



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Trading and Markets

CFTC Letter No. 02-24
February 27, 2002
No-Action
Division of Trading and Markets

VIA FACSIMILE and U.S. MAIL

Philip McBride Johnson
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave, N.W.
Washington, DC 20005-2111

Re: Sections 5 and 5a - Bourse de Montréal Inc.: Request for
No-Action Relief from Contract Market Designation and
Derivatives Transaction Execution Facility Registration Requirements

Dear Mr. Johnson:

This is in response to your letter dated August 28, 2001 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission").¹ By this correspondence, you request, on behalf of the Bourse de Montréal Inc. (the "Bourse" or "Exchange"), that the Division grant no-action relief to permit the Bourse to make its electronic trading and order matching system, known as *Système automatisé de Montréal* (referred to herein as "SAM" or the "System"), available to US-based Approved Participants² in the United States³ ("No-Action Request"). Specifically, the Bourse wishes to make SAM available to: (1) Approved Participants who wish to use terminals located in the

¹ Letter from Phillip McBride Johnson, Counsel to the Bourse de Montréal Inc., to John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission (August 28, 2001).

² For purposes of the No-Action Request and the relief provided herein, references to an "Approved Participant" shall include an individual, a partnership or a corporation, whose principal business is that of a broker or dealer in securities or commodity futures, which has been approved by the Bourse to trade in the products listed on the Bourse. The Bourse represents that the term "Approved Participant" replaced the term "Member" when the Bourse was demutualized. All transactions on the Bourse must be cleared through an account with an Approved Participant. Under the Rules of the Bourse, an Approved Participant that is not incorporated under Canadian law (such as a US-based firm) must be registered with a securities commission or another regulatory organization recognized by the Bourse.

³ For purposes of this letter and the relief provided herein, the term "United States" shall include the United States, its territories and possessions.

United States giving them access to SAM to trade on the Bourse for their proprietary accounts⁴; (2) Approved Participants who are registered with the Commission as futures commission merchants (“FCMs”) and who wish to use terminals located in the United States giving them access to SAM to submit and transmit orders from United States customers⁵; and (3) Approved Participants who are registered with the Commission as FCMs or who are exempt from such registration pursuant to Rule 30.10 (“Rule 30.10 Firms”)⁶ who wish to accept orders through United States automated order routing systems (“AORSs”)⁷ from United States customers for submission to SAM.

The Bourse requests that the Division confirm that it will not recommend that the Commission institute enforcement action against the Bourse, Canadian Derivatives Clearing Corporation (“CDCC”)⁸, or Approved Participants solely based upon the Bourse’s failure to seek designation as a contract market or registration as a derivatives transaction execution facility (“DTF”) pursuant to Sections 5 or 5a of the Commodity Exchange Act (“CEA” or “Act”),⁹ respectively, or to comply with those Commission regulations that specifically relate to contract markets or DTFs, in connection with the installation and use in the United States of terminals and/or AORSs that are used to submit orders to SAM.

⁴ For purposes of this letter and the relief provided herein, the term "proprietary account" shall have the meaning set forth in Rule 1.3 (y). 17 C.F.R. § 1.3(y) (2001). Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

⁵ For purposes of this letter and the relief provided herein, the term "United States customers" shall have the same meaning as the term "foreign futures or foreign options customers" as it is defined in Rule 30.1 (c).

⁶ 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 Commodity Exchange 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: (1) 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; (2) minimum financial requirements for those persons that accept customer funds; (3) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (4) procedures for auditing compliance with the requirements of the regulatory program, including record keeping and reporting requirements; (5) standards for the protection of customer funds from misapplication; and (6) 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 (2001).

⁷ For purposes of this letter and the relief provided herein, the term "AORS" shall be defined to include any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial intervention, trade matching or execution takes place.

⁸ The CDCC is the issuer, clearinghouse, and guarantor of exchange-traded interest rate and equity derivative contracts in Canada. See Section II D below for more details.

⁹ 7 U.S.C. §§ 1 et seq., as amended by the Commodity Futures Modernization Act of 2000, PL 106-554, 114 Stat. 2763 (2000).

As you know, on March 24, 1999, the Commission published proposed rules that would have governed the circumstances under which foreign futures exchanges could be accessed from electronic trading devices in the United States.¹⁰ On June 2, 1999, the Commission issued an order that withdrew those proposed rules and directed the Commission staff to begin considering requests from foreign exchanges for interim no-action relief to allow them to place trading systems in the United States on a temporary basis until the Commission itself promulgates rules or guidelines in this area ("June 2 Order").¹¹ In accordance with this instruction, the Division has reviewed the Bourse's No-Action Request and the materials submitted in support thereof.

In connection with its No-Action Request, the Bourse has forwarded the following information to the Division:

- Literature describing the Bourse and its operations, including those of its wholly-owned clearing corporation, CDCC;
- Materials relating to the SAM system;
- Documents relating to the Bourse's participation in the Globex Alliance;
- A copy of the Bourse's current Rulebook; and
- A copy of the Order of the Commission des valeurs mobilières du Québec (CVMQ) recognizing the Bourse as a Self-Regulatory Organization.

In addition, the Bourse referred to certain information already in the possession of the Division, including but not limited to:

- Commission Orders pursuant to Rule 30.10 exempting designated members of the Bourse from certain of the Commission's foreign futures and options rules based on substituted compliance with comparable regulatory and self-regulatory requirements of the CVMQ¹²; and
- A listing of the information-sharing arrangements among the Bourse, the Commission, and other regulatory and self-regulatory bodies.

Representations made by the Bourse regarding the Bourse's activities in the United States, the Bourse's membership criteria, the SAM system, the relevant regulatory regime in Canada, and the information-sharing arrangements applicable to the SAM system are

¹⁰ Access to Automated Boards of Trade, 64 Fed. Reg. 14159 (proposed March 24, 1999), withdrawn, June 2, 1999.

¹¹ Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, Release No. 4274-99 (June 2, 1999).

¹² The Bourse was one of the first foreign futures markets to receive Rule 30.10 exemption. 54 Fed. Reg. 11179 (Mar. 17, 1989); 62 Fed. Reg. 8875 (Feb. 27, 1997).

summarized in Sections I - V below. For purposes of its response to the No-Action Request, the Division has relied upon the Bourse's representations and has not conducted an independent review to confirm their accuracy.¹³

I. GENERAL INFORMATION REGARDING THE BOURSE

The Bourse is Canada's only derivatives market for financial instruments. Its main office and place of business is in Montreal, Quebec. It is governed by the *Securities Act*, Revised Statutes of Quebec, c. V-1.1, which is administered by the CVMQ.¹⁴

The Bourse's predecessor corporation, The Montreal Exchange, was incorporated as a stock exchange in 1874. It began trading futures contracts on government debt and financial instruments in 1979.

As of October 1, 2000, the Bourse converted from a membership organization to a for-profit Quebec corporation under the name of Bourse de Montréal Inc.¹⁵ To carry on business in Quebec, an exchange must be recognized as a self-regulatory organization ("SRO") by the CVMQ pursuant to section 169 of the *Securities Act*. The recognition process involves a detailed review of the structure, operations, rules and finances of the applicant. The CVMQ recognized the restructured exchange as an SRO on November 4, 2000. A copy of the English version of the CVMQ's Ruling No. 2000-C-0729 (the "Recognition Order") was attached to the Bourse's petition.

As an SRO, the Bourse is subject to the extensive supervisory powers of the CVMQ as provided in sections 177 to 186 of the *Securities Act*. All Rules and Policies of the Bourse and all amendments thereto must be approved by the CVMQ before they take effect. The CVMQ conducts the rule approval process in collaboration with the Ontario Securities Commission. The Bourse is subject to the reporting and inspection requirements of the CVMQ, and all Bourse decisions are subject to CVMQ review.

The Bourse offers derivatives on a variety of instruments, some of which would not be within the Commission's jurisdiction if the Bourse were a US market.¹⁶ It also trades futures on Canadian government debt,¹⁷ on bankers' acceptances, and on a national stock index.¹⁸

¹³ As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by the Bourse 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.

¹⁴ Commodity futures trading and commodity futures exchanges are regulated in Quebec under the *Securities Act*.

¹⁵ Notice of this change was given to the Commission on October 3, 2000 by letter from counsel to the Bourse to John C. Lawton, Acting Director, Division of Trading and Markets, as well as to relevant officials within the Office of the General Counsel and the National Futures Association ("NFA").

¹⁶ For instance, the Bourse lists options on individual equity securities, which are the Bourse's most active products on an aggregate basis. Those options are issued by CDCC pursuant to an S-20 registration statement and supplements filed with the US Securities and Exchange Commission ("SEC")

¹⁷ On the initiative of the Bourse, the SEC has included Canadian government debt securities in its exemption from registration for futures trading purposes under Rule 3a 12-8.

Recently, the Bourse also began listing futures on individual equity securities.¹⁹ All transactions are cleared through CDCC. Contract specifications for all products are filed with the CVMQ and other Canadian regulators.²⁰

The Bourse represents that it does not maintain an office within the United States. While it participates in industry conferences and expositions held in the US, it does not operate any solicitation or marketing efforts using US-based persons, nor does it have in the US any facility providing investment advice to US persons. Neither does it have any trading or clearing facility in the US. The Bourse also notes that it does not communicate in any way with retail clients.

II. HOW SAM OPERATES

At the outset, the Division notes that the description of SAM set forth herein is based upon representations made by the Bourse or its representatives. The Division has not performed an independent assessment of the security or soundness of SAM. The Bourse states, however, that SAM uses the NSC²¹ electronic trading platform and is similar to the GLOBEX®2 architecture. The Bourse notes that the Commission has had a number of opportunities to assess the GLOBEX®2 system during its implementation by the Chicago Mercantile Exchange and extension of its service to a number of foreign futures markets, including the Bourse. The Bourse points out that the Commission has also considered the NSC system, which SAM uses, in the context of its review of the request for similar no-action relief by ParisBourse SA. In that instance, the Commission found that the NSC system is largely the same system as used by the CME in its operation of GLOBEX®2.²²

A. System Architecture and Failure Recovery Systems

1. Architecture

¹⁸ The Bourse procured no-action relief from the Commission's Office of General Counsel for this contract – the S&P/TSE 60 Index Futures – on December 9, 1999. See [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,050. In addition, the Bourse has procured permission from the Commission on several occasions to offer options to US investors. See 53 Fed. Reg. 28840 (July 29, 1988), reprinted at [1987-90 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,288 (IOCC foreign currencies and precious metals); 56 Fed. Reg. 3207 (January 30, 1991), reprinted at [1990-92 Transfer Binder] Comm. Fut. L. Rep. ¶24,991 (Canadian sovereign debt); and 59 Fed. Reg. 10281 (March 4, 1994), reprinted at [1992-94 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,986 (Bankers' Acceptances).

¹⁹ The Bourse notes that it appears that the CEA, notwithstanding the changes implemented by the Commodity Futures Modernization Act of 2000, continues to prohibit the offer or sale to US investors of single-stock futures listed on foreign boards of trade. See CEA §2(a)(1)(C)(v). See also §6(h)(1) of the Securities Exchange Act (in the case of "security futures"). The Bourse understands that the CFTC and the SEC may address this situation by developing a program to permit full competitive participation in this product class by foreign futures markets. Until then, the Bourse acknowledges that access to its single-stock futures by US investors is restricted.

²⁰ The Bourse has also been designated by the US Department of the Treasury as a "qualified board or exchange" under §1256 of the Internal Revenue Code, enabling US participants in the Bourse's futures contract transactions to invoke related special tax treatment.

²¹ "Nouveau Systeme de Cotation."

²² See the letter of the Director of the Division of Trading and Markets to ParisBourse SA dated August 10, 1999.

SAM (“*Système Automatisé de Montréal*”) refers to the various components upon which is built the Bourse’s fully automated trading environment, operated by the Bourse since September 25, 2000.

The SAM system, located at the Bourse’s premises in Montreal, matches orders, generates execution reports, disseminates market data and allows the Bourse’s Surveillance Department to view and generate reports on all information entered.

The SAM architecture consists of three main components: (1) the back-end servers, (2) the network, and (3) the front-end clients. The Bourse’s Approved Participants use front-end clients to access the Bourse’s network directly or via the NSC Application Program Interface (“MMTP-API”) which, in turn, provides access to the network. The network, in turn, provides access to the back-end servers.

a. Back-End Servers

The back-end servers, or “trading engine,” make use of the electronic trading platform software known as NSC, used under license from its developer, Atos-Euronext. This application comprises SAM’s principal components of order receipt, validation, registration, matching, confirmation and dissemination.

b. The Network

The network provides the backbone for interaction between the trading engine and the front-end clients. It serves to route all incoming and outgoing messages between the trading applications, the various sub-systems and the trading applications installed on the front-end clients.

c. The Front-End Clients

SAM is linked to other specialized software modules at the offices of financial intermediaries who trade the Bourse’s contracts on behalf of clients or for their own accounts.

The Bourse provides a “turn-key” front-end client solution through its GLWIN service bureau facility. The software installed at the Approved Participants is provided to the Bourse under license from the firm GL TRADE. Approved Participants equipped with the software are able to electronically access and trade all Bourse contracts listed on the electronic trading platform.²³ To prevent unauthorized access, a user must enter a password to log on to the workstation. The workstation is connected directly to the Bourse’s own secure network. The workstation allows traders to enter, modify and cancel orders. For each contract traded, users have real-time access to the best bid and offer price; the available quantity at each price; session high and low prices; the last-traded price; and volume.

²³ Subject to the exclusions referred to in note 19 *supra*.

The adoption of an “open architecture” whereby other suppliers and financial intermediaries may connect their own systems to the SAM trading network is made possible through the publication of the NSC “API” (application protocol interface). In order to connect to the Bourse’s network, such clients must adhere to Bourse certification testing requirements (a copy of which has been provided by the Bourse) as well as prescribed levels of processing bandwidth and recovery capabilities.

SAM is also connected directly to other service suppliers in the Canadian derivatives industry such as: (1) the Canadian Derivatives Clearing Corporation, (2) data vendors who provide real-time price and market information to users and investors, and (3) the Bourse’s internal services such as the Market Surveillance Department.

2. Failure Recovery

All front-end client trading terminals are connected to the Bourse’s network by both private leased lines and the public switched telephone network (“PSTN”). If a fault occurs with the workstation primary link, a backup connection is made over the PSTN. Encryption and compression routines are used to prevent data and communications protocols from being compromised, and the network has the ability to detect tampering of any kind.

NSC is built on a fully redundant system architecture that has automatic recovery capability. The shadowing of the primary computer activities allows for almost instantaneous recovery with no loss of functionality or data if a mishap strikes the primary computer. Additionally, all engine information is backed up on magnetic tape.

B. Order Processing and Limits

SAM can be programmed to reject orders from any Approved Participant to buy or sell futures or options contracts that are prohibited under United States law. Also, Approved Participants are required by the Bourse’s Rules to manage risk by setting reasonable limits on their traders’ and customers’ accounts.

For all orders entered into SAM for a particular contract, the Trading Engine matches orders first based on price and then, where multiple orders at the same price are in the system, by time of receipt into the trading engine. Therefore, the first bid or offer lodged at a certain price will have the first right of execution as that price is reached in the market. Order receipt is generally recorded in less than two seconds.

Each operator that enters an order resulting in an execution receives trade details in a trade execution message that is generated by the Trading Engine. SAM is designed to ensure that each operator receives a trade confirmation within generally less than two seconds of execution. All unmatched bids and offers are deemed to lapse at the SAM close and are purged from the system.

SAM is designed to provide equitable order executions to all market participants, and there is no material difference in the time that it takes a trade originating in the United States to

reach the trading engine and the time it takes a trade originating in Canada to reach the trading engine. The Bourse monitors the performance of SAM on a daily basis to ensure that all Approved Participants, whether they are domestic users or cross-border users, are able to use the System on a sufficiently equal basis.

C. Audit Trail

Transactions through the electronic trading system produce a clear audit trail. The basic source of information is the trade register. The trade register contains complete information about each order entered, including whether orders were modified or cancelled. Order entry and execution times are captured, sequenced, and identified to the nearest second, and the source of each order is noted. The archived data is stored and retrievable on request, ensuring full access to audit trail information by the Bourse for a minimum of five years.

Although each order sent to the electronic trading system is registered and time-stamped by the system itself, the Bourse's Rules require Approved Participants to keep a record of each order received. All orders must be time-stamped. The record of each order filled must show the person receiving the order, the time the order is entered, the price paid or received, to the extent feasible the time of execution, and the broker from or to or through whom the derivative instrument on the Bourse was bought or sold and must be retained for five years. The record of each order that remains unfilled must show the person receiving the order and the time of receipt and must be retained for two years.

On a daily basis, the Bourse's surveillance personnel run a number of reports specific to trades, including: (1) cross trade reports; (2) volume per Approved Participant reports; (3) exchange for physical reports; and (4) high / low closing reports. In addition, surveillance personnel monitor and conduct market surveillance during real-time trading. Surveillance personnel can, at any time, require Approved Participants to provide the Bourse with relevant information regarding their trading on the electronic trading system. The Bourse's daily surveillance activities are also intended to detect any breach of the statutes or rules referenced in Section III C below, "Fraud, Market Manipulation, Customer Protection and Order Limits," including manipulative or deceptive methods of trading, front running, best price execution, customers' orders priority and prearranged transactions.

When certain position limits are exceeded, Approved Participants must file position reports with the Bourse at least twice a week or more frequently if deemed necessary by the Bourse. The Bourse's Rules require Approved Participants to permit access to their premises and to their relevant records. The Bourse's Rules permit the Bourse to share any information regarding trading with any regulatory body with which the Bourse has concluded an information sharing agreement.

D. Clearing

All futures and option contracts traded on SAM are cleared by CDCC (Canadian Derivatives Clearing Corporation). CDCC reconciles and matches trades, marks to market clearing members' obligations each day, and guarantees clearing members' financial obligations

to each other in the event of a default by one or more of them through a system of mutualized risk sharing.

CDCC was established in 1975. Like the Bourse, CDCC is an SRO recognized by CVMQ and subject to the CVMQ's inspection and review procedures.²⁴

CDCC has one class of clearing member. There are currently 31 such members. CDCC requires members to deposit margin to cover the projected risks associated with their derivative positions. Members may be required to post additional intra-day margin during periods of increased market volatility. Each clearing member must meet well-defined capital adequacy standards and contribute to a clearing fund that provides coverage for residual risks. The current total monetary commitment of any clearing member is \$CAN 75,000 (if the member is trading futures) and \$CAN 25,000 (if the member is trading options). CDCC may request additional deposits from members if circumstances require.

As disclosed in its Annual Report for 2000,²⁵ CDCC held margin deposits of approximately \$CAN 1.9 billion and clearing fund deposits of approximately \$CAN 185 million as of December 31, 2000.

In addition, CDCC maintains standby credit and securities borrowing facilities with major Canadian banks in order to ensure immediate access to liquid funds and to meet delivery obligations.

To reduce the risk of default, CDCC requires clearing members to have and maintain sufficient net tangible assets and may prescribe substantially higher requirements based upon such factors as the size of a clearing member's open positions with the CDCC or the risk and volatility of the positions held. CDCC calculates the monetary requirements every half hour.

In the event of a clearing member's default on its obligations, the CDCC will access the following funds in the following order:

- All money, securities, collateral, or property held by CDCC in any defaulting clearing member's accounts (other than client funds)
- The defaulting clearing member's deposit to the Clearing Fund
- Any CDCC assets designated for this purpose
- Proceeds of any insurance or other financial backing maintained by CDCC
- Any other financial backing agreed to by clearing members

²⁴ A detailed description of CDCC's market protection mechanisms, financial resources, and default procedures is contained in an information statement entitled "Risk Management" included with the documents attached to the Bourse's petition.

²⁵ A copy of which was also attached to the Bourse's petition.

- Any other funds or assets available to CDCC
- Any non-defaulting clearing member's deposits to the Clearing Fund

In addition to the protection afforded by CDCC's requirements and facilities, arm's-length clients of Canadian-based Approved Participants of the Bourse are protected by the Canadian Investor Protection Fund²⁶ from losses resulting from an Approved Participant's insolvency up to the amount of \$CAN 1,000,000 per client for all types of accounts (including commodity futures accounts).

E. Adherence to IOSCO Principles

The Bourse points out that the NSC system used by SAM was considered by Commission staff in their review of the request by ParisBourse SA for similar no-action relief, and was found to be largely the same system as used by the CME in its operation of GLOBEX®²⁷. The CVMQ, which is a member of the IOSCO Technical Committee, is guided by the relevant IOSCO principles in its review of the Bourse's systems and operations.

F. Demarcation of Responsibilities and Liability

The rules of the Bourse and the terms of its contract with each Approved Participant provide that the Bourse and CDCC will not be liable for any loss or damages as a result of the use of its trading system.

The Bourse and CDCC provide a complete credit ring to ensure the integrity of the market. Approved Participants who are clearing members of CDCC are liable to each other and to CDCC in regard to the obligations of defaulting customers. An Approved Participant must either be a clearing member of CDCC or have entered into a clearing agreement with a clearing member.

An Approved Participant cannot have any dealing with a customer in futures contracts unless a futures account has been approved by the Approved Participant's futures contract principal and a futures trading contract has been signed with the customer. Prior to trading, the customer must receive the current information statement approved by the CVMQ. Approved Participants are required to supervise customers' accounts and trading activity in order to ensure that the acceptance of any order is within the bounds of good business practice and suitable to the customer's investment objectives, and in order to ensure compliance with the applicable position limits. Specific position limits for each product are stated in the contract specifications.

²⁶ This reference to the Canadian Investor Protection Fund ("CIPF") is relevant to the measures that exist in Canada to protect the overall integrity and stability of the Canadian brokerage industry, which historically has provided the context for the Bourse's activities as a market and as an SRO. Being an initiative of the Canadian brokerage industry, CIPF provides coverage only to the clients of Canadian-based firms. CIPF coverage will not apply to US-based firms that become Approved Participants covered by the relief sought in the Bourse's request.

²⁷ See note 22 *supra*.

The Bourse has recently submitted to the CVMQ for approval, Rule amendments providing for the supervised and filtered routing of orders by eligible customers pursuant to an order routing agreement. Under the proposal, Approved Participants accept responsibility for their customers' compliance with the Bourse's requirements, and must have entered into an Order Routing Agreement with the customer binding the customer to those requirements.

III. REGULATORY REGIME GOVERNING THE BOURSE

The Bourse notes, as pointed out above, that the Commission has granted Rule 30.10 "comparability" relief to the Bourse and its eligible Approved Participants based upon a finding that the Quebec regulatory regime resembles that which the Commission administers within the United States.²⁸ The Bourse represents that it is not aware of any statutory or regulatory development in Quebec affecting its rights, responsibilities, or operations that has diminished the scope or quality of the regulatory regime in Quebec since that time. On the contrary, the Bourse notes that CVMQ oversight procedures and requirements have been enhanced, as evidenced by the terms of the CVMQ's Recognition Order.

All Approved Participants are contractually bound by the Bourse's Rules and Regulations. No US-based firm or affiliate of such firm would be able to trade on the Bourse from terminals situated anywhere in the world without becoming an Approved Participant.

The Bourse's Rules and Policies establish: (1) financial and fitness criteria for Approved Participants; (2) reporting and record-keeping requirements; (3) procedures governing the protection of customer funds and property; (4) sales practice and other business standards; and (5) prohibitions against fraud, abuse and market manipulation.

A. Bourse Approval

The Bourse is a fully approved futures market under the laws of Quebec and the requirements of the CVMQ. As such, it sets standards in its Rules and Policies: (1) for participation in the market (including training and experience); (2) for business conduct, including efficient, honest and fair practices in relation to futures activity; (3) for excluding persons lacking good character and high business integrity; (4) for levying fines, suspending or expelling persons for conduct inconsistent with just and equitable principles of trade or in contravention of Quebec law or regulations; (5) for inspection and audit of financial records required to be kept under the Bourse Rules, Quebec law or CVMQ requirements; (6) for identifying the classes of futures contracts that may be dealt in and the conditions for doing so; (7) for prohibiting unauthorized trading on behalf of another person; and (8) for dispute resolution mechanisms for claims between Approved Participants or between an Approved Participant and a client.

Under the Bourse's Rules, only approved futures contract representatives may deal with customers in respect of futures contracts. An approved futures contract representative must be

²⁸ See note 6, *supra*.

licensed or registered under the commodities or securities laws applicable to the applicant and have passed the courses and examinations required by the Bourse or satisfy the Bourse that they have the required qualifications and experience.

As required by the CVMQ, the Bourse's activities regarding the oversight of Approved Participants and their employees are conducted by a separate Regulatory Division, which operates on an autonomous basis under the supervision of a Special Committee. At least 50% of the members of the Special Committee must be independent persons having no connection to Approved Participants.

The Regulatory Division is made up of the following departments: Examination; Investigation; Registration; Margin, Capital and Compliance Policies; and Market Surveillance.

Under the CVMQ's Order recognizing the Bourse as an SRO, the Bourse must immediately advise the CVMQ of any suspected fraud or misconduct by Approved Participants or their representatives that could have an impact on customers or other Approved Participants.

With regard to the registration and fitness of Quebec-based firms and their employees, some of the statutory powers of the CVMQ have been delegated to the Bourse as provided in the *Securities Act*.

Under the *Securities Act* and a specific requirement of the CVMQ, the Bourse cannot unreasonably deny access to its facilities by qualified applicants for Approved Participant status.

In April 2001, the Bourse set up the Derivatives Institute. The mission of the Derivatives Institute is to train and inform the public in the use of derivatives for effective portfolio management. It offers courses, workshops, and seminars on-line, in class and by correspondence.

B. Requirements for Becoming an Approved Participant of the Bourse

When the Bourse converted to a for-profit corporation through a process of demutualization, the right to trade on the Bourse was unbundled from rights of ownership. The concept of "Approved Participant" was created to allow members to retain their trading rights without remaining shareholders, and to enable new Approved Participants to be admitted without having to acquire an equity interest in the Bourse. The criteria for acceptance as an Approved Participant remain essentially the same in all other respects.

All directors and officers of a corporate Approved Participant must seek approval as such from the Bourse and agree to be bound by the Bourse's Rules and Policies. A corporation seeking approval as an Approved Participant must have a board of directors made up of at least 40% of people who qualify as "industry members"²⁹. All officers of a corporate Approved Participant must devote the major portion of their time to the business of the corporation and

²⁹ An "industry member" is a person approved as such by the Bourse, who has had experience as a broker or dealer in securities or commodity futures to the extent required by the Bourse (normally five years), devotes the major portion of his or her time to the business of the corporation, and has successfully completed the required courses.

have successfully completed the courses of study required by the Bourse. An Approved Participant that trades in futures contracts and options on futures contracts must have at least one approved Futures Contract Principal to oversee all aspects of the futures contracts business of the Approved Participant.

Under the current Rules of the Bourse, a non-Canadian corporation can be approved as an Approved Participant only if it is registered with a securities commission or another regulatory organization recognized by the Bourse and does not deal with Canadian clients who do not qualify as “sophisticated purchasers” in Quebec or “exempt purchasers” in the other provinces and territories of Canada (essentially these categories of clients are institutional clients). To deal with Canadian clients who do not qualify in either one of these two categories, an Approved Participant must be incorporated under the Canadian laws, have a place of business in each province or territory in Canada where it intends to do business, have in place adequate registered personnel and be registered with the Commission of each such province or territory.

Under the Quebec Securities Act, the Bourse cannot discriminate in the processing of applications for admission.

C. Fraud, Market Manipulation, Customer Protection, and Order Limits

In Canada, fraud and market manipulation are sanctioned by criminal proceedings under the *Criminal Code*, a federal statute. Provincial statutes, such as the Quebec *Securities Act* and the *Regulations* adopted under the *Act*, deal with various aspects of customer protection. These include rules relating to suitability of transactions (“know your client”), misrepresentation, conflict of interest, record-keeping and reporting. The Bourse disciplinary committee is empowered to find an Approved Participant or its representative guilty of any act, conduct, practice or proceeding inconsistent with just and equitable principles of trade, a concept that is broad enough to include a breach of any statute or regulation relating to trading in securities or derivative instruments (under the Quebec *Securities Act*, the term, “securities,” includes futures contracts and futures contract options).

The Bourse’s Rules relating specifically to futures contracts contain detailed requirements regarding the recording and reporting of orders, positions and transactions; the opening of futures accounts; diligence as to accounts (“know-your-client” and “suitability”); customer confirmations and monthly statements; position limits; and discretionary and managed accounts.

The Bourse’s general Rules contain provisions relating to conflict of interest, improper order solicitation, manipulative or deceptive methods of trading, front running, best price execution, customers’ orders priority and prearranged transactions.

The Bourse, as a regulating SRO under the framework of the Canadian Investor Protection Fund³⁰, has rules and requirements similar to those applicable throughout Canada with regard to capital requirements to be met by Canadian-based Approved Participants, the reporting

³⁰ See note 26 *supra*.

of Approved Participants' financial condition, and the Early Warning System designed to detect and respond to situations that could lead to the Approved Participant's insolvency.

D. Record-keeping and Reporting

Approved Participants on the Bourse are subject to record-keeping and reporting requirements. The Rules dealing specifically with futures trading contain detailed requirements regarding the recording and reporting of orders, positions and trades; the opening of futures accounts; diligence as to accounts ("know-your-client" and "suitability"); confirmations; and monthly statements customers. A firm dealing in futures must have at least one approved futures principal to oversee accounts.

Reports on trading and account activities are supplemented by the financial condition reporting referred to above.

The reports filed by Approved Participants with the Bourse are accessible to the CVMQ under its inspection powers pursuant to section 180.3 of the *Securities Act*.

E. Review, Surveillance and Enforcement

Under section 175 of the *Securities Act*, the Bourse is required to provide for the disciplining of Approved Participants and their representatives for breaches of the Rules of the Bourse or contravention of the *Act* or the regulations adopted under the *Act*.

The Bourse's Market Surveillance Service monitors compliance with the Bourse's trading Rules and Policies, using the techniques identified above under "Audit Trail."

The Investigation Service inquires into complaints from customers and situations disclosed by the Examination Service or otherwise. Customers' complaints are often sent to the CVMQ, which then refers them to the Bourse for action.

Disciplinary matters regarding breaches of the Bourse's Rules or Policies are normally dealt with by a disciplinary committee whose decisions may be appealed to the Special Committee and to the CVMQ. The Bourse is required to keep the CVMQ informed of all pending disciplinary matters and the results of a disciplinary hearing must be publicly disclosed. Although Quebec law follows the civil tradition, disciplinary procedures are governed by due process under the adversarial system familiar to the Common Law jurisdictions of North America.

Exceptionally, the Special Committee may order the pre-hearing suspension of an Approved Participant where the protection of the public so warrants. Such powers are usually exercised in collaboration with similar steps by the CVMQ under the *Securities Act* and with the participation of the audit and inspection personnel of the Canadian Investor Protection Fund.

IV. INFORMATION-SHARING

As set forth more fully below, pursuant to the terms and conditions of the no-action relief provided herein, the Division will be entitled to receive certain specified information regarding SAM directly from the Bourse. Additional information relevant to the Bourse, SAM, and system participants will be available to the Commission and its staff through certain information-sharing arrangements to which both the CFTC and the CVMQ are parties. These include:

- Financial Information Sharing Memorandum of Understanding between the Commission, the CVMQ, the Bourse, the Ontario Securities Commission and the NFA dated September 23, 1991.
- Memorandum of Understanding between the Commission and the CVMQ dated July 7, 1992.³¹
- Declaration on Cooperation and Supervision of International Futures markets and Clearing Organizations, as amended, March 1998 (the “Boca Raton Declaration”).
- Memorandum of Understanding dated January 7, 1988 between the SEC, the CVMQ and other Canadian regulators regarding mutual assistance.³²

The Bourse notes that, in addition, it is a party to the Agreement to Share Market Surveillance and Regulatory Information dated February 23, 1996 among the affiliate members of the Intermarket Surveillance Group. The Bourse further points out that it is a specific condition of the CVMQ’s Recognition Order that the Bourse and its Regulatory Division cooperate with the CVMQ and other regulatory authorities in regard to the sharing of information.

V. CONCLUSION

Consistent with the Commission's June 2 Order,³³ the Division has reviewed and considered the Bourse's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by the Bourse indicate that the Bourse does not: maintain any office or staff in the United States; provide investment advice, solicit orders, or direct trading from within the United States; or maintain any order matching or clearing facilities in the United States. The materials also indicate that: the Bourse is recognized as an SRO under the laws of Quebec; the Bourse, SAM and the Bourse’s

³¹ The Division notes that the CVMQ has confirmed that this information-sharing arrangement would extend to information requested by the CFTC in connection with the no-action relief provided herein. Letter from Jean Lorrain to John Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission (November 9, 2001).

³² In a letter dated October 21, 1999 from the CVMQ to the Commission, the CVMQ confirmed that this agreement covers options and futures contracts on the S&P/TSE 60 Index.

³³ Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, Release No. 4274-99 (June 2, 1999).

Approved Participants are subject to oversight in Quebec by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime; the SAM system adheres to the IOSCO Principles; and the CFTC and the CVMQ are parties to various information-sharing arrangements applicable to the Bourse and its Approved Participants and the activities of SAM.³⁴

Based specifically upon these and other representations made by the Bourse in support of its No-Action Request, the Division has determined that granting no-action relief to the Bourse and its Approved Participants, pending the adoption by the Commission of rules or guidelines regarding access to foreign boards of trade from electronic trading devices in the United States, 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 the Bourse or its Approved Participants solely based upon the Bourse's failure to obtain contract market designation or DTF registration pursuant to Sections 5 and 5a of the CEA if: (1) Bourse Approved Participants trade for their proprietary accounts through SAM in the United States; (2) Bourse Approved Participants who are registered with the Commission as FCMs submit orders from United States customers for transmission to SAM; and (3) Bourse Approved Participants who are registered with the Commission as FCMs, or who are Rule 30.10 Firms, accept orders through AORSs from United States customers for submission to SAM.

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

- S&P Canada 60 Index Futures (SXF)
- 3-month Canadian Bankers' Acceptance Futures (BAX)
- Options on 3-month Canadian Bankers' Acceptance Futures (OBX)
- 5-year Government of Canada Bond Futures (CGF)
- 10-year Government of Canada Bond Futures (CGB)
- Options on 10-year Government of Canada Bond Futures (OGB)

If additional futures and option contracts become available for trading through SAM, the Bourse may make such futures and option contracts available for trading through SAM in the United States without obtaining written, supplemental no-action relief from Commission staff in accordance with the terms, conditions, and exceptions of the Commission's Statement of Policy regarding the listing of new futures and option contracts by foreign exchanges that are operating electronic trading devices in the United States pursuant to Commission staff no-action relief.³⁵

³⁴ 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 the Bourse 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.

³⁵ Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States, 65 Fed. Reg. 41641 (July 6, 2000).

The scope of the Division's no-action position is restricted to providing relief from the requirement that the Bourse obtain contract market designation or DTF registration pursuant to Sections 5 and 5a of the CEA and regulatory requirements that flow specifically from the contract market designation and DTF registration requirements if the above-referenced contracts are made available in the United States for trading through SAM, in the manner set forth herein. The Division's no-action position does not extend to any other provision of the CEA, any other Commission regulations, or to any registered futures association rules and does not excuse the Bourse or its Approved Participants 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 requirement that a firm operating pursuant to the no-action relief provided herein must be a registered FCM or be operating pursuant to Rule 30.10 relief to engage in the offer or sale of a foreign futures contract or a foreign options transaction for or on behalf of a United States foreign futures or foreign options customer. For example, nothing in this letter is intended to alter current Commission rules and staff interpretations that require generally that any foreign firm that clears trades on a fully-disclosed basis on behalf of United States persons (including where the United States person is a non-clearing member of a foreign board of trade trading solely for its proprietary account) be a registered FCM or a Rule 30.10 Firm unless the foreign firm solely carries accounts on behalf of United States customers that are its proprietary accounts (as defined in Rule 1.3(y)).³⁶ If a foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM in the United States and its sole contact with a United States customer is that it carries the FCM's omnibus account, then the firm need not register under Rule 30.4.³⁷

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 United States. Thus, Rule 30.10 firms cannot provide direct access to SAM in the United States (although they would be permitted to accept orders overseas from customers located in the United States that submit such orders by telephone or through an AORS located in the United States). FCMs or Rule 30.10 Firms who solicit or accept orders from United States customers for trading on SAM 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 SAM shall be subject to all existing Commission rules and regulations and to any future rules or guidance propounded 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, and other applicable federal securities laws or rules

³⁶ See CFTC Staff Letter No. 88-15, Comm. Fut. L. Rep. (CCH) ¶24,296 (Aug.10, 1988).

³⁷ See CFTC Staff Letter No. 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (Nov. 17, 1987).

promulgated thereunder.

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

- The Bourse will continue to satisfy the criteria for designation as an SRO under the applicable laws of Quebec with respect to transactions effected through SAM.
- The laws, systems, rules, and compliance mechanisms of Canada and Quebec applicable to the Bourse will continue to require the Bourse to maintain fair and orderly markets; prohibit fraud, abusive practices, and market manipulation; and provide that such requirements are subject to the oversight of the appropriate regulatory authorities.
- The Bourse and SAM will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended, to the extent consistent with United States, Canadian and Quebec law.
- Only Approved Participants will have direct access (*i.e.*, not through an AORS) to SAM, and the Bourse will not provide, and will take reasonable steps to prevent, third parties from providing such access to SAM to persons other than such Approved Participants.³⁸
- All orders that are transmitted through SAM by an Approved Participant that is operating pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for "proprietary accounts," as defined herein, of such Approved Participant.
- All orders for United States customers accepted and transmitted by Approved Participants through SAM will be intermediated by an Approved Participant that is registered with the Commission as an FCM, to the extent required under Commission regulations.
- All orders for United States customers accepted through an AORS and transmitted by Approved Participants through terminals accessing SAM will be intermediated by an Approved Participant that is either registered with the Commission as an FCM or is a Rule 30.10 Firm, to the extent required under Commission regulations.
- Prior to operating pursuant to the no-action relief provided herein, the Bourse will require each current and future Approved Participant that is not registered with the Commission as an FCM to file with the Bourse a written representation, executed by a person with the authority to bind the Approved Participant, stating that as long as the Approved Participant operates pursuant to the no-action relief provided herein, the

³⁸ As stated above, "Approved Participants" includes those persons identified in footnote 2 for the purposes of this no-action letter and the conditions imposed upon the relief provided herein.

Approved Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the no-action relief. The Bourse will obtain the foregoing representation before it permits the Approved Participant to operate pursuant to the no-action relief and will maintain the representation as long as the Approved Participant is operating pursuant to the relief. The Bourse will make such representations available to the Commission upon the request of a Commission representative.

- The Bourse will require each current and future Approved Participant that is not registered with the Commission as an FCM to file with the Bourse a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of "communications"³⁹ that are issued by or on behalf of the Commission. The Bourse will obtain the foregoing appointment before it permits the relevant Approved Participant to operate pursuant to the no-action relief and will maintain the appointment as long as the relevant Approved Participant is operating pursuant to that relief. The Bourse will make such appointments available to the Commission upon the request of a Commission representative.
- The Bourse will require each current and future Approved Participant who is not registered with the Commission as an FCM to file with the Bourse a written representation, executed by a person with the authority to bind the Approved Participant, stating that, as long as the Approved Participant operates pursuant to the no-action relief provided herein, the Approved Participant will provide, upon the request of the Commission, the United States Department of Justice, and, if appropriate, the National Futures Association ("NFA"), prompt access to original books and records maintained at their United States offices as well as to the premises where SAM is installed or used in the United States. The Bourse will obtain the foregoing representation before it permits the relevant Approved Participant to operate pursuant to the no-action relief and will maintain the representation as long as the relevant Approved Participant is operating pursuant to the no-action relief. The Bourse will make such representations available to the Commission upon the request of a Commission representative.
- The Bourse will file with the Division a valid and binding appointment of a United States agent for service of process in the United States, pursuant to which the agent is authorized to accept delivery and service of "communications," as defined above, that are issued by or on behalf of the Commission. The Bourse will maintain the foregoing representation as long as the Bourse or SAM operates pursuant to the no-action relief.
- The Bourse will maintain or cause to be maintained the following updated

³⁹ 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 on behalf of the Commission.

information and submit such information to the Division on at least a quarterly basis, and at any time promptly upon the request of a Commission representative:

- For each contract available to be traded through SAM, the total trade volume originating from terminals in the United States⁴⁰ (including volume originating from AORSs that route orders to SAM) compared with total worldwide trade volume for such products traded on the Bourse through SAM and the total worldwide trade volume for such products traded on the Bourse generally; and
- A listing of the names, NFA ID numbers (if applicable), and main business addresses in the United States of all Approved Participants that have access to SAM in the United States.
- The Bourse will promptly provide the Division with written notice of the following:
 - Any material change in the information provided in its No-Action Request, including any information contained in the documents submitted in support thereof;⁴¹
 - Any material change in Bourse Rules or the laws, rules, and regulations in Canada and Quebec relevant to futures and options;
 - Any matter known to the Bourse or its representatives that, in the Bourse's judgment, may affect the financial or operational viability of the Bourse, including, but not limited to, any significant system failure or interruption;
 - Any default, insolvency, or bankruptcy of any Approved Participant known to the Bourse or its representatives that may have a material, adverse impact upon the condition of the Bourse, the Bourse's clearing system, or upon any United States customer or firm;
 - Any known violation by the Bourse or any of its Approved Participants of the terms or conditions of the no-action relief provided herein;
 - Any Bourse disciplinary action against any Approved Participant operating pursuant to the no-action relief provided herein that involves any market

⁴⁰ Petitioners represent that, based on a user's identification number, SAM is capable of identifying trades originating in the United States. Further, SAM will generate reports to identify business originating outside of Canada.

⁴¹ The Division notes that "material" changes in the information provided to it in support of this No-Action Request would include, without limitation, a modification of: the Bourse's criteria to be approved as a Participant; the location of the Bourse's management, personnel, or operations (particularly changes that may suggest an increased nexus between the Bourse's activities and the United States); the basic structure, nature, or operation of the SAM system; or the regulatory or self-regulatory structure applicable to the Bourse, its Approved Participants or SAM.

manipulation, fraud, deceit, conversion or that results in suspension or expulsion;
and

- Any disciplinary action taken by the Bourse against any of its Approved Participants operating pursuant to the no-action relief provided herein that involves the use of SAM or an AORS to submit orders to SAM and either: (a) the Approved Participant against whom the disciplinary action is taken is located or based in the United States, or (b) the disciplinary action results, in whole or in part, from conduct that: (i) involves the use of an electronic trading device or an AORS that is located in the United States to accept or submit an order for trading through SAM; (ii) involves a United States customer or firm or a registered FCM; or (iii) might have a material, adverse impact upon any United States customer or firm.
- Satisfactory information-sharing arrangements between the Commission and the relevant regulatory authorities will remain in effect.
- The Commission will be able to obtain sufficient information regarding the Bourse, SAM and the Bourse's Approved Participants operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of the Bourse or its Approved Participants for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.
- The Bourse will provide directly to the Commission information necessary to evaluate the continued eligibility of the Bourse or its Approved Participants for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.
- The Bourse will employ reasonable procedures, to be determined by the Bourse, 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 the Bourse'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 the Bourse's activities in the United States to ascertain whether the Bourse's presence in the United States has increased to a level that might warrant reconsideration of the no-action relief.

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. Finally, the Division wishes to emphasize that the no-action position set

forth herein is intended to provide immediate, interim relief to the Bourse and its Approved Participants, pending any adoption of rules or guidelines by the Commission regarding the use and placement in the United States of automated trading systems or AORSs that provide access to the products of foreign boards of trade. Thus, this letter will cease to be effective in the event that the Commission or its staff adopts generally applicable rules or general guidelines regarding the issues addressed herein, and the Bourse will be subject to those rules or guidelines in that event.

If you have any questions regarding this correspondence, please contact me or Donald H. Heitman at (202) 418-5041.

Very truly yours,

John C. Lawton
Acting Director

cc: Gregory C. Prusik, Vice-President Compliance and Registration, NFA
Branch Chief, Audit and Financial Review Unit, Division of Trading and Markets,
Chicago Regional Office