for a period of two years, to persons found to be professionally qualified. New DN holders must meet these minimum professional standard requirements within six months. In addition to professional standards, DN holders must meet minimum technology qualifications, including providing for adequate technical security, business continuity planning, testing and redundancy of the IT systems, and must meet requirements with respect to reporting and storage of information.

Trading Rights holders must also meet minimum financial requirements. Commodities Brokerage Houses are required to maintain a minimum proprietary working capital. Commodities Brokerage Houses that are full DN holders must maintain working capital of R\$3.75 million (US\$2,256,779); those that are restricted DN holders must maintain R\$3 million (US\$1,805,423) for trading rights in interest rates, currency exchange rates and equity derivatives and R\$1 million (US\$601,808) for trading in other types of derivatives. Further, as discussed in greater detail below, Commodity Brokerage Houses and Locals must also pledge a significant amount of collateral to the Operational Performance Fund (FDO).²⁶ In furtherance of their prudentiality requirements, DN holders are required to provide risk management limits on the size of orders which may be entered by their customers in trading on GTS. These credit filters or screens reside on GTS and are applicable to any non-DN trader with direct access to the trading system that the DN holder guarantees. Finally, all DN holders are required to enter into a formal agreement with a Settlement Rights Holder to guarantee their executed trades.

Pursuant to CVM Instruction, Commodity Brokerage Houses must be registered with the CVM. Registration requires that the Commodity Brokerage House be incorporated as a joint-stock company or limited company, be admitted as a Trading Rights or Settlement Rights Holder of the Exchange, and appoint a qualified managing partner. When filing for registration with the CVM, Commodity Brokerage Houses must provide documentation with respect to their managing partners or officers, including making required representations that the individual manager or officer, among other things, (1) is not subject to a disqualification from occupying a position in a financial institutions which depends upon authorization by the CVM, the Central Bank of Brazil or other regulatory authorities; (2) has not been convicted of any crimes; (3) has not been the manager of an enterprise subject to control and surveillance by CVM or the Central

are entitled to 24 floor trading permits and restricted Trading Rights Holders are entitled to five floor trading permits.

²⁶ The FDO is a safeguard structure created for the Derivatives Clearinghouse after the demutualization of BM&F. Commodities Brokerage Houses with full Trading Rights must deposit R\$6 million (US\$3,610,847) and Locals with full Trading Rights must deposit R\$1.6 million (US\$962,893). Commodities Brokerage Houses and Locals with restricted Trading Rights are required to post lesser amounts of collateral, but not less than R\$3 million (US\$1,805,423) and R\$1 million (US\$601,808), respectively.

Bank of Brazil or subject to reorganization in bankruptcy; or (4) has not been the subject of an adverse judgment for breach of the rules of the CVM, Central Bank of Brazil or other regulatory authorities. The CVM must approve all new managing partners, officers and directors prior to their investiture.

Commodity Brokerage Houses are required by CVM Instruction to make good and actual settlement of transactions, to make bona fide deliveries of legitimate securities, to provide for legitimate transactions under their power of attorney appointment from clients and to operate generally with high ethical standards. Commodity Brokerage Houses must maintain the confidentiality of client information, releasing such information only as authorized or pursuant to law or regulation, and are required to inform CVM of any violation of the law or regulations by the broker's clients or of a client default. Commodity Brokerage Houses are prohibited from funding, making loans, or advancing payments to clients, are required to meet the minimum financial requirements established by the Exchange, and must be audited by an independent auditor twice yearly.²⁷

C. Settlement Rights

Settlement Rights granted by BM&F enable the holders to use the clearing and settlement systems managed by the Exchange, permitting the clearance and settlement of transactions by the Derivatives Clearinghouse. All Settlement Rights Holders must be Brazilian legal entities with their headquarters or offices in São Paulo and must be financial institutions whose operations are authorized by the Central Bank of Brazil.

Settlement Rights are divided into three different types, depending upon the class of transactions that may be settled. These include: (1) Type 1 DL, which are permitted to settle only their proprietary transactions and those of affiliates; (2) Type 2 DL, which may settle the same transactions as the Type 1 DL and transactions of customers of Commodity Brokerage Houses that are under a common corporate ownership with the DL holder; and (3) Type 3 DL, which may settle the same transactions as the Type 2 DL and transactions of customers of Commodity Brokerage Houses that are not under common ownership with the DL holder, and transactions of Locals. The requirements for holding Settlement Rights vary depending upon whether the entity is a Type 1, Type 2 or Type 3 DL.

As is the case with DN holders, DL holders must meet minimum professional standards with respect to their supervisory and compliance personnel and with respect to their back office managers and employees desk. Such personnel must demonstrate their competence through a testing program administered by BM&F and by meeting minimum required documentation and educational standards. BM&F, as part of this program, issues professional certifications, valid

²⁷ In 2005, BM&F launched a voluntary program to strengthen brokerages by establishing higher standards under which brokerages could be certified by BM&F by meeting enhanced standards of excellent service within a particular business segment. A full service brokerage could be certified as excelling in all business segments, including the trade execution, carrying broker, agricultural, retail and web-based broker business segments. Brokerages that specialize in one business segment could be certified in that segment. The first set of certifications resulted in BM&F issuing 75 seals in August, 2007.

for a period of two years, to persons found to be professionally qualified. New DL holders must meet these minimum professional standard requirements within six months. As with DN holders, DL holders must meet technical requirements, including those of the CVM and the Central Bank of Brazil. DL holders are also required to implement risk management systems and procedures that are appropriate to the nature, volume and complexity of the positions that they carry and to have an account with the Central Bank of Brazil or have a correspondent relationship with such an institution.

Pursuant to the Rules and Operations Manual of the Derivatives Clearinghouse, DL holders are responsible for the positions which they carry, including settlement of such positions. As a consequence, they must meet specified proprietary working capital requirements and must pledge a specified amount of collateral to the FDO. Specifically, Type 1, 2 and 3 Settlement Rights Holders must maintain working capital of R6, 7 and 8 million, respectively, (US\$3,610,847, \$4,212,655, \$4,814,463, respectively) and must contribute R5.5, 6.5 and 7.5 million respectively, (US\$3,309,943, \$3,911,751, \$4,513,559, respectively) to the FDO. In addition, as a consequence of their status as Settlement Rights Holders, they must contribute to the Clearinghouse's clearing fund in the amount of R2, 3 and 4 million, respectively (US\$1,203,616, \$1,805,423, and \$2,407,231, respectively).

D. Direct Access Through Globex

In addition to the BM&F Access Rights Holders discussed above, BM&F and CME have entered into an Order Routing Agreement under which CME Globex terminal users may directly access GTS through their Globex terminal connection. In the first instance, entities with a Globex terminal will have satisfied CME access rules with respect to Globex. Entities with access to a Globex terminal will also be required to satisfy BM&F policies and procedures for granting permission to Globex terminal users to access BM&F's GTS via their Globex terminals. This includes the requirement that all such market users have their direct market access rights guaranteed by a BM&F Settlement Rights Holder with whom they are required to maintain a contractual relationship.²⁸ Thus, all positions that are entered into the BM&F trading system through a Globex terminal will be required to be cleared by a BM&F Settlement Rights Holder. In addition, each Globex user will receive authorization for the direct market access from a local Commodity Brokerage House (a DN holder). The BM&F clearing member, through the clearing relationship with the DN holder, and as a requirement for, and, as a condition of, the DN holder's permitting direct access to the BM&F trading system of the Globex user, is required to:

- a. guarantee and assume all financial responsibility for all activity related to BM&F markets conducted through each Globex user's (authorized customer) direct market access connection;
- b. assist in a timely manner BM&F in any investigation into potential violations of BM&F Rules, the CEA, or the terms and conditions set forth in the no-action relief, including,

²⁸ Orders for execution on the BM&F market by Globex terminal users that have not satisfied BM&F's access requirements will be rejected by the trading engine.

but not limited to, requiring the authorized customer to answer questions from BM&F, and/or appear in connections with the investigation; and

c. suspend or terminate the authorized customer's access if BM&F determines that the actions of the authorized customer threaten the integrity or liquidity of any contract or violate any BM&F Rule or the CEA, or if the authorized customer fails to cooperate in an investigation.

III. OVERVIEW OF THE BM&F TRADING SYSTEM

At the outset, the Division notes that the description of BM&F's trading system, GTS, set forth herein is based upon representations made by BM&F or its representatives. The Division has not performed an independent assessment of the security or soundness of GTS in connection with this request. Nonetheless, Commission staff did observe GTS operations during a demonstration conducted during the staff's onsite visit.

A. Introduction

BM&F's original electronic trading system, launched in 2000, was based on the ATOS/Euronext trading platform. BM&F's new, internally developed trading system, also referred to as GTS, became operational in late 2007 and includes all of the trading features that were available on the original trading system. Currently, only BM&F contracts are traded on GTS. Traders seeking to trade in mini-futures contracts can access an internet-based system, the WebTrading system, and transmit purchase and sale offers directly into the system. The offers accepted through the WebTrading system are automatically included in BM&F's GTS, where bids and offers are matched.

BM&F provides the central order processing facilities for its trading system, the Trading Engine, in São Paulo. It also provides the API through which the authorized user's front-end trading application communicates with the Trading Engine through the Financial Information Exchange (FIX) Protocol. Authorized users are required to supply their own workstations. They may make use of BM&F trading application software, purchase front-end software supplied by an Independent Software Vendor (ISV), or develop their own front-end trading application software. Users are able to link their workstations directly to other systems (*e.g.*, those dealing with trade capture and order management) to facilitate more efficient processing.²⁹

B. Trading Engine

The Trading Engine provides the order matching service and is validated using a process that requires, among other things, the completion of comprehensive business and technical testing before the system is declared operational. Access to the Trading Engine is limited to

²⁹ As discussed below, users can connect to GTS through a variety of methods, including dedicated link set up by the user, the local Brazilian broker's network, the Financial Community Communication Network, the web, or via Globex or other vendors. This is possible because of the system's reliance on the FIX Protocol. This interface is known as by the acronym "BELL", which stands for "BM&F Electronic Link."

authorized users holding a relevant trading subscription which determines which contracts the authorized Trading Rights Holder may trade. Each BM&F Trading Rights Holder is required to place filters on the GTS Gateway that apply to the trades of each market participant at the level of beneficial owner. If such a filter is set at zero, that market participant's orders are systemically prevented from entering the matching engine. Thus, BM&F is able to prevent any and all U.S. persons from executing transactions in contracts which they are not permitted to trade on the BM&F market by instructing its Trading Rights Holders to set a zero limit in such contracts for U.S. persons.³⁰ Moreover, the filter enables GTS to preclude Globex users that do not have valid authorization from trading on the system.

A non-Trading Rights Holder may transmit orders directly to the Trading Engine if authorized by a Trading Rights Holder. Authorized users of Globex may transmit orders directly to the Trading Engine via Globex if a BM&F Trading Rights Holder has so authorized. Non-access rights holders may also transmit orders using the automated order routing system (AORS) of a BM&F Trading Rights Holder. GTS requires that Trading Rights Holders providing or using an AORS must comply with certain order validation and recording requirements.

Orders processed by the Trading Engine generally are for two price types: (1) limit orders³¹ and (2) market orders.³² BM&F recognizes the following order types: market; limit; stop; stop limit; market if touched; and market with leftover as limit. With respect to duration, orders can be left in effect for the trading session (all day); good till cancelled;³³ immediate or cancel;³⁴ or fill or kill. Market-on-open (MOO) orders are also permitted to be entered during the Pre-Open period and are executed at the calculated opening price.³⁵ Order volume parameters may also be specified. Minimum volume orders are cancelled if the minimum volume cannot be executed immediately. For limit orders, cancellation parameters also may be specified. The variables relating to resting orders may be modified, and orders may be withdrawn at any time prior to execution.

³⁰ You represent that BM&F will issue an Advisory or another administratively binding action to require its Trading Rights Holders to set such limits. Thus, U.S. market participants will be systemically blocked from executing trades in contracts that are not within the no-action relief granted by the Division. Further, you represent that if cash equities or equity options now traded on BOVESPA become tradable through GTS in the future, absent relief or approval by the U.S. Securities and Exchange Commission, U.S. persons with direct market access under the no-action relief provided herein would be systematically precluded from trading such equities or equity options via BM&F's GTS API.

³¹ Limit orders trade at the price stated in the order or better. Unfilled residual volume is maintained in the central order book until filled, withdrawn or cancelled.

³² Market orders are executed consecutively at the best price available until all volume at that price has been traded and until all the order volume has been filled.

³³ Good till cancelled orders are held until a specified date, the contract expires or they are withdrawn by the trader.

³⁴ Immediate or cancel orders are executed against any existing orders, and any unfilled portion of the order is immediately cancelled.

³⁵ Residual volume converts to a limit order. If no bid or offer exists at market open, the MOO order is cancelled.

Orders on BM&F are matched by price/time priority. Lower offers take precedence over higher offers and higher bids take precedence over lower bids. In the case of multiple bids or offers at the same price, earlier bids and offers take precedence over later bids and offers respectively. Thus, under price/time priority of market orders, a bid (offer) is filled at the best price by the earliest entered offer (bid) at that price. If additional contract units are needed to fill the bid (offer) then the next oldest offer (bid) at that price is matched until all of the liquidity at that price has been exhausted. Then matches would commence at the next best price until the order is filled. The time assigned to an order is the time that it arrives at the Trading Engine.

Credit and order size restrictions that are controlled by the Trading Rights Holders filter the orders of customers with direct market access before they reach the Trading Engine. Thus, as previously noted, orders that exceed these limitations are rejected before entering into the Trading Engine. Similarly, orders reaching the Trading Engine Gateway via Globex will be rejected and not permitted to reach the Trading Engine if the Globex user has not been authorized to access GTS. In addition, GTS has limits to prevent operational errors. Those limits, which market participants are required to assign, are applied to quantity and price information on every order, per instrument, per instrument class (group of instruments) or per market (future or option for example). Price limitations also include restriction on variation (percent or basis points) in relation to last traded price, close price (previous day) or settlement price.

C. Distribution Network

Authorized traders may be connected to the Trading Engine through a variety of channels. First, the Financial Community Communication Network, RCCF, is an MPLS network that connects all brokerage firms, as well as some distributor and other interested clients, to BM&F. This network allows for specific Service Level Agreements and contingency features and is used to receive market data and for order management. Clients within Brazil and from the U.S. may continue to contact their Brazilian broker by telephone and the broker may enter the client's order into the Trading Engine through its RCCF connection. Commodities Brokerage Houses and banks that are Trading Rights Holders may also connect to the trading system using a direct leased line. Alternatively, pursuant to the no-action relief provided herein, customers in the U.S. which are guaranteed by a BM&F Settlement Rights Holder, and authorized by an FCM or a Rule 30.10 Firm, could enter orders directly into the trading system through an international network provider which carries the electronic message from the customer to the GTS's FIX Gateway.

Authorized U.S. traders (or their customers, if authorized) could also enter orders into the trading system using their Globex terminals. Orders thus entered would be carried to a hub location in São Paulo on CME-operated and maintained telecommunication circuits. Under the BM&F-CME Order Routing Agreement, BM&F will provide the telecommunication circuits between the São Paulo hubs and the Trading Engine. Eventually, BM&F will locate hubs in major financial centers, including in the U.S., to connect with the Trading Engine in São Paulo. You represent that orders of U.S. direct market users arriving at the GTS Gateway will not be

treated any differently or disadvantaged by the Trading Engine from those of GTS Trading Rights Holders.

D. Audit Trail

The BM&F trading system captures a complete audit trail of all orders entered into the trading system and all trades that are executed. In this regard, the following information is required to be included on orders submitted to the trading system: (1) commodity; (2) contract month; (3) purchase or sale; (4) customer account; (5) quantity; (6) limit price (except for market orders, MOO orders and other similar order-types); and (7) strike prices, put or call (for options). GTS automatically records the time of, and retains a record of, each entry into the system. Resting orders that have not resulted in an executed trade may be withdrawn. However, the entry and withdrawal of such orders is captured and a record thereof is retained. Thus, the trading system captures and retains a complete and accurate audit trail of all activity on the trading system. All relevant data are retained for a period of ten years in an electronic storage medium. Confirmations of orders successfully entered into the trading system are automatically generated and sent to authorized traders, as are confirmations of all matched trades. These confirmations are also captured automatically and retained as part of the permanent audit trail.

E. Data Dissemination

BM&F disseminates trading data (prices/quotes/market depth) to authorized market users via the trading system and, more generally, through third party vendors, such as Bloomberg and Reuters. Authorized market users also have available to them a summary of the market user's activity during that session, including the market user's orders entered during the current trading session and completed trades. Additional information such as daily high, low, open interest and volume is distributed publicly by BM&F. Such information is also available in an archived form on BM&F's website, on which BM&F also provides intra-day last sale, quote and volume information on a fifteen minute delayed basis.

F. System Reliability

The hardware specification for the Trading Engine server includes duplicate, back up power sources, which also are provided for the datacenters where those servers are hosted. GTS itself provides reliability functionality, making it possible for system administrators to configure multiple instances of a matching engine for an instrument or group of instruments. In this way, data processing is replicated and synchronized among more than one matching engine, so in an event of failure, the trading system is not affected.

When connecting to GTS, BM&F provides fault tolerance to Trading Rights Holders through distributed data centers and clustered services. All components of the BM&F trading system are allocated in clusters, which in the event of a hardware failure fall over to a back-up device. The back-up system is idle when the primary component is running. In addition, the GTS system Gateway applies messaging throttling, which ensures that abnormal external activity will not hinder system performance, availability and reliability. As necessary, the Trading

Engine can control the number of messages received per second and the log-on status from the API (API session control). Thus, the trading system is able to make necessary adjustments to remain operational in the face of varying computational demands.

You represent that there have been no trading problems or issues with respect to the reliability, availability or operation of the new trading system since its introduction in late 2007 and that the new trading system has been operated with a Trading Engine availability of 99.9947 percent. Finally, all users who connect to GTS must go through a certification process to ensure that nothing in their connectivity will degrade the reliability of the system.

G. System Security

The trading system includes a security system that provides for user authentication, confidentiality and information integrity. It ensures integrity by using features embedded in the API that cannot be accessed externally. The security system is responsible for: (1) maintaining the database of currently certified users; (2) authenticating certified users as they log on; (3) distributing session keys as part of the login process; and (4) maintaining a list of currently logged-on trading applications.

Only authorized users are allowed to access GTS and must first log in to the security system. User authentication is through the use of passwords. Messages and data are exchanged in the system through a private, encrypted network. This protects the confidentiality of such information, including the password on the authentication messages. Passwords must meet criteria established by BM&F and are required to be changed periodically.

New users are formally identified to BM&F by a registered market participant, which is required to submit a form to BM&F for each individual authorized user to be granted direct access to the trading system. The form includes the name, location, and the number and type of trading access rights granted (in case there is a specific trading access right involved). Once an authorized user has been registered by the Exchange, access keys and passwords are made available.

The security of the system also depends on the actions of system users. Each registered market participant is required by BM&F rules and policies to implement suitable security measures to ensure that only those persons specifically authorized by the registered market participant have access to the user's passwords and security keys.

H. Disaster Recovery

BM&F has business continuity plans, reviewed and tested continuously, in place as part of its Exchange operations. The network, servers and storage are distributed in two data centers that operate on an integrated basis in real time. Both centers providing services to BM&F's trading community in what is known as an Active-Active mode, which provides high availability, scalability and performance. Although both centers are operating actively, the available capacity is such that in an event of failure in one center, the other has sufficient

capacity to continue operations. The connection between these data centers is through an optic connection of high-speed and large bandwidth. The data for disaster recovery are replicated in real time to the alternate data centers. The two data centers are 30 kilometers distant from each other. The backup media are produced in tandem and stored in appropriate tape storage on different sites from BM&F data centers. Backup media are recycled (data are moved from outdated media) as well as tested from business perspectives from time to time.

BM&F has also established general policies to respond to incidents affecting operation of the trading system. These policies provide guidance for responding to possible operational problems, assign responsibility to address various issues and include well-understood escalation policies. Thus, BM&F has in place a business continuity plan which would enable the Exchange to implement recovery procedures in the face of a disaster and to resume operations within a commercially acceptable time frame. This plan is continually reviewed and updated. In addition, BM&F periodically conducts disaster recovery tests to evaluate the adequacy of its procedures and contingency planning.

I. Adherence to IOSCO Principles

You represent that in developing, recently deploying and operating GTS, BM&F has complied with, and will continue to comply with, the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles) adopted by the Commission on November 21, 1990.³⁶ In this respect, you represent that in constructing and deploying GTS, BM&F has employed the expertise of industry specialists to ensure that the resulting system infrastructure follows best industry practice and quality standards. BM&F has satisfied the CVM, which has endorsed the IOSCO Principles,³⁷ that BM&F satisfies the IOSCO Principles in connection with its operation of GTS.

IV. SETTLEMENT AND CLEARING

A. Introduction

BM&F includes within its corporate organization three integrated clearinghouses and a settlement bank. These clearinghouses and the BM&F Settlement Bank coordinate the registration, clearing, settlement and risk management activities associated with trades executed on the Exchange. The Derivatives Clearinghouse clears futures, options on futures and options on actuals, and is the universal counterparty to all BM&F futures and options transactions.³⁸

³⁶ The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products. "Policy Statement Concerning the Oversight of Screen-Based Trading Systems," 55 Fed. Reg. 48670 (Nov. 21, 1990).

³⁷ The CVM is a participant in IOSCO and on its website lists a number of resolutions that it has endorsed, including the IOSCO Principles. See www.cvm.gov.br/ingl/indexing.

³⁸ It also registers OTC derivatives transactions and clears OTC derivatives that are submitted for clearing. In addition to the Derivatives Clearinghouse, BM&F's Foreign Exchange Clearinghouse is responsible for the registration, clearing, settlement and risk management of spot U.S. dollar transactions traded in the Brazilian

BM&F becomes the counterparty to each buyer and seller of transactions executed on the Exchange through novation of the contracts, which occurs at the time the transaction is executed on the trading system. As explained in greater detail below, the Derivatives Clearinghouse settles transactions through multilateral netting, thereby reducing the number of payments institutions are required to make, reducing transaction costs and related operational risks.

The risk management system of the Derivatives Clearinghouse measures position risks every ten minutes, on average, and determines the collateral amount necessary to mitigate these risks. To do so, it operates a margining system under which parties to a contract deposit a good faith performance bond to assure that the party will fulfill its obligations under the contract. This margining system includes the requirement that original margin be deposited and that positions be marked-to-market on a daily basis in order to maintain required minimum margin levels. Margins are due to the Clearinghouse in cash. However, the Clearinghouse, in its discretion, may accept additional forms of collateral, including government bonds, gold, shares of stock of companies included in the IBOVESPA Index, certain investment funds, U.S. treasury bonds, bank letters of credit and such other assets as the Clearinghouse may permit. Haircuts are taken against certain instruments used as collateral.

As of March 31, 2008 the Derivatives Clearinghouse held total margin pledged by market participants in the amount of approximately R\$74.02 billion (US\$44.55 billion). BM&F also maintains a Clearing Fund which is funded in the amount of R\$315.67 million (US\$189.97 million) and which is available in the event of a default of a Settlement Rights Holder. As of March 31, 2008, the FDO, composed of deposits of DN Holders and DL Holders, stood at R\$1,097.40 million (US\$660.42 million).

Customer funds/collateral are protected through a system of segregation which operates by permitting customers to directly deposit their funds with the Derivatives Clearinghouse rather than with their Commodity Brokerage House. In addition, BM&F maintains a separate Guarantee Fund to make customers whole in the event of a customer loss resulting from a Commodity Brokerage House's wrongful use of customer funds or other similar loss.

Finally, the BM&F Settlement Bank performs a supplementary role in the Derivatives Clearinghouse's risk management. The Derivatives Clearinghouse can access the intraday BACEN credit facility through the BM&F Settlement Bank, making it possible for BM&F to promptly access customer collateral and/or liquidate government securities pledged as collateral. In addition, the BM&F Settlement Bank facilitates contract settlement and collateral management.

B. Clearing Procedures

interbank market. It clears and settles local currency transactions through an account at BACEN and at correspondent banks in the U.S. The Securities Clearinghouse is responsible for the registration, clearing, settlement and risk management of transactions involving Brazilian government-issued securities. These two clearinghouses are not involved in clearing and settlement of futures and related option contracts on BM&F.

The clearing systems were developed internally by BM&F and are fully integrated with GTS. The clearing process of an electronic trade is initiated by GTS' automatic entry into the clearing system of details of an executed trade. Trades are accepted by the Clearinghouse when a bid and offer are matched on the trading system. For clearing purposes, trades entered into through GTS by the close of the day's floor trading session are cleared overnight with daily settlement made on a T + 1 basis. Trades entered into GTS after the close of floor trading are included for clearing during the subsequent trading day. However, if for daily settlement purposes, such T + 2 positions would result in a debit amount in a customer's account, the amount will be included in the T + 1 margin requirement. Processing of trades is accomplished overnight and reports are generated prior to the start of trading on the next trading day showing open interest and required pays and collects, or as termed in the BM&F Clearing Operations Manual, "cash settlement."

All trades by each DN holder are subject to an intra-day risk limit. Depending on the current obligations of the DN holder, BM&F can require that additional margin be posted in support of such positions. Until the additional margin has been posted, BM&F can prevent the DN holder from registering additional transactions. Trades are also subject to the rules and policies of BACEN, CVM and the Council for Financial Activities Control and any trades that violate rules or policies of any of these regulators can be cancelled within the T+0 period. Such trades are subject to reversal if identified subsequently.

The Derivatives Clearinghouse nets open positions only at the customer level, although settlement is netted at the DL holder level. The multilateral net amount with respect to DL holders includes variation margin payment on positions entered into in both floor trading and on GTS and includes reset amounts on cleared OTC positions, as well as the cash value of physically-settled contracts. All transactions for customers must be identified to the Clearinghouse as customer positions. In this regard, BM&F requires that customers be registered with the Clearinghouse by the intermediary and that customer identifying information must be updated in the BM&F systems at all times. If the customer registration information is incomplete, the Clearinghouse will place the transactions in an error account and treat such positions as unknown customers of the carrying intermediary.

The BM&F clearing system also accommodates give-up/take-up relationships. Give-ups can be designated at the time of order entry through GTS and are provided a unique identifier which represents an end customer-executing firm give-up relationship. Upon designation that a trade is to be given-up, the take-up firm will receive notification of the trade and must accept or reject the trade. If the take-up firm rejects the trade, the trade is carried by the executing firm. Give-up relationships require that an agreement be entered into between the broker giving-up a trade and the broker taking-up the trade. Certain position-related functions, such as providing open/close or give-up/take-up instructions that were not included in the order when it was entered into the trading system, can also be entered by intermediaries through the clearing system as post-trade adjustments. These clearing-related functions are made through the BM&F Serviços website, which provides secure, web-enabled access by intermediaries to the clearing system and to position and other clearing-related information.

C. Risk Management

BM&F has developed and implemented procedures to measure risk parameters of the products listed for trading on the Exchange. It also monitors price trends in the futures and the underlying cash markets, monitors price volatility and conducts simulations of the effect of these risks on accounts carried by its members. Using these risk management procedures and analyses, BM&F determines the appropriate level of margins which should be required and whether extraordinary intra-day margin calls are appropriate. Margins are required to be paid to the Clearinghouse on a gross basis, *i.e.*, from each individual customer.

D. The Margin System

In conjunction with the implementation of the Brazilian Payment System, which required market participants to monitor their risk and cash flows for financial futures contracts, BM&F adopted a new portfolio margining calculation system in May 2001. BM&F developed the new system based on stress testing and analysis of the financial variables that directly influence the prices of derivatives, including: (1) the cash or spot market prices; (2) the term structure of interest rates (for BM&F contracts, term structures are taken into account both in Brazilian Reals (fixed rate yield curve) and U.S. Dollars (ID x U.S. Dollar spread yield curve); and (3) the market volatility level.

The margin calculation system uses a portfolio-based approach to overall risk. Accordingly, risks of various contracts in a customer's account are combined; the risks of certain positions may be reduced or off-set by other positions in the portfolio, yielding a calculation based upon the over-all risk of the positions held in the account. The accounts are then subjected to stress testing using a number of possible scenarios involving changes in the above factors as determined by the Risk Committee, an executive-level management committee.³⁹ These possible scenarios can result from both technical/statistical analysis and subjective market evaluations. The model then examines the hypothetical gains and losses of the portfolio in response to changes in the identified factors. All of these scenario combinations are analyzed to obtain the one leading to the highest hypothetical loss which determines the amount that will be required as collateral for the portfolio. All scenarios used by the model are disclosed daily in BM&F's Daily Bulletin, enabling market participants to evaluate the amplitude of scenarios and the degree of coverage they offer the Clearinghouse.

BM&F developed an application that allows brokers to simulate, in real-time, the effect that buying and selling contracts has on margin requirements. This enables market participants to anticipate the potential effect of the margin requirement on their cash flows. Risk calculations are updated on an intra-day basis as new transactions are entered into. Thus, it is necessary for market participants to have or pledge collateral to maintain their operational limit with respect to

³⁹ The Risk Committee, which is established in the BM&F bylaws and is composed of a number of executive officers of the Exchange, defines the scenarios and sets the parameters to be used in the risk analysis. Typical scenarios include: shifts in the yield curves, changes in foreign exchange rates, and increased implied option volatility.

such intra-day trading. Free-balances, however, are determined and made available on a T+1 basis.

E. Segregation of Customer Funds

As a general matter, the funds and securities amounts belonging to customers, the transfer of which is ordered by these customers, are legally considered as segregated from the funds and collaterals of the Commodity Brokerage Houses and DL Holders. This general rule is applicable to collateral posted by the customers with Commodity Brokerage Houses and DL Holders. Thus, securities that are deposited as collateral are held as assets that are specifically segregated for the benefit of the depositing customer. Deposits of cash are made by the customer directly to a BM&F account that complies with the requirements of Commission Regulation 30.7. The Clearinghouse directly controls each customer's cash balance. Accordingly, both collateral and cash deposit amounts are recognized as segregated from that of the Commodity Brokerage Houses and DL holders.

Apart from the Clearinghouse's control of customers' cash balances as a means of complying with the requirements of Commission Regulation 30.7, any customer that meets a specified threshold level of volume established by BM&F is able to establish a Special Settlement Account (CEL) directly with the BM&F Settlement Bank.⁴⁰ The CEL account enables customers to settle their trades directly with the Clearinghouse. This bypasses the need for the customer's funds to be held by and forwarded to the Clearinghouse by the Commodities Brokerage House and DL holders. In so doing, the customer's funds are completely segregated from those of the intermediaries. Bypassing the intermediaries in this manner has the consequence that even if an intermediary had the unlawful intention of using customer segregated funds for proprietary purposes, as a practical matter it cannot do so because it does not exercise control over such customer funds.

The customer's ability to directly deposit funds with the Clearinghouse through the CEL account does not alter the legal responsibility for making payments. Thus, as a legal matter, the Clearinghouse looks to the DL holder and the DL holder looks to the DN holder for satisfaction of the obligations to pay. Thus, in the case of a shortfall in a CEL account, the Commodities Brokerage House and in turn the DL holder would be obligated to pay the amount due to the Clearinghouse. Operationally, the Commodity Brokerage House informs the customer of the amount owed by the customer for that day's settlement. After verifying the receipt of the amount from the customer, the Clearinghouse adjusts the DL holder's multilateral net amount.

F. Default Procedures

BM&F has made explicit the procedures that it would follow in the event of a default. Should a default occur, the Clearinghouse may close out the positions held by the defaulting participant; use the defaulting participant's collateral to cover debit balances; notify the market

⁴⁰ U.S. based customers are able to establish an account with one of the correspondent U.S. Settlement banks with respect to dollar denominated contracts.

and competent authorities; transfer to other DL or DN holders, with prior agreement, customer positions carried by the defaulting intermediary; transfer funds through another settlement bank, or make use of other mechanisms to ensure the timely fulfillment of pending obligations.

Pursuant to the Clearinghouse rules, in the event of a default, collateral shall be used to satisfy the shortfall in the following order: (1) collateral pledged by the defaulting participant; (2) collateral pledged by the defaulting participant but issued by third parties; (3) collateral pledged by the intermediaries; (4) collateral pledged by DL holders; and (5) guaranty funds.

The final line of defense to address the event of a default includes the various guarantee funds. Pursuant to its bylaws, BM&F maintains a specific capital reserve that shall be used to “ensure proper settlement and the refund of losses resulting from intermediation of trades executed in BM&F’s auction systems.” In addition, DL holders have invested in the Clearing Fund, the purpose of which is to guarantee transactions. The liability of each DL holder to the Clearing Fund is joint and several, and limited to twice the value of the required deposit, which is determined by access rights category. The total held in the Clearing Fund as of March 31, 2008, is R\$315.67 million (US\$189.97 million). In addition, as noted above, the Guarantee Fund exists as a special purpose entity to refund customers for losses from the unauthorized or illegal use of customer funds by intermediaries. As of March 31, 2008, the Guarantee Fund stood at R\$ 92.34 million (US\$55.57 million).

V. THE REGULATORY REGIME IN BRAZIL

A. Overview

BM&F and its Access Rights Holders are subject to a comprehensive regulatory regime administered and enforced by government entities that includes, among other things: financial and other fitness criteria for industry participants; reporting and recordkeeping requirements; procedures governing the treatment of customer funds and property; sales practice and other conduct of business standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse, and market manipulation. In addition, pursuant to the Brazilian regulatory structure, BM&F, as a self-regulatory organization (SRO), has oversight and self-regulatory enforcement obligations with respect to operation of the market in a financially sound manner and free from trading, market or customer abuses. BM&F also carries out SRO functions with respect to oversight of market intermediaries.

Oversight of the Brazilian financial markets is vested in three government entities: the National Monetary Council (CMN), the Central Bank of Brazil (BACEN), and the CVM. The CMN is the highest policy-making authority of the Brazilian financial system and is composed of the Minister of Finance (chairman), the Minister of Planning and Budgeting, and the President of BACEN. It was created to formulate the monetary and credit policies for the financial and capital markets to address such matters as availability of credit in the system, form of remuneration for credit transactions, operating limits of financial institutions, rules for carrying

out foreign investments in Brazil and rules for foreign exchange.⁴¹ To implement CMN Resolutions, BACEN and CVM issue Circulars and Instructions, respectively.

BACEN is the federal agency under the Ministry of Finance responsible for implementing the monetary and credit policies established by the CMN, regulating the foreign exchange market and foreign investment flow in Brazil, authorizing admission of new financial institutions to the market and monitoring operations of financial institutions. Regulation and supervision of investment banks, securities brokers, securities dealers, and the commodities and futures exchanges are shared between BACEN and CVM. BACEN, whose chief responsibilities are centered on prudential and systemic regulation activities, also has the responsibility to license certain financial institutions. Prior to receiving an operating license from BACEN, financial institutions must submit a complete economic and financial statement demonstrating compliance with standards (*i.e.*, minimum capital, the competence and integrity of principals and directors, etc.).⁴² BACEN is responsible to ensure that the members of BM&F that are under its jurisdiction have sufficient working capital and that their monthly accounting information is made available to the financial market. All audited financial statements are then submitted for posting on the Brazilian Central Bank Information System.

The CVM is a federal agency under the Ministry of Finance and is authorized to regulate and supervise all activities relating to the securities and futures markets. Its chief focus is the regulation of business conduct and trading activities. It is the main supervisory body of the Brazilian capital markets, and has had oversight of the securities markets and the enforcement of securities and corporation laws in Brazil since its powers and authority were defined when it was formed in 1976. Financial institutions and other institutions authorized to operate by BACEN are also subject to CVM supervision when conducting business in the capital markets. CVM's authorizing legislation was amended in 2001 to expand CVM's authority by giving it explicit statutory authority over all commodities and futures exchanges and over the OTC derivatives markets. Under the provisions of that law, commodity futures exchanges and Commodity Brokerage Houses are required to be authorized by the CVM.⁴³ CVM has a total of 450 employees. Of these, 33 employees fall under the Superintendent of Market and Intermediary Relations (SMI) and are responsible for overseeing the regulatory compliance of BM&F Bovespa and 28 employees are directly involved with enforcement activities.

The Division notes that the Commission previously reviewed the regulatory regime administered and enforced in Brazil. On June 28, 2002, in response to a petition from BM&F, the Commission issued an order pursuant to Commission Rule 30.10 that granted exemptive

⁴¹ Advising CMN is the Technical Commission on Currency and Credit, composed of the President of BACEN (coordinator), the President of CVM, the Executive Secretary for the Minister of Planning and Budget, the Executive Secretary for the Minister of Finance, the Economic Policy Secretary of the Minister of Finance, the Secretary of the National Treasury of the Minister of Finance and four directors of BACEN, who are appointed by its President.

⁴² A financial institution must receive approval from BACEN prior to any significant change to its organization or operations, including a merger, transfer of headquarters, or material alteration of its capital.

⁴³ Pursuant to CVM Instruction 461, "Organized markets of securities are the stock exchanges, commodities and futures markets and the organized over-the-counter markets."

relief to designated members of BM&F from the application of certain of the Commission's foreign futures and options rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority.⁴⁴ In the order, the Commission concluded that the standards for relief set forth in Rule 30.10 generally had been met and that compliance by the Rule 30.10 Firms with applicable Brazilian law and BM&F rules could be substituted for compliance with certain provisions of the CEA and the Commission's rules set forth in the Commission's order.⁴⁵

B. Requirements Applicable to Exchange Operations

CVM's program to oversee and monitor the exchanges that it regulates for their compliance with applicable statutory and regulatory requirements stands on two main pillars: (1) prior approval of all exchange rules and resolutions and (2) review of exchange compliance through an on-going requirement of exchange self-reporting. CVM Instruction No 461 requires the exchange to obtain CVM approval prior to making effective any exchange rule, bylaw, policy or amendment thereto with respect to the operating rules of the market, the bylaws of the operating entity, changes in the operating company's organizations or changes to the organization of the market, procedures followed by the Self-Regulatory Department or of the Self-Regulatory Department's management bodies, including any changes with respect to the execution of its self-regulatory commitments, and the operation of the exchange's loss recovery mechanism.⁴⁶ Pursuant to that Instruction, CVM conducts a thorough review of proposed exchange rules or rule amendments and actively exercises its review authority and may request changes even to relatively technical operating rules or procedures.

The second means by which CVM oversees exchange compliance is by requiring exchanges to report on compliance and regulatory programs on a periodic basis. These include, among others, the following reports submitted to CVM by the Chief Officer of the Self-Regulation Department: (1) immediate notification of each and every severe breach of CVM rules; (2) a monthly report describing possible failure to observe any exchange rule during the preceding month, including information on the violative transaction; (3) a monthly report on audits that have been completed in the period; and (4) a monthly reports on the number of administrative actions initiated by the exchange, including those referring to the use of the loss reimbursement mechanism, with the identification of the persons interested and the respective

⁴⁴ 67 Fed. Reg. 45056 (July 8, 2002).

⁴⁵ The Division notes that nothing in the no-action relief provided herein abrogates or otherwise alters the obligations of FCMs or Rule 30.10 Firms under the CEA, Commission rules, or relevant Part 30 orders.

⁴⁶ Pursuant to CVM Instruction, the managing entity of an exchange must maintain a loss recovery mechanism for the purpose of ensuring that investors can recover their losses arising from an action or omission of a person authorized to trade or the officers, employees or representatives thereof in relation to the brokerage of transactions carried out on an exchange or to the custody services. With respect to recordkeeping, the managing entity must, among other things, keep a record of the transactions in the trading environments managed by the entity for no less than five years or through the closing of investigations in the event that CVM notifies the managing entity of any existing investigation procedure.

conduct. In addition, CVM has full access to the details of each transaction that takes place on the Exchange through a daily report from the Exchange of transactions submitted to auction and of transactions cancelled and the daily movement of transactions in each environment or trading system, including information on persons authorized to trade and the beneficial owners of accounts. Thus, CVM is able to follow trading on an individualized transaction basis and make inquiries of the Self-Regulatory Department of any action that the Self-Regulatory Department takes, or fails to take, in response to such trading activities.

In its role as regulator of BM&F, and in order to prevent or correct any market or customer abuse, the CVM has authority to: (1) approve, suspend or cancel registrations; (2) oversee operation of the commodities and futures markets, as well as the conduct of market intermediaries; (3) disclose information or recommendations to provide clarification for market participants; (4) prohibit market participants from engaging in acts that could be detrimental to the operation of the market and its investors; and (5) impose penalties. As noted above, organized futures markets must be authorized by the CVM prior to beginning their activities. Authorization depends on meeting a number of regulatory requirements, including net equity or capital stock requirements, free trading of membership titles or shares that will be issued, and providing access rights to its markets and systems of member companies or access rights holders as provided for in the Exchange's bylaws.

In its oversight role of organized exchange markets, the CVM is also authorized to: (1) suspend adopted exchange rules if they are deemed to be inadequate for their operation, and require adoption by the exchange of those rules that CVM considers to be necessary; (2) suspend decisions taken by exchanges, either wholly or in part, particularly when protecting investors; (3) cancel trades on exchanges or determine that clearinghouses suspend settlement of trades in case of transactions that could characterize violations of legal and regulatory rules; (4) suspend trading sessions on exchanges to prevent or correct abnormal market situations, as defined in applicable regulations; (5) suspend or revoke, through an administrative proceeding, the exchange's authorization for operation in cases of material violations pursuant to applicable regulations; (6) order, on a preventative basis, that exchange directors or officers be immediately removed when there is evidence of a violation committed by such person that is incompatible with the office to which they have been elected or designated; (7) order exchanges to suspend activities of their members and entities authorized to operate in their systems; (8) order restatements of financial statements of entities that manage exchanges that are not in compliance with Brazilian corporate law and with applicable regulations; and (9) deny approval of rules or procedures, or require their amendment, whenever these rules or procedures are considered to be insufficient for proper operation of the market or in violation of applicable legal or regulatory provisions. In addition, BM&F must subject its new futures contracts and its bylaws and operational rules to the prior approval of the CVM.⁴⁷

C. Prohibition of Abusive Trade Practices and Financial Protections

⁴⁷ Both CVM and BACEN require exchange rules to address the protection of investors' rights, the accuracy and transparency of price formation, observance of all trading standards and, in general, sound market practices.

Abusive trade practices are prohibited under Brazilian law. The CVM is empowered to investigate any illegal act or unfair practice of a market participant by opening an administrative inquiry that commences with a public investigation and ends with a decision by the Board of Commissioners. A range of penalties may be imposed, to include: (1) warnings; (2) fines, limited to R500,000 (US\$300,904) or three times the amount of economic advantages gained, or losses avoided, due to the violation; (3) prohibition (limited to 20 years) on appointment as a Director or to the Board of Trustees of any corporation, particularly in the financial intermediary industry; (4) suspension of registration with regulatory agencies; (5) cancellation of authorizations granted by regulatory agencies; (6) prohibition (limited to 10 years) on trading and dealing, directly or indirectly, on specific securities and particular markets; and (7) prohibition (limited to 20 years) on work for any financial company or entity in the brokerage industry. In addition, any case may be referred for criminal charges, as appropriate, to the Federal Attorney's Office.

Additionally, Brazilian law penalizes fraudulent transactions or other deceitful action aimed at artificially changing the regular operation of the securities markets for the purpose of obtaining undue advantages or profits for oneself or others, or to cause damage to third parties. CVM, by Instruction, specifically prohibits managers and stockholders of public companies, intermediaries, and other participants in the securities markets, which includes futures and commodities exchanges, from (1) creating artificial conditions of demand, supply or price, (2) engaging in price manipulation, (3) engaging in fraudulent trading, and (4) using unfair practices.

BM&F is supervised with respect to financial integrity issues by both BACEN and the CVM. Brazilian law requires that clearinghouses and clearing and settlement services must have mechanisms and safeguards to guarantee settlement of obligations, including adequate security procedures and rules for risk control, contingencies, loss sharing among participants, and the direct execution of positions held in custody, of contracts and of collateral posted by participants. Exchanges are required to establish financial safeguards and guarantee funds to guard their clearing and settlement operations and facilities and to protect member firms and their customers from defaults, insolvencies or malpractice by market participants. Brazilian law also requires each exchange to maintain an internal audit system and to monitor its internal controls.

D. Emergency and Supervisory Enforcement Authority

With respect to emergency authority, BACEN and CVM, pursuant to Brazilian law, have the power to: (1) suspend the execution of rules adopted by futures exchanges; (2) adopt rules they deem necessary; (3) void totally or partially the enforcement of decisions taken by futures exchanges; (4) decree the recess of futures exchanges in order to prevent or correct abnormal situations; and (5) adopt other measures they deem necessary for the good functioning of the market. In addition, the BM&F bylaws vest broad authority in the Executive Officers to take extraordinary actions when warranted to address market disruptions. For instance, the Clearinghouse Officers are authorized to take all applicable measures in the event of a payment delay. The CEO and the Clearinghouse Officers and Trading Officer, meeting together, are authorized to: (1) declare a default; (2) establish operational, credit and risk limits for participants; and (3) determine for Access Rights Holders and their clients the total or partial settlement of open interest in one or more Exchange markets.

In addition, BACEN may restrict, suspend, or revoke the license of any non-compliant financial institution.⁴⁸ For example, Brazilian law empowers BACEN to require institutions with liquidity problems to: (1) inject additional capital; (2) transfer shareholder control; and/or (3) undertake company reorganization through incorporation, merger, or dissolution. If necessary, BACEN may expropriate the shares of the controlling shareholder and sell the shares at public auction.

E. Regulation of Access Rights Holders and Intermediaries

Any firm that intends to act as a Commodities Brokerage House must receive an operating license directly from CVM. Brokerage companies must comply with the accounting procedures established by the CMN and BACEN, and must submit financial statements every six months to independent auditors appointed by CVM. Only a natural person resident in Brazil may serve as the manager of a brokerage company, and each brokerage company is required to have a technically-qualified manager for each area of operations. CVM may cancel the operating license for any Commodities Brokerage House that does not commence operations within six months of obtaining the license.

BACEN supervises financial institutions, including BM&F Settlement Rights Holders and certain Commodities Brokerage Houses, through on-and off-site examinations. On-site supervision involves the examination of financial institutions under the Comprehensive Consolidated Examination (IGC), which examines all the activities conducted by a financial institution and all the firms that are part of the conglomerate to which the institution belongs. Conducted every 24 months or less, the IGC also reviews for compliance each firm's operational policies and procedures.

In addition, as noted above, a CVM Instruction establishes rules under which Commodities Brokerage Houses may organize, including the requirement that Commodities Brokerage Houses: (1) be an access rights holder on the Exchange; (2) be responsible to make good settlement; (3) comply with high ethical standards of conduct;⁴⁹ (4) keep confidential the trading information of their customers; (5) disclose any defaults to the market and to regulators; (6) meet and maintain minimum financial requirements; (7) refrain from advancing funds to their

⁴⁸ As previously discussed, the CVM has authority to approve, suspend or cancel registrations; monitor BM&F and Commodities Brokerage Houses; prohibit market participants from engaging in acts that could be detrimental to the operation of the market and its investors; and impose penalties.

⁴⁹ BM&F is required by CVM to adopt rules of conduct, which must be approved by the CVM, to be met by brokerage firms in their relationship with clients and with the market as a whole. The rules are required to address, and enforce, the following standards of conduct: (1) probity in the performance of activities, always to the best interest of their clients with a view of safeguarding market integrity; (2) observance of the proper standard of care in the handling of securities purchase, sale or swap orders; (3) qualification for the performance of activities; (4) commitment to obtain and provide clients with proper information, including inherent market risks as well as timely documentation of trades affected; and (5) avoidance of conflicts of interest and, if not possible, providing equitable treatment to their clients.

clients; (8) keep records and make such reports as required; and (9) register their operation with the appropriate government agency. The CVM has also issued an Instruction establishing standards to be followed by Commodities Brokerage Houses and futures exchanges with respect to the entry of customer orders in both floor and electronic trading systems. The Instruction requires that brokers avoid conflicts of interest in filling customer orders and that customer orders be given priority over house orders.

VI. BM&F INTERNAL REGULATIONS

A. Status as a SRO

Self-regulatory status was granted to derivatives exchanges in Brazil in 1989 and expanded in 1998. BM&F is a “self-regulating entity” under Article 17 of Law 6385.⁵⁰ The CVM has delegated significant power to SROs, including BM&F.⁵¹ As an SRO, BM&F is required to establish mechanisms to prevent and correct breaches of applicable laws, rules and regulations, to ensure an orderly marketplace, and to protect customers from unfair or abusive behavior by market participants. As part of its demutualization process, BM&F amended its by-laws to adjust its management, self-regulatory and operating structure to comply with CVM Instruction No. 461.⁵² Consistent with these requirements, BM&F has provided for an independent Self-Regulatory Department to carry out its SRO functions.⁵³

As previously described, the Regulatory Board, the Self-Regulatory Board, Self-Regulatory Department and the Self-Regulatory Officer are responsible for the supervision of the operations and management of BM&F and for the transactions carried out on BM&F’s systems, respectively. The self-regulatory bodies are required, pursuant to applicable regulations and the by-laws and internal regulations of BM&F, to monitor compliance with the rules of operation of the market and to impose the applicable penalties, at any time or upon request of the CEO or of third parties. Of BM&F’s 561-person staff, 32 people are assigned to the Self-Regulatory

⁵⁰ See CVM Instruction 283 (1998), which required BM&F to conform its rules and regulations to standards set forth in that Instruction, and to submit them for approval by CVM, as well as all subsequent rule amendments. All SRO rules of conduct are reviewed and approved by CVM.

⁵¹ Brazilian law provides that stock exchanges, futures exchanges, over-the-counter market entities and securities clearing entities, as ancillary entities of the Brazilian Securities Commission, shall be required to supervise their respective members and the securities transactions carried out by them. Because there is no separate SRO governing futures professional (like National Futures Association in the U.S.) in Brazil, BM&F also performs all registration functions for its members. Accordingly, in this capacity, BM&F supplements the BACEN licensing procedure and, subject to direct oversight by CVM, recognizes and licenses Access Rights Holders.

⁵² CVM Instruction 461, adopted on October 23, 2007, provides for: (1) the form of incorporation and mandatory governance structure of entities managing organized exchange markets; (2) the organization and functioning of self-regulatory departments of entities managing organized exchange markets; (3) the authorization to install trading displays of foreign exchanges; (4) limitations on the equity participation in entities managing organized exchange markets; and (5) specific procedures for the granting and revocation of authorization to manage organized exchange markets.

⁵³ As a result of the integration process with BOVESPA, SRO functions will be lodged in, and carried out, by a completely separate legal entity which is independent of the business operations of the Exchange.

Department and involved in direct market supervision activities. Of these 32 people, 11 conduct real-time market surveillance activities, ten conduct market surveillance and related market-oversight activities in connection with trading on GTS, five are devoted to the monitoring and surveillance of warehouses, three are devoted to monitoring the various delivery processes, and three are engaged full-time in oversight of market and Access Rights Holders activities. The latter three persons, with the assistance of electronic analytical tools, devote full time to surveillance of the market for abnormal trading patterns after the allocation process has been completed.

If violations of applicable laws and regulations are detected, BM&F's self-regulatory bodies initiate and conduct disciplinary administrative proceedings to assess the violations and apply the appropriate penalties. Further, these bodies examine all complaints concerning operation of the organized markets, monitoring their progress and the responsive measures that have arisen from those complaints. Similar to the U.S., intermediaries have a right to appeal any BM&F disciplinary decision to the governmental regulators.

In fulfilling its self-regulatory responsibilities, BM&F issues Circulars and other binding notices to market participants which govern Trading Rights Holder's conduct with respect to trading on the Exchange as well as sales and financial conduct with respect to their customers. As discussed above, these include among other requirements, that Trading Rights Holders be fit, not have any statutory disqualifications, provide customers with disclosure information and confirmations, have adequate capital, have adequate systems, not abuse customer orders or manipulate the market, and provide the Exchange with requested information.

B. Functions of the Self-Regulatory Department

The Self-Regulatory Department (Department) conducts oversight and surveillance of trading on BM&F. Assisted by the Audit Department, the Department conducts market surveillance for possible price manipulations, distortions and market congestion, in addition to surveillance for trading abuses. The Department performs surveillance by analyzing various futures and cash market data, by analyzing price data for futures and cash markets, and by comparing current futures market data with respect to the price levels across commodities, across geographic markets and inter-temporally.

BM&F establishes position limits that can be applied at many levels for its Exchange-traded derivatives contracts, including customer, broker, clearing member and financial group. Position limits on the size of customer positions are calculated both as an absolute number and as a percentage of open interest and can be adjusted based upon BM&F's assessment of various risk factors. Using automated programs that generate exception reports, BM&F monitors position size in the various contracts on a daily basis and with close scrutiny during a contract's delivery month or if the market participant is at the limit, in which case the Exchange may require the posting of additional margin or the reduction of the size of the position. Staff routinely contacts

the Trading Rights Holder in connection with positions that generate an exception report.⁵⁴ In addition, BM&F applies intra-day daily price fluctuation limits to the contracts traded on the Exchange.

The Self-Regulatory Department also conducts surveillance to detect possible trading abuse violations. For example, cross-trades by the same position holder are prohibited. Other forms of abusive trading, such as engaging in fictitious transactions, pre-arrangement of trades, acting individually or in concert to give a false impression of market activity, false dissemination of information, unfair competition, and trading in anticipation of a client's trading activities are also prohibited. The Self-Regulatory Department analyzes various futures market data, including unusual trading patterns or other indicators of suspicious activity. In this regard, surveillance staff will open an inquiry when suspicious trades or trading patterns have been identified through various electronically-generated exception reports. The staff has authority to make such inquiries of Trading Rights Holders regarding any suspicious activities and may make such further investigation as is warranted.

Finally, as previously described, the Clearinghouse is responsible for clearing operations and for monitoring risk, conducting risk assessment and related clearing functions. In the event that a Settlement Right Holder's position is deemed to pose an unacceptable risk to the Clearinghouse, BM&F has the authority to take any necessary measures including suspending the Settlement Rights Holder's trading, closing open positions and requiring the posting of additional margin, or other necessary action as set forth in the Clearinghouse Rulebook and Clearinghouse Operations Manual.

VII. INFORMATION-SHARING

As described more fully below, the Commission and its staff will be entitled to receive sufficient information regarding BM&F, the trading system and BM&F's Trading and Settlement Rights Holders directly from BM&F pursuant to the terms and conditions of the no-action relief granted herein. BM&F will provide directly to the Commission information necessary to evaluate the continued eligibility of BM&F or its Trading or Settlement Rights Holders for the relief, to enforce compliance with the terms and conditions of the relief, or to enable the Commission to carry out its duties under the Act and Commission regulations. BM&F is a signatory to the Exchange *International Information Sharing Memorandum of Understanding and Agreement* dated March 15, 1996, a framework for over 60 futures exchanges and clearing organizations worldwide to share information relevant to managing global market emergencies.

With respect to government to government information sharing relevant to BM&F Bovespa and BM&F's market participants, the CVM has entered into a Memorandum of Understanding with the Commission's Division of Enforcement, signed in Washington, D.C. on April 12, 1991. The CVM is also a party to the Windsor Declaration, the Tokyo Communiqué

⁵⁴ BM&F has full information regarding a trader's positions through the clearing system, which separately identifies, through the account structure, each trader's positions at the end-customer level. Accordingly, the positions of all traders, not just large traders, are known by the Exchange.

and the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations (Boca Declaration).

The Commission, in connection with BM&F's Rule 30.10 Petition, also received confirmations from both CVM and BM&F, respectively, that they will share with the Commission on an "as needed" basis, information relevant to BM&F transactions proposed to be entered into with or on behalf of U.S. customers.⁵⁵ In addition, CVM represented to the Commission that: (1) it has entered into information-sharing arrangements with other financial regulators in Brazil, including BACEN, and will undertake best efforts to retrieve any other related information from such financial regulators including, if necessary, obtaining a court order to suspend the provisions of any applicable bank secrecy laws; and (2) local laws do not serve as an impediment to cooperation and information-sharing with the Commission.⁵⁶ The Commission also received a confirmation that the CVM intends to submit an application to IOSCO to become a signatory to the *Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information* (MMOU), dated October 16, 2003 and, in that regard, will use its best efforts to comply with any recommendations or conditions that IOSCO might impose as a pre-requisite for becoming a signatory to the MMOU.

Separately, by letter dated September 15, 2008, the CVM confirmed that the Memorandum of Understanding on Mutual Assistance and Exchange of Information between the CVM and the CFTC, dated April 12, 1991, and the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations would extend to information requested by the CFTC in connection with the activities conducted pursuant to any no-action relief granted by the CFTC, or any division thereof, in connection with the establishment and use in the U.S. of electronic facilities providing access to a CVM-regulated market or products traded through a CVM-regulated market.⁵⁷

VIII. CONCLUSION

Consistent with the Commission's Policy Statement and the June 2 Order, the Division has reviewed and considered BM&F's no-action request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by BM&F indicate that BM&F and its members are subject to oversight in Brazil by a regulatory regime that is based upon regulatory objectives that generally are equivalent to those in the U.S.;

⁵⁵ Letter from Eduardo Manhães Ribeiro Gomes, President, CVM, to Jean Webb, Secretary, Commission, dated April 1, 2002; BM&F November 14, 2001 response to staff letter dated September 21, 2001, at pp. 18-19 filed in connection with the BM&F 30.10 Petition. The assurances of BM&F and CVM concerning information sharing on an as needed basis extend, but are not limited to, information as to trade confirmations, offshore funds committed to BM&F transactions, firm related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Brazil into the U.S.

⁵⁶ In connection with its 30.10 Petition, BM&F has also confirmed that the express statutory provisions of Law 105 (2001) provide that the Brazilian secrecy rights and confidentiality legal provisions cannot be used to obstruct information sharing among market regulators and financial institutions examiners.

⁵⁷ Letter from Alexandre Diniz de Oliveira Freitas, Acting Head of International Affairs, CVM, to Jacqueline H. Mesa, Director, Office of International Affairs, Commodity Futures Trading Commission (September 15, 2008).

that the regulatory regime provides basic protections for customers trading on BM&F's market and for the integrity of the market itself; that BM&F and its regulatory authority employ surveillance, compliance and enforcement mechanisms designed to ensure compliance with statutes and BM&F's and the regulatory authority's rules and regulations; that BM&F adheres to the IOSCO Principles; and that adequate information-sharing arrangements applicable to the activities of BM&F are in place.⁵⁸

Based specifically upon these and other representations made by BM&F in support of its no-action request, the Division has determined that granting no-action relief to BM&F and its members would not be contrary to the public interest. Accordingly, subject to compliance with the terms and conditions stated herein, the Division will not recommend that the Commission institute enforcement action against BM&F or its members if BM&F does not seek designation as a DCM or registration as a DTEF pursuant to Sections 5 or 5a, respectively, of the Act or comply with any other section of the Act or Commission regulations relating specifically to DCMs or DTEFs with respect to the submission of orders to BM&F by:

- (1) persons located in the U.S. that have been authorized by or under the rules of the CME to have access to a CME Globex terminal and that, pursuant to the BM&F-CME Order Routing Agreement of which both BM&F and CME are signatories, have been granted the right to directly access BM&F's GTS through the use of a Globex terminal (CME Access Holders);
- (2) an FCM that submits orders for execution to the trading system using the GTS API for its proprietary account or from or on behalf of U.S. customers; and
- (3) a U.S. customer of an FCM or Rule 30.10 Firm (authorized customer) that is authorized by an entity with access rights to BM&F Bovespa (authorized entity) to enter orders directly into the trading system using the GTS API; and through the clearing relationship between such an authorized entity and a BM&F Settlement Rights Holder (clearing member), and as a requirement for and as a condition of the authorized entity's permitting direct access to the BM&F GTS API by the authorized customer, the BM&F Settlement Rights Holder:
 - a. guarantees and assumes all financial responsibility for all activity conducted through each authorized customer's direct market access connection;
 - b. assists BM&F in a timely manner in any investigation into potential violations of BM&F Rules, the CEA, or the terms and conditions set forth in the no-action relief, including, but not limited to, requiring the authorized customer to answer questions from BM&F, and/or appear in connection with the investigation; and

⁵⁸ The Division notes that the foregoing is not intended to be an exhaustive list of the factors relevant to its decision to grant the no-action relief requested by BM&F nor of the factors that the Division might consider when analyzing no-action requests from other exchanges. No-action requests, by their nature, require case-by-case evaluation and the Division's conclusion regarding any particular no-action request will be based upon the facts and circumstances presented at the time of its review of that request.

c. suspends or terminates the authorized customer's access if BM&F determines that the actions of the authorized customer threaten the integrity or liquidity of any contract, violate any BM&F Rule or the CEA, or if the authorized customer fails to cooperate in an investigation.

The Division's no-action position shall become effective immediately with respect to the following BM&F contracts:

Agricultural Contracts

- Crystal Sugar Futures Contract
- Call and Put Options on Crystal Sugar Futures Contract
- Anhydrous Fuel Alcohol Futures Contract
- Call and Put Options on Anhydrous Fuel Alcohol Futures Contract
- US Dollar-Denominated Ethanol Futures Contract
- Cotton Futures Contract
- Feeder Cattle Futures Contract
- Call and Put Options on Feeder Cattle Futures Contract
- Real-denominated Live Cattle Futures Contract
- Mini Live Cattle Futures Contract (WTr)
- Call and Put Options on Real-denominated Live Cattle Futures Contract
- Arabica Coffee Spot Contract⁵⁹
- Arabica Coffee Futures Contract
- Mini Arabica Coffee Futures Contract (WTr)
- Call and Put Options on Arabica Coffee Futures Contract
- Robusta-Conillion Coffee Futures Contract
- Call and Put Options on Robusta-Conillion Coffee Futures Contract
- Real-Denominated Corn Futures Contract
- Call and Put Options on Real-Denominated Corn Futures Contract
- Soybean Futures Contract
- Call and Put Options on Soybean Futures Contract

Non-Agricultural Contracts

- Gold Spot Contract
- Gold Futures Contract
- Call and Put Options on Gold Spot Contract
- Gold Forward Contract⁶⁰

⁵⁹ The Division recognizes that the Arabica Coffee Spot and the Gold Spot Contracts would not be considered to be futures or option contracts subject to Commission oversight under the Act and, as such, could be traded by direct access from the U.S. without the no-action relief provided herein. These contracts are included herein because BM&F requested they be included in the no-action relief.

⁶⁰ The BMF Bovespa Gold Forward Contract calls for delivery within five days, but can be extended to longer periods. To the extent that the Commission would consider this contract to fall within the requirements of Section 4(a) of the Act, BM&F Bovespa is including it as a subject of the relief provided herein.

- General Market Price Index (IGP-M) Futures Contract
- Mini General Market Price Index (IGP-M) Futures Contract
- Extended Consumer Price Index (IPCA) Futures Contract
- U.S. Dollar Futures Contract
 - Annex: Forward Points on U.S. Dollar Futures
 - Annex: U.S. Dollar Volatility (VTC)
 - Annex: U.S. Dollar Volatility with Futures –Style Options (VCA)
- Call and Put Options on Spot U.S. Dollar Contract
- Futures-Style Call and Put Options on Spot U.S. Dollar Contract
- Call and Put Options on U.S. Dollar Futures Contract
- Mini U.S. Dollar Futures Contract (WTr)
- Euro Futures Contract
- One-day Interbank Deposit Futures Contract
 - Annex: Interbank Deposit Spot Rate Volatility (VTF)
 - Annex: Interbank Deposit Forward Rate Volatility (VID)
- Call and Put Options on Average One-Day Interbank Deposit Rate Index Contract
- Call and Put Options on One-Day Interbank Deposit Futures Contract
- IDxUS Dollar Spread Futures Contract
 - Annex: FRA on the ID x US Dollar Spread
- Mini ID x U.S. Dollar Swap with Reset
- ID x U.S. Dollar Swap with Reset
- ID x IPCA Spread Futures Contract
- ID x IGP-M Spread Futures Contract
- Long-Term Interbank Deposits Futures Contract – Long ID
- A-Bond Futures Contract
- Global 2009 Futures Contract
- Global 2010 Futures Contract
- Global 2011 Futures Contract
- Global 2012 Futures Contract
- Global 2013 Futures Contract
- Global 2014 Futures Contract
- Global 2015 Futures Contract
- Global 2019 Futures Contract
- Global 2020 Futures Contract
- Global 2024 Futures Contract
- Global 2025 Futures Contract
- Global 2027 Futures Contract
- Global 2030 Futures Contract
- Global 2034 Futures Contract
- Global 2037 Futures Contract
- Global 2040 Futures Contract
- Ten-Year US Treasury Note Futures Contract
- Three-Year Brazilian Sovereign Credit Default Swap Futures Contract

- Five-Year Brazilian Sovereign Credit Default Swap Futures Contract
- Seven-Year Brazilian Sovereign Credit Default Swap Futures Contract

The Division's no-action position shall become effective with respect to the following contracts when BM&F receives a no-action position from Commission staff that would permit the offer and sale of futures contracts on such foreign stock indices within the U.S.:

Equity Indexes

- Ibovespa Futures Contract
- Mini Ibovespa Futures Contract (WTr)
- American-Style Call and Put Options on Ibovespa Futures Contract
- European-Style Call and Put Options on Ibovespa Futures Contract
- Brazil Index-50 Futures Contract

If additional futures and option contracts become available for trading through the trading system, BM&F may make such futures and option contracts available for trading by direct access from the U.S. in accordance with the provisions of the Commission's Notice of Revision 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 Provide Direct Access to their Automated Trading Systems from Locations in the United States.⁶¹

The scope of the Division's no-action position is restricted to providing relief from the requirement that BM&F obtain DCM designation or DTEF registration pursuant to Sections 5 and 5a, respectively, of the CEA and regulatory requirements that flow specifically from the DCM designation and DTEF registration requirements if the above-referenced contracts are made available in the U.S. for trading through GTS in the manner set forth herein. The Division's no-action position does not extend to any other provision of the Act, any other Commission regulations or orders, or to any registered futures association rules and does not excuse BM&F or its members from compliance with any applicable requirements thereunder. Nor does the no-action position alter, restrict, or expand the coverage of existing Commission exemptions for particular products.

The Division specifically notes that its no-action position does not alter the general requirement that a firm operating pursuant to the no-action relief provided herein must be appropriately registered or exempt from such registration to engage in the offer or sale of a foreign futures contract or a foreign option transaction for or on behalf of a U.S. customer. For

⁶¹ 71 Fed. Reg. 19877 (April 18, 2006); corrected at 71 Fed. Reg. 21003 (April 24, 2006). The Notice of Revision does not apply to broad-based stock index futures and option contracts that are covered by Section 2(a)(1)(C) of the Act. Foreign boards of trade are required to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling such contracts through U.S.-located trading systems. Additionally, should the Exchange propose to make available pursuant to the no-action relief granted in this letter a contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a CFTC-regulated DCM or DTEF, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract, the Division will impose additional conditions that must be met for the no-action relief to continue in effect for those contracts.

example, nothing in this letter is intended to alter current Commission rules that require that any foreign firm that clears trades on a fully-disclosed basis on behalf of U.S. persons (including where the U.S. person is a non-clearing member of a foreign board of trade trading solely for its own account) be a registered FCM or a Rule 30.10 Firm. However, if a foreign firm solely carries accounts on behalf of U.S. customers that are the foreign firm's or any registered FCM's proprietary accounts (as defined in Rule 1.3(y)) or the foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM and its sole contact with a U.S. customer is that it carries the FCM's omnibus account, then the firm need not register under Rule 30.4 nor confirm relief under Rule 30.10.

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the U.S. Thus, although a Rule 30.10 Firm's customers may have direct access to GTS in the U.S., the Rule 30.10 Firm may not operate or have a presence in the U.S. The Rule 30.10 Firm would also be permitted to accept orders overseas from customers located in the U.S. that submit such orders by telephone or through an AORS. FCMs or Rule 30.10 Firms who solicit or accept orders from U.S. customers for trading on GTS remain responsible for, among other things, complying with risk disclosure, the handling and allocating of customer orders, and the segregation of customer funds.

The Division's no-action position does not affect the Commission's ability to bring appropriate action for fraud or manipulation. The Division specifically notes that the use of AORSs to transmit orders to GTS shall be subject to all existing Commission rules and regulations and to any future rules or guidance issued by the Commission or the Division. Finally, this letter does not address issues that might arise under the Securities Act of 1933, the Securities Exchange Act of 1934, or any other applicable federal securities law or rule promulgated thereunder.

The Division's no-action position is subject to compliance with the following conditions:

1. BM&F Bovespa will continue to satisfy the criteria for approval by the CVM as an exchange under the laws of Brazil with respect to transactions effected through the BM&F trading system.
2. The laws, systems, rules, and compliance mechanisms of Brazil applicable to BM&F Bovespa will continue to require BM&F Bovespa to maintain fair and orderly markets with respect to the BM&F market; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.
3. BM&F Bovespa will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Brazilian law.
4. Only persons granted the right to directly access BM&F's trading system under the BM&F-CME Order Routing Agreement, of which both BM&F and CME are signatories, will

have access to the BM&F trading system from the U.S. pursuant to the no-action relief granted herein and BM&F will not provide, and will take reasonable steps to prevent third parties from providing, such access to the system to persons other than the foregoing persons.

5. Only an FCM registered with the Commission that submits orders for execution to the trading system using the GTS API for its proprietary account or from or on behalf of U.S. foreign futures and options customers will have access to the BM&F trading system from the U.S. pursuant to the no-action relief granted herein and BM&F will not provide, and will take reasonable steps to prevent third parties from providing, such access to the system to persons other than the foregoing persons.

6. Only a U.S. customer of an FCM or a Rule 30.10 Firm authorized by a BM&F Trading Rights Holder will have access to the BM&F System from the U.S. pursuant to the no-action relief granted herein where a BM&F Settlement Rights Holder, through its clearing relationship with a Commodity Brokerage House, guarantees and assumes all financial responsibility for all activity conducted through each U.S. customer's direct market access connection and undertakes to assist in investigations.

7. All orders for U.S. customers accepted through an AORS and transmitted by BM&F Trading Rights Holders to the trading system pursuant to the relief granted herein will be intermediated by a BM&F member that is either registered with the CFTC as an FCM or is a Rule 30.10 Firm.

8. U.S. and Brazilian intermediaries will continue to be required by law to segregate customer funds. Funds and securities that are deposited by, or on behalf of, U.S. customers as collateral shall be held by BM&F, pursuant to Brazilian law, in accounts specifically segregated for the benefit of, and registered in the name of, each such customer.

9. BM&F will require that each current and prospective Trading or Settlement Rights Holder of BM&F Bovespa that operates pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM execute and file with BM&F a written representation, executed by a person with the authority to bind the Trading or Settlement Rights Holder, stating that as long as the BM&F Trading or Settlement Rights Holder operates pursuant to the no-action relief provided herein, the Trading or Settlement Rights Holder agrees to and submits to the jurisdiction of the CFTC with respect to activities conducted pursuant to the no-action relief. BM&F will maintain the foregoing representations as long as the relevant Trading or Settlement Rights Holder is operating pursuant to the no-action relief and shall make such representation available to the Commission upon the request of a CFTC representative.

10. BM&F will require that each current and prospective Trading or Settlement Rights Holder of BM&F Bovespa that operates pursuant to the no-action relief provided herein and that is not registered with the CFTC as an FCM execute and file with BM&F a valid and binding appointment of a U.S. agent for service of process in the U.S. pursuant to which the agent is authorized to accept delivery and service of "communications" issued by or on behalf of the

Commission.⁶² BM&F will maintain the foregoing appointments as long as the relevant Trading or Settlement Rights Holder is operating pursuant to the no-action relief and shall make such appointments available to the CFTC upon the request of a Commission representative.

11. BM&F will require that each current and prospective Trading or Settlement Rights Holder of BM&F Bovespa that operates pursuant to the no-action relief provided herein and that is not registered with the CFTC as an FCM file with BM&F a written representation, executed by a person with the authority to bind the Trading or Settlement Rights Holder, stating that as long as the relevant BM&F Trading or Settlement Rights Holder operates pursuant to the no-action relief provided herein, the Trading or Settlement Rights Holder will provide, upon the request of the Commission, the U.S. Department of Justice and, if appropriate, the National Futures Association (NFA), prompt access to original books and records maintained at their U.S. offices as well as to the premises where the trading system is installed or used in the U.S. BM&F will maintain the foregoing representations as long as the relevant Trading or Settlement Rights Holder is operating pursuant to the no-action relief. BM&F will make such representations available to the CFTC upon the request of a Commission representative.

12. Prior to operating pursuant to the no-action relief provided herein, BM&F will file with the Division, and maintain thereafter as long as BM&F, its Trading or Settlement Rights Holders or the trading system operate pursuant to the no-action relief, a valid and binding appointment of a U.S. agent for service of process in the U.S., pursuant to which the agent is authorized to accept delivery or service of “communications”, as defined above, that are issued by or on behalf of the CFTC.

13. BM&F will maintain the following updated information and submit such information to the Division on at least a quarterly basis, not later than 30 days following the end of the quarter, and at any time promptly upon the request of a Commission representative, computed based upon separating buy sides and sell sides in the format reflected in the attachment to this letter:

- a. For each contract available to be traded through the trading system, (i) the total trade volume originating from electronic trading devices providing access to the trading system in the U.S., (ii) the total trade volume for such products traded through the trading system worldwide, and (iii) the total trade volume for such products traded on BM&F generally; and
- b. A list identifying the responsible BM&F Trading Rights Holder and its NFA ID, if applicable; the identification (if applicable) of the FCM and its NFA ID; and the names and the CVM code of U.S. customers having direct access to the BM&F trading system in the U.S.

14. BM&F Bovespa will request that the CVM provide to the Division not later than July 1st

⁶² For purposes of these conditions, “communications” is defined to include any summons, complaint, order, subpoena, request for information, or notice or any other written or electronic documentation or correspondence issued by or on behalf of the Commission.

of each year a letter or email confirming that BM&F retains its authorization in good standing as an exchange under the exchange licensing methodology used in Brazil.

15. BM&F will promptly provide the Division with written notice of the following:
 - a. Any material change in the information provided in its no-action request, including any information contained in the documents submitted in support thereof;⁶³
 - b. Any material change in BM&F's Rules or the laws, rules, and regulations in Brazil relevant to futures and options;
 - c. Any matter known to BM&F or its representatives that, in BM&F's judgment, may affect the financial or operational viability of BM&F, including, but not limited to, any significant system failure or interruption;
 - d. Any default, insolvency, or bankruptcy of any BM&F Bovespa Trading or Settlement Rights Holder known to BM&F or its representatives that may have a material, adverse impact upon the condition of BM&F, BM&F Clearing, or upon any United States customer or firm;
 - e. Any known violation by BM&F Bovespa or any BM&F Trading or Settlement Rights Holder of the terms or conditions of the no-action relief provided herein; and
 - f. Any disciplinary action taken by BM&F Bovespa against any BM&F Access Rights Holder operating pursuant to the no-action relief provided herein that involves any market manipulation, fraud, deceit, conversion or that results in suspension or expulsion and that involves the use of the trading system or an AORS to submit orders to BM&F and either (i) the BM&F Access Rights Holder against whom the disciplinary action is taken is located or based in the U.S. or (ii) the disciplinary action results, in whole or in part, from conduct that: (1) involves the use of a terminal or an AORS that is located in the U.S. to accept or submit an order to the trading system; (2) involves a U.S. customer or firm or registered FCM; or (3) might have a material, adverse impact upon any U.S. customer or firm.
16. Information-sharing arrangements satisfactory to the Commission will be in effect between the Commission and relevant Brazilian authorities.
17. The Commission will be able to obtain sufficient information regarding BM&F Bovespa and its Trading or Settlement Rights Holders operating pursuant to the no-action relief provided herein. BM&F will provide directly to the Commission information necessary to evaluate the

⁶³ The Division notes that "material" changes in the information provided to it in support of the no-action request would include, without limitation, a modification of: BM&F's Trading or Settlement Rights Holder criteria; the location of BM&F's management, personnel or operations (particularly changes that may suggest an increased nexus between BM&F's activities and the U.S.); the basic structure, nature, or operation of the trading and/or clearing system; or the regulatory or self-regulatory structure applicable to BM&F and its Trading or Settlement Rights Holders.

continued eligibility of BM&F or its Trading or Settlement Rights Holders for the relief, to enforce compliance with the terms and conditions of the relief, or to enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or U.S. DCMs and DTEFs.

18. BM&F Bovespa will employ reasonable procedures, to be determined by BM&F Bovespa, for monitoring and enforcing compliance with the terms and conditions of the no-action relief provided herein.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. It is based upon the information and representations contained in BM&F Bovespa's no-action request and the materials submitted in support thereof. Any materially different, changed, or omitted facts or circumstances may render this letter void. The Division specifically notes that it will examine the volume information submitted as a condition to the no-action relief provided herein, as well as any changes in the nature or extent of BM&F's activities in the U.S., to ascertain whether BM&F Bovespa's presence in the U.S. has increased to a level that might warrant reconsideration of the no-action relief. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, Senior Special Counsel, at dandresen@cftc.gov or by phone at (202) 418-5492.

Very truly yours,

Richard A. Shilts
Director

cc:

Gregory C. Prusik, Vice-President Compliance and Registration, NFA
Branch Chief, Audit and Financial Review Unit, Division of Clearing and Intermediary Oversight, Chicago Regional Office
Cicero Augusto Vieira Neto, BM&F
Verdi Rosa Montiero, BM&F

Attachment

Attachment

Quarterly Trading Volume Report for Foreign Boards of Trade Granted No-Action Relief (Computed based upon separating buy sides and sell sides).

1	2	3	4	5	6	7
Product ¹	Volume from All Terminals ²	Total Buy/Sell Side Volume (COLUMN 2 X 2) ³	Volume from U.S. Terminals			Percentage from U.S. Terminals ⁷
			Buy Side ⁴	Sell Side ⁵	Total (4) + (5) ⁶	
Contract 1						
Contract 2						
Contract 3						
Contract 4						
Totals						

¹ List each contract that is eligible to be traded by direct access from the U.S., including those contracts for which there was no trading volume during the reporting period.

² Include the total volume worldwide on the electronic trading system for each listed contract and, in the bottom row, enter the total of such volume worldwide for all listed contracts.

³ Multiply Column 2 X 2 (this should represent the total electronic buy side plus the total sell side volume worldwide for each listed contract).

⁴ Include the total electronic buy side volume for each contract originating by direct access in the U.S.

⁵ Include the total electronic sell side volume for each contract originating by direct access in the U.S.

⁶ Add Columns 4 + 5 to represent the total electronic buy side and sell side volume for each contract originating by direct access in the U.S.

⁷ Divide Column 6 by Column 3 and multiply the result by 100 to determine the percentage of the total buy/sell side volume originating from the U.S.