

**CFTC Letter No. 02-29**  
**March 8, 2002**  
**No-Action**  
**Division of Trading and Markets**

**VIA FACSIMILE and U.S. MAIL**

Eudald Canadell  
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Spain

Re: Sections 5 and 5a – MEFF Sociedad Holding de Productos Financieros Derivados S.A.; Request for No-Action Relief from Contract Market Designation Requirement

Dear Mr. Canadell:

This is in response to your letter dated October 1, 2001 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”).<sup>1</sup> By this correspondence, you request, on behalf of MEFF Sociedad Holding de Productos Financieros Derivados S.A. (“MEFF Holding”), which wholly owns MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Variable (“MEFF RV”) and MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija (“MEFF RF”), hereinafter collectively referred to as “MEFF” or “Exchange”, that the Division confirm that it will not recommend enforcement action to the Commission against MEFF and/or its members<sup>2</sup> if MEFF

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<sup>1</sup> Letter from Eudald Canadell, Director of Strategic Planning, MEFF Sociedad Holding de Productos Financieros Derivados S.A., to John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission (October 1, 2001).

<sup>2</sup> For purposes of the No-Action Request and the relief provided herein, references to the members of MEFF shall include any “affiliate” of any MEFF member that has been granted access by the MEFF member to MEFF S/MART, MEFF's electronic trading and order system. An “affiliate” of a MEFF member shall mean any person that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; or (iii) is owned 50% or more by a third person that also owns 50% or more of the member. MEFF represents that, as a condition of access to MEFF S/MART, such affiliates would be required to comply with all MEFF Rules and that MEFF members will remain responsible to MEFF for ensuring their affiliates' compliance. For purposes of this letter and the no-action relief

does not seek designation as a contract market or registration as a derivatives transaction execution facility (“DTEF”) pursuant to Section 5 or 5a, respectively, of the Commodity Exchange Act, as amended (“Act” or “CEA”), or comply with those regulations that specifically relate to contract markets or DTEFs, in connection with the installation and use in the United States<sup>3</sup> of MEFF S/MART, MEFF's electronic trading and order matching system (“No-Action Request”).

Specifically, MEFF wishes to make MEFF S/MART, MEFF's electronic trading and order matching system, available to: (i) MEFF RV and MEFF RF members who wish to trade for their proprietary accounts<sup>4</sup> through the MEFF S/MART system in the United States; (ii) MEFF RV and MEFF RF members (including members of the Chicago Mercantile Exchange [“CME”] who are granted the right of access to MEFF contracts pursuant to the GLOBEX® Alliance Agreement, of which both MEFF and CME are signatories)<sup>5</sup> who are registered with the CFTC as futures commission merchants (“FCMs”) and who wish to submit the orders of United States customers<sup>6</sup> for transmission to the MEFF S/MART system; and (iii) MEFF RV and MEFF RF members (including members of the CME who are granted the right of access to MEFF contracts pursuant to the GLOBEX® Alliance Agreement) who are registered with the Commission as FCMs or who are exempt from such registration pursuant to Rule 30.10 (“Rule 30.10 Firms”)<sup>7</sup> and who wish to accept orders from United States customers through automated

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provided herein, the term “MEFF Rules” shall mean the rules contained in the MEFF RV Rules and Regulations and the MEFF RF Rules and Regulations.

<sup>3</sup> For purposes of this letter and the relief provided herein, the term “United States” shall include the United States, its territories and possessions.

<sup>4</sup> 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. 1 (2001).

<sup>5</sup> Effective September 6, 2000, the Globex Alliance Agreement is an agreement among the CME, the Singapore Exchange Derivatives Trading Limited, the Parisbourse SA (which wholly owns the Marche a Terme International de France [“MATIF”] and the Marche des Options Negociables de Paris [“MONEP”]), the Bourse de Montreal, Inc., the Bolsa de Mercadorias & Futuros, and the MEFF (the “Parties”). The objective of the strategic alliance is to form a network of exchanges to offer access to the largest possible range of derivatives products, consistent with the rules and policies separately established by each of the parties, in order to develop their respective derivatives businesses. The Agreement sets forth the terms and conditions of participation in the alliance and the mutual undertakings of the parties with respect to the negotiation of agreements relating to the harmonization of trading rules and trading platforms, clearing cooperation, and marketing and incentive programs. The rights and obligations set forth in the Agreement pertain only to the electronically traded derivatives products of each of the parties.

<sup>6</sup> 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).

<sup>7</sup> 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.

order routing systems (“AORSs”)<sup>8</sup> for submission to the MEFF S/MART system.

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.<sup>9</sup> 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 promulgated rules or guidelines in this area (“June 2 Order”).<sup>10</sup> In accordance with this instruction, the Division has reviewed MEFF Holding's No-Action Request and the materials submitted in support thereof.

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

- General information regarding MEFF (*e.g.*, its location and organization);
- MEFF RV and MEFF RF Rules and Regulations (which contain the rules governing the trading of futures and option contracts on MEFF);
- The specifications of the contracts that would be traded through the MEFF S/MART system in the United States pursuant to the no-action relief requested;
- The GLOBEX Alliance Agreement;
- A Draft Cross-Exchange Access Agreement between CME and MEFF;
- The MEFF Electronic System Trader's Manual;
- MEFF's Year 2000 Annual Report;

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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 (2000).

<sup>8</sup> 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.

<sup>9</sup> Access to Automated Boards of Trade, 64 Fed. Reg. 14159 (proposed March 24, 1999).

<sup>10</sup> Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, Release No. 4274-99 (June 2, 1999).

- MEFF S/MART: an Introduction (a technical guide); and
- The Memorandum of Understanding Between the Comision Nacional del Mercado de Valores (“CNMV”) of Spain and the CFTC.

Representations made by MEFF Holding regarding MEFF's activities in the United States, MEFF's membership criteria, MEFF S/MART, the relevant regulatory regime in Spain, and the information-sharing arrangements applicable to MEFF S/MART are summarized in Sections I - V below. For purposes of its response to the No-Action Request, the Division has relied upon MEFF Holding's representations and has not conducted an independent review to confirm their accuracy.<sup>11</sup>

## **I. GENERAL INFORMATION REGARDING MEFF**

MEFF RV and MEFF RF are the two Spanish financial futures and option exchanges and are among the leading financial futures and options exchanges in Europe. They provide integrated exchange and clearing services to members for futures and options on equity and fixed income products. MEFF Holding, whose shareholders are the main Spanish financial entities and the four Spanish Stock Exchanges, wholly owns MEFF RV and MEFF RF. Contracts currently traded at MEFF include equity index futures and futures options (on the IBEX-35 and the S&P Europe 350 indices), equity options, single stock futures, and government debt (BONO-10) futures.

MEFF RV (previously OM Iberica) and MEFF RF (previously MEFF SA) were independently created in 1989. MEFF SA was the market operator and clearing house for futures on fixed income and OM Iberica was the market operator and clearing house for options on fixed income. In December 1991, both companies came under MEFF Holding and were renamed to their current names. MEFF RV became the market operator and clearing house for futures and options on equity products while MEFF RF became the market operator and clearing house for futures and options on fixed income products. Although they had separate management structures, the two companies shared a number of functionalities and services, e.g., both trading and clearing ran on the same electronic platform (MEFF S/MART). At the end of 1999, MEFF Holding reorganized the two companies under a single management, although both entities continue to hold the appropriate licenses from the competent Spanish authorities to operate a market and a clearinghouse.

MEFF, whose principal places of business are in Madrid and Barcelona, Spain, is a fully automated options and futures exchange on which all trades are executed and cleared electronically. MEFF represents that it does not maintain any office in the United States and that it does not intend to do so in the near future. Its marketing activities in the United States are limited to presence at collective industry events, e.g., the annual Futures Industry Association Futures Expo in Chicago, and occasional one-on-one meetings between its staff and entities, at

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<sup>11</sup> As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by MEFF Holding 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.

the request of those entities, for the purpose of describing the contracts available for trading at MEFF. At these occasional meetings with US entities or persons, MEFF states that it always describes all the regulatory and legal restrictions applicable to US entities or persons trading MEFF products. MEFF represents that its staff does not provide investment services or accept, solicit, receive or direct orders in the United States with respect to the products traded on MEFF. MEFF represents further that no trade processing or clearing functions are performed by the Exchange in the United States.

## **II. MEMBERSHIP**

To execute trades through MEFF S/MART, a legal entity<sup>12</sup> must be a member of MEFF or a member of an exchange with which MEFF has signed a formal agreement, duly approved or authorized by the relevant authorities, providing for direct access by the members of that exchange to the MEFF trading platform.<sup>13</sup> MEFF has three membership categories whose function is to trade on the market: (i) Trading Members (MEFF RV) or Non Clearing Members (MEFF RF), (ii) Clearing Members, and (iii) Custodian Clearing Members. Trading (or Non Clearing) Members must maintain a contract and clear their accounts through a Clearing Member or Custodian Clearing Member. In addition to trading, Clearing Members are responsible for satisfying obligations, effecting and receiving margin payments, and buying and selling the underlying assets.<sup>14</sup> Custodian Clearing Members have the additional responsibility of receiving and maintaining custody of margin payments on behalf of MEFF.<sup>15</sup>

In order for a legal entity to be eligible for membership at MEFF, it must be, under Spanish law, duly authorized by the competent authorities of Spain or of its country of origin to perform financial intermediation<sup>16</sup> and it has to execute an agreement with MEFF whereby the

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<sup>12</sup> Membership at MEFF is separate from ownership. Pursuant to Spanish law, natural persons cannot become members of the official Spanish exchanges.

<sup>13</sup> Currently, aside from Spanish members of MEFF, members of BVLP (Portuguese Exchange), CME, and Euronext (both signatories of the GLOBEX® Alliance Agreement) are eligible for direct access to the MEFF trading platform. Direct electronic access to MEFF has not yet been granted to any institution located in the U.S., and MEFF represents that it does not intend to provide such access as long as it has not obtained the no-action relief sought in this letter. In the future, once cross-exchange access agreements are signed, members of the other signatory exchanges to the GLOBEX® Alliance Agreement will be eligible for direct access to the System. To be granted such access, the members would have to sign a standardized contract with MEFF that is, in all respects, equivalent to the contracts signed by MEFF members.

<sup>14</sup> Clearing Members do not retain margin deposits. A Clearing Member must have a cash account with the Bank of Spain or must arrange for cash settlements with a financial institution which has such an account.

<sup>15</sup> Custodian Clearing Members must be members of the Book-entry Government Debt Market and possess funds of at least 4.508 million euros (\$3,967,040. For informational purposes only, the Division has noted the United States dollar equivalent of any sum of euros referenced herein, based upon the exchange rate of March 7, 2002 [1 euro = \$.88]). Other than applicable capital requirements, there are no special financial requirements for the other membership categories.

<sup>16</sup> MEFF members that have a permanent place of business within Spain must be authorized by the CNMV or, if a banking institution, by the Bank of Spain (the Spanish Central Bank, which is the licensing and regulatory authority for banking entities in Spain). Members of MEFF located in other European Union ("EU") countries must be authorized by national competent authorities (either a Securities Commission or a Banking Regulator), and their license to operate in their country of origin must be recognized by the competent Spanish authorities.

entity and its representatives agree to comply with the MEFF rules and regulations. Before admitting an applicant to membership on MEFF, the Board of Directors must determine that the applicant: (1) is fit and proper; (2) enjoys the financial and business standing suitable for admission to membership; (3) is authorized, or otherwise licensed or permitted by the appropriate regulatory body to conduct business on the market;<sup>17</sup> (4) maintains a staff that is also fit and proper and that possesses suitable qualifications and experience to implement and maintain adequate internal procedures and controls in relation to the applicant's intended business on MEFF; and (5) satisfies such other membership criteria (*e.g.*, financial resource requirements)<sup>18</sup> prescribed in its Market Regulations or required by the regulatory authorities of Spain, including the authorization by the competent authorities to become a member of MEFF.<sup>19</sup> An applicant may apply for membership on both exchanges on a single application form. The MEFF Board of Directors has never refused membership to any applicant when all the prescribed membership conditions were satisfied, and failure to comply with one or more of such conditions would be the only basis on which the Board would refuse to grant an application for membership.

### **III. OVERVIEW OF THE MEFF S/MART SYSTEM**

At the outset, the Division notes that the description of MEFF S/MART set forth herein is based upon representations made by MEFF or its representatives. The Division has not

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<sup>17</sup> For a membership application to be considered, an applicant located in a non-EU country must have a valid license to operate granted by national competent authorities of the country of origin. Admission procedures are equivalent to those applied to Spanish or EU-based applicants, but before admitting a non-EU based entity for membership, MEFF would have to be satisfied that the Exchange and the CNMV have good working relationships, including information sharing arrangements, with the regulator that is responsible for authorizing and supervising the applicant for membership. In the case of US-based entities, MEFF understands that the MOU signed between the CNMV and the CFTC, and the MOU signed between the CNMV and the SEC, provide the adequate framework. Should any US-based entity seek membership, MEFF represents that it would apply the same criteria for acceptance that it applies to its current members. MEFF understands as well that any MEFF member transacting business with United States customers is required to be registered as an FCM or operating pursuant to Rule 30.10 orders or other applicable exemptive relief, and MEFF would not grant membership to a US-based applicant unless it had the assurance that such conditions were fulfilled.

<sup>18</sup> In order to be eligible for MEFF membership, financial institutions must demonstrate that they have a capital base sufficient to conduct business on MEFF. The minimum net worth necessary to be authorized to conduct business and to obtain and maintain membership at MEFF depends on the kind of institution: 18.03 million euros (\$15,866,400) is required for banks; 4.508 million euros (\$3,967,040) for intermediaries acting both for their own account and on behalf of client accounts; and 901,518 euros (\$793,336) for intermediaries acting only for their own account. Additionally, the maximum level of activity and number of positions permitted to be held at MEFF by each member is determined by MEFF on the basis of actual net worth. Members are required to comply with applicable financial requirements throughout the duration of their membership and must submit financial returns to MEFF in order to demonstrate ongoing compliance with financial obligations. MEFF has, additionally, the right to monitor and perform checks on the financial suitability of the members at any time. In addition, the financial institutions submit financial returns to the CNMV or the Bank of Spain on a monthly basis. In order to protect the financial integrity of the markets, the CNMV and/or the Bank of Spain would confer with MEFF in the event that a MEFF member appeared to demonstrate inadequate capital.

<sup>19</sup> MEFF members are required to satisfy, at all times, all the above-mentioned conditions in order to maintain their membership status at MEFF. Further, they are under a legal obligation to inform MEFF and the CNMV of any relevant fact or situation that might have an impact on their ability to continue to satisfy the required conditions.

performed an independent assessment of the security or soundness of MEFF S/MART.

**A. Technical Aspects of the MEFF S/MART System**

**1. Introduction**

MEFF provides the central order processing facilities in Spain for MEFF S/MART, which was developed and improved by an in-house team. MEFF also maintains the communication network and the workstations and provides the software, known as the Application Program Interface (“API”), through which a third party member's front-end trading and back office applications communicate with the order processing facilities. The MEFF S/MART Trading System is comprised of four main components: (i) the Trading Host; (ii) the Trading Application; (iii) the Distribution Network; and (iv) the Settlement and Clearing Systems.

**a. The Trading Host**

The Trading Host provides the order matching service for MEFF S/MART. MEFF represents that the Trading Host software is validated using a process that requires, among other things, the completion of comprehensive business and technical testing before the system may be declared operational. Access to the Trading Host is limited to members holding a relevant trading subscription.<sup>20</sup>

Orders that may be introduced into MEFF S/MART include limit orders and market orders. A limit order trades at the price stated or better and, unless otherwise specified, any residual volume is retained in the central order book until it is withdrawn, traded, or canceled at the end of the session. A limit order can be designated as fill and kill, under which any residual volume is automatically cancelled, or as fill or kill, under which the entire volume specified must be executed or the order is automatically cancelled. A market order trades at the best price(s) available. In the case of a partial execution, the unfilled portion of the order is canceled immediately. A market order can also be designated as fill or kill. Traders may also enter stop limit orders (on rise or fall) and spread orders. In the former, the trader fixes the volume to be traded (buy or sell) and the trigger price, as well as the price at which a limit order will be issued when the market price reaches or exceeds the trigger price (rise) or is equal to or below it (fall). A spread order consists of simultaneous input of a pair of fill and kill orders selling and buying related contracts that must be matched for the same volume. To avoid trader errors, input price and volume data must satisfy a hierarchy of limits defined by trader, member, clearer, and Market Surveillance.

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<sup>20</sup> Trading terminals are to be used only by authorized personnel at member firms. Each member must appoint a person who is responsible for the MEFF operation in the member's trading room and who controls the passwords that are the only means of accessing the trading terminals. Members are responsible, among other things, for assuring that only authorized traders access terminals and that passwords are changed regularly.

Orders may be canceled at any time, provided that they have not been executed, and all unexecuted orders are automatically canceled at the close of each trading session. There is also a panic cancel mechanism that cancels all existing orders in just one action. Once entered into the system, orders are matched by the Trading Host in the central order books according to a price and time priority algorithm. First, priority is given to the order having the best price. Second, where two or more orders are entered at the same price, priority is given to the oldest standing order. Orders are timestamped upon arrival to the Trading Host. Once an order has been executed, MEFF S/MART notifies both sides of the trade, without identifying the counterparty. The clearing system is also notified.

Data security is provided through the use of a dual host system (maintaining the data on two different computers) that directs the data along a dedicated line with transparent backup along a public line. There are two host machines (one active and one passive) that have the same configuration and are set up so that all transactions are processed simultaneously through both systems. The active system transmits the result to the central processing system, while the passive system stores a record of the transaction and acts to verify that the order and the result coincide with the initial transaction. If the data do not match or are not transmitted back to the host computer in a predetermined period of time, an alarm will sound.

**b. The Trading Application**

The Trading Application is the application software that runs on members' workstations that permits access to the trading host. MEFF is able to supply members with trading application software to be installed in PC-like workstations. Alternatively, a member may use its own front-end system to access the trading host or may purchase one that has been developed by an independent software vendor ("ISV"). In that case, the front-end communicates with the trading host through API software provided by MEFF ("MEFFGATE").

**c. The Distribution Network**

All the members and the Trading Host are linked through a virtual private telecommunications network ("MEFFNET"). All members have at least two connections to MEFFNET. The local network segment at the member site, under MEFF design, includes at least a router, a communication server and one or several trading workstations. The Distribution Network is designed to satisfy MEFF requirements, operated to strict service levels, and managed by major international network providers.

**2. Audit Trail**

Exchange members generally are subject to audit trail requirements in the jurisdiction in which they are based. Thus, the precise audit trail requirements applicable to a particular member vary, depending upon the rules adopted by the responsible supervisor in the member's home jurisdiction. Members that have been authorized to conduct investment business in Spain, for example, are subject to the audit trail and conduct of business rules imposed by the CNMV.

MEFF rules and regulations require members to maintain a book of orders received from clients. All orders are in an electronic form, and audit trail information for every order input into MEFF S/MART must include the following: member and trader terminal identification, customer and customer's account identification, contract, whether it is a buy or sell order, order type, price and volume. During the order life cycle, which ranges from input through possible changes and up to execution as a trade, MEFF S/MART adds controlling information to allow both online integrity checking and online or offline transaction analysis. Every order sent to MEFF S/MART is registered and timestamped by the system.

While in session, recordation of the transaction data is accomplished all along the chain from host, network and trading application. Network and trading applications logs can be retained under MEFF surveillance criteria. Under a periodic magnetic media rereading and rewriting procedure, MEFF maintains all of the audit trail information that has been recorded by MEFF S/MART since it was activated in 1991. MEFF represents that it intends to maintain these records indefinitely and intends to maintain on-line records for the most recent six years. In addition, every communication between the Surveillance Centre and a member, such as when a member suffers a temporary disruption and the Surveillance Centre acts on his or her behalf, is routinely taped through audio-logged lines. Recordings of communications on audio-logged lines are retained for a period of one year after the date of recording.

### **3. Clearing**

MEFF S/MART provides integrated trading and clearing services - all trades executed on MEFF are cleared automatically through MEFF S/MART. MEFF enters into contracts simultaneously with each of the Exchange members who have placed the matching orders in the order book. From the time at which the trade is executed, MEFF provides a clearing guarantee by entering into balanced contracts with the buyers and with the sellers. Settlement at contract expiration is accomplished by either cash settlement or delivery of the physical commodity against the contract. To reduce credit risk, MEFF's futures and option contracts are "marked-to-the-market" on a daily basis.

Settlement notes are issued by MEFF and each member is required to provide collateral in the minimum amount of the margin requirement calculated by the Exchange for the relevant member. Clearing members are responsible for the posting and maintenance of margin deposits, both for their own accounts and for the accounts of customers, and must guarantee that the customer or member for whom they have responsibility posts margin. Contracts are settled according to their individual specifications. Settlement of payments is effected through charges and payments to the cash accounts of clearing members held by the Bank of Spain or other authorized financial institutions. Absent default, MEFF's obligations are met from the payments made to MEFF by the parties on either side of each contract.

### **4. Data Dissemination**

During a trading day, MEFF S/MART generates information that is broadcast to market participants in real-time. An individual trader may not view information or execute trades on a particular market unless the member for whom he or she is trading has subscribed to the specific

market. Once the member has subscribed, the trader may view, in real-time, the latest market information, including the best three bid and offer prices, the order book changes, the time and sales, and market events that occur throughout a trading day. In addition, the Host continuously updates market price information supplied to recognized data vendors.

## 5. Surveillance Center

MEFF's surveillance system includes two Commissions for Supervision and Surveillance, one for MEFF RV and one for MEFF RF, and a single Surveillance Centre that acts for both MEFF RV and MEFF RF. The responsibilities of the Commissions, each of which includes two Exchange staff members and from three to 11 Exchange members, include the following: (1) ensure orderly trading; (2) receive a written report, at least once a month, from the Surveillance Centre of the conflicts<sup>21</sup> that there have been in the course of trading and solutions that have been found; (3) determine the criteria by which the Surveillance Centre should interpret the regulations for the resolution of conflicts and ensure, in so far as possible, that the Centre applies the criteria that have been set; (4) resolve trading conflicts presented to the Exchange for which no solution has been reached; (5) ensure that the Exchange complies with market regulations, especially in the area of impartiality with regard to access and equal distribution of information; (6) approve the hours of trading; (7) make suggestions to the Exchange concerning the functioning of the markets, contracts traded, and proposed new contracts; and (8) where necessary, publish Commission decision by means of market circulars (the criteria set for the Surveillance Centre must be published).

The responsibilities of the Surveillance Centre include the following: (1) ensure that trading is orderly and that the regulations and other applicable rules are complied with (among these regulations would be those addressing mistrades, use of orderly price and volume filters by members, clearinghouse filters, daily settlement prices, and prearranged trades); (2) resolve any conflicts that may arise, applying the regulations and, where applicable, criteria set by the Commission; and (3) decide, if necessary to guarantee orderly trading, to suspend trading, either in one or more particular contracts or in the entire market, or to extend the trading session.

The MEFF Surveillance Centre is responsible for the day-to-day control and ongoing monitoring of trading on MEFF S/MART. The day-to-day control is based upon monitoring trading on a realtime basis, which is accomplished through the use of two monitoring terminals. Through the administration terminal, the Surveillance Centre opens and closes the market, may suspend from trading a member or an authorized trader for that member, may send text messages to members, and may monitor the order book as well as all trades and the counterparties to trades. Through the pool terminal, the Surveillance Centre may monitor the activity of a

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<sup>21</sup> As used in MEFF's Rules, "conflicts" refers to situations arising during a trading session that could result in, among other things, a claim or a member complaint, or that might have an adverse effect on a member, a group of members, or the market as a whole. An example would be a member's claim that an order entered into the system and executed included an obvious mistake (e.g., price entered in the volume field, volume entered in the price field, or price or volume "obviously" too high), and therefore the transaction should be cancelled. Another example would be a member's claim that an order entered and executed in one contract was entered erroneously in that it was meant to be in a different contract.

particular trader and may act on behalf of a member if the member is experiencing a temporary disruption (e.g., enter, remove or modify orders).

## **6. Reliability and Failure Recovery**

MEFF represents that MEFF S/MART incorporates both mechanisms for detecting system failures and procedures for ensuring recovery from such failures. In the event of system failure, access to the market would be reestablished in an orderly fashion. Specifically MEFF represents that MEFF S/MART provides system reliability by duplicating all key components of the system, including power supply, computer equipment, and network elements.

MEFF is responsible for providing user assistance and for monitoring the primary and backup computer equipment, the network, and the system interfaces. The back-up system is operated daily in normal production in order to avoid any problems that could be encountered if it became necessary to activate a long dormant facility. MEFF employs specialized software that alerts the computer operator if any computer or network functionality is being lost. A problem log is maintained and any problems encountered are documented and reviewed on a daily basis. MEFF S/MART also incorporates a “heartbeat” mechanism that provides a continuously transmitted message that confirms to Authorized Users that the system is functioning.

In the event of a system failure that lasted for a significant period of time, the Market Supervisor would decide to deactivate the order book. Following recovery and prior to the resumption of trading, members would be informed when trading would be resumed and would be provided with the opportunity to delete their orders. In the event of a local system failure (i.e., a limited number of members could not access MEFF S/MART), the affected member(s) could contact MEFF Surveillance to cancel or modify existing orders or to have new orders entered on their behalf.

## **7. System & Network Response Time**

All instructions transmitted to MEFF S/MART by Members are dealt with on an impartial basis and in strict accordance with the time at which the instructions were received, regardless of the membership class of the Member. Moreover, MEFF S/MART itself has been constructed to ensure that, as far as is reasonably possible, no one network connection is disadvantaged over another and the order execution of all participants is equitable. MEFF monitors the performance of the network on an ongoing basis to ensure that all members, regardless of location, are able to use MEFF S/MART on a sufficiently equivalent basis.<sup>22</sup> Generally, MEFF S/MART has been designed and sized to process transactions in under one

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<sup>22</sup> With respect to orders originating in the United States, MEFF represents that, absent any system or communications malfunction, any order originating at a terminal in the U.S. would be entered into the system within the same second as an order originating at any other terminal if the orders were placed simultaneously. MEFF monitors the performance of MEFF S/MART on an ongoing basis to ensure that no one accessing it is disadvantaged, regardless of location. As part of the monitoring process, MEFF has the capability to measure, with precision, the time that elapses between the time an order is entered at a terminal and the time that order reaches the Trading Host. Email from Eudald Canadell to Duane C. Andresen, Division of Trading and Markets (March 7, 2002).

second, allowing for substantial growth in both product range and trading volume. If any anomalies are noticed for particular end-points, the problem is investigated immediately.

## **8. The Security System**

[REDACTED]

### **B. Adherence to IOSCO Principles**

MEFF represents that it employed the best available expertise in the design, building, and implementation of MEFF S/MART and its subsequent updates to ensure that the resulting system infrastructure would follow best industry practice and quality standards. In developing and operating MEFF S/MART, MEFF represents that it has adhered to, 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”).<sup>23</sup> MEFF also represents that it has satisfied the CNMV, which has endorsed the IOSCO Principles,<sup>24</sup> that the features and facilities provided by MEFF S/MART, as well as the use of MEFF S/MART's technology, are satisfactory in light of the IOSCO Principles. MEFF represents that it will continue to comply with the IOSCO Principles in the provision of electronic trading and clearing facilities.

## **IV. OVERVIEW OF THE REGULATORY STRUCTURE IN SPAIN**

MEFF and those participating on MEFF RV and MEFF RF are subject to a comprehensive regulatory regime. This regulatory structure, administered and enforced by the CNMV, 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

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<sup>23</sup> Working Party 7 of IOSCO (“Working Party”) had a mandate that included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns for screen-based trading systems, the Working Party identified and addressed the following issues: transparency, order execution algorithms, operational issues, security and system vulnerability, access, financial integrity, disclosure, and the role of system providers. The Working Party considered these issues and articulated for each a broad principle to assist regulatory authorities in overseeing screen-based trading systems. The IOSCO Principles were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products on November 21, 1990. Policy Statement Concerning the Oversight of Screen-Based Trading Systems, 55 Fed. Reg. 48670 (Nov. 21, 1990).

<sup>24</sup> The CNMV endorsed the IOSCO Principles on May 22, 1995.

market manipulation.<sup>25</sup>

Responsibility for financial services legislation and broad policy in Spain lies with the Ministries of Economy and Finance, which are answerable to Parliament. Responsibility for regulating the conduct of investment business, for providing investor protection, and for preventing and prohibiting market abuse in Spain, rests with the CNMV. The principal legal provisions for investor protection in the Spanish financial sector are contained in, or derived from, the Securities Market Act 24/1988 of July 28, 1988 (“SMA”), which established the CNMV. In 1991, Royal Decree 1814 was enacted to create rules specifically tailored to the regulation of financial futures and financial options markets and transactions.<sup>26</sup> In 1993 the Spanish Parliament enacted Royal Decree 629, which provided a more complete framework of regulations for governing relations between investors and institutions in securities markets generally and established a code of conduct applicable to market intermediaries. As amended by the Securities Market Reform Act 37/1998 of November 16, 1988, the SMA contains a prohibition on insider trading<sup>27</sup> and includes Rules of Conduct that provide a framework for the protection of customer interests in the trading of derivatives on MEFF.<sup>28</sup> The CNMV fulfills its regulatory and supervisory responsibilities within the framework established by that Act and related legislation.<sup>29</sup>

The CNMV is an independent administrative authority. Its Board is composed of seven members: the Deputy Governor of the Bank of Spain, the General Director of the Treasury Department, three specialists designated by the Minister of Economy, and a Chairman and a Vice-Chairman who are proposed by the Ministry of Economy and appointed by the Government. With a staff of 246 persons in 2001, the CNMV is functionally organized around 12 Departments (General Directions), covering all of the regulatory and supervisory functions of

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<sup>25</sup> The CNMV approves MEFF’s rules and orders and supervises the orderly conduct of trading on the Exchange and the settlement of Exchange transactions.

<sup>26</sup> The Decree addresses issues that include the following: authorization and registration of financial futures and options markets, minimum requirements for exchange regulations, contract approval procedures, suspension of trading by the Ministry of Economy and CNMV, supervision and management duties of exchanges, financial requirements, membership, and margin system requirements.

<sup>27</sup> The SMA defines inside information as “any information of a precise nature referred to one (or several) securities or financial instruments, or issuers of securities, which has not been made public and which could, if made public, have or have had a significant influence on the price of such securities or financial instruments.” Insider trading is defined as follows: (1) preparing or effecting, on one’s own account or on the account of a third party, directly or indirectly, any kind of operation in the market with respect to the securities or financial instruments to which the inside information is related; (2) communicating, personally or through a third party, directly or indirectly, the inside information to third parties, with the exception of information communicated in the normal exercise or working or professional functions; or (3) recommending to a third party, directly or indirectly, or causing in any way the acquisition or sale of securities or financial instruments, based on the inside information.

<sup>28</sup> Among other things, the Rules of Conduct prohibit advising customers to enter transactions contrary to their interests and proscribe such activities as front running or trading ahead of customer orders.

<sup>29</sup> The CNMV is the only supervisory authority for the securities and derivatives markets in Spain. Therefore, even the banking entities (authorized by the Bank of Spain) that are members of MEFF fall fully under the supervision of the CNMV with respect to all actions that are related to their activity on the Exchange.

the different market segments and their participants, as well as the internal organizational and support functions.<sup>30</sup>

The CNMV has its own terminals electronically connected to the Exchange and the clearinghouse, thus allowing real time monitoring of all the activity at the Exchange. The CNMV has its own applications which, when fed by the data originating at MEFF, perform various checks and tests that the CNMV deems appropriate. Although the CNMV can monitor trading with its MEFF screens, it cannot intervene directly on the market from those screens. Based upon its monitoring or supervision of the market, the CNMV can instruct MEFF to, among other things, suspend trading on a single contract or on the entire market or suspend a member from trading. MEFF is under legal obligation to follow the CNMV's instructions. To further monitor compliance, the CNMV may demand information and documents from the Exchange and market participants and, further, may conduct its own inspections.

The CNMV's main functions with respect to markets include the surveillance of regulated markets and the supervision of market intermediaries. Among other things, the CNMV is responsible for the following: (1) proposing to the Minister of Economy the authorization to create regulated futures and options markets; (2) approving corporate by-laws of the governing body of the market and the rules and regulations of the market, as well as any amendments to either of them;<sup>31</sup> (3) authorizing, upon request of the governing body of the market, the general conditions of the options and futures contracts proposed to be traded;<sup>32</sup> (4) surveilling the operations of regulated markets and supervising the activities of investment services providers, including compliance with the Conduct of Business Rules; (5) ensuring that all investment services providers doing business in Spain, as well as regulated markets and clearing houses, observe rules of good conduct; (6) approving the annual budgets of the governing bodies of the markets; (7) requesting that the Minister of Economy suspend contracts from trading, or directly suspend them from trading, when special circumstances exist that could distort the normal course of trading or otherwise render the suspension advisable for the protection of investors;<sup>33</sup> (8) disciplining and/or imposing administrative sanctions for breaches of obligations under relevant laws and regulations; and (9) approving the program of activities of firms wishing to provide investment services.<sup>34</sup>

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<sup>30</sup> The CNMV's 12 Departments are as follows: Market Intermediaries; Primary Markets; Secondary Markets; Supervision; Enforcement; Legal Services and Secretary of the Board; General Secretary; Development; Economic Studies; International Relations; Information Systems; and Communication.

<sup>31</sup> The CNMV also may establish regulations required to be followed by members of the market with respect to their relationships with their clients, order documentation, and registration.

<sup>32</sup> This authorization would be based upon a report from the governing body of the market on which the underlying assets are traded (the Bank of Spain, for money market assets, currencies and book entry public debt; and the Board of the Stock Exchange for securities or indexes whose underlying asset is a security or a basket of securities).

<sup>33</sup> The CNMV also acts to confirm the suspension of a given contract when the contract is directed to be suspended by the governing body of the relevant market in cases of extreme urgency.

<sup>34</sup> Prior to applying for MEFF membership, all firms must first obtain the approval of the CNMV. With respect to MEFF members, the CNMV may request information and documents from the members and market participants that trade on behalf of customers, including their management personnel, their employees who are responsible for trade execution, analysis or investment advice, and affiliated enterprises.

The Division notes that the Commission previously reviewed the regulatory regime administered and enforced in Spain by the CNMV. On June 5, 1995, the Commission issued an order pursuant to Rule 30.10 that granted exemptive relief to designated members of MEFF RF 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. On April 1, 1997, the Commission issued an order pursuant to Rule 30.10 that granted similar exemptive relief to designated members of MEFF RV. In each of these orders, the Commission concluded that the standards for relief set forth in Rule 30.10 generally had been satisfied by the petitioning regulatory authorities, and compliance by the Rule 30.10 Firms with applicable Spanish law and the rules of the respective petitioning authorities could be substituted for compliance with certain provisions of the CEA and the Commission's rules set forth in the Commission's orders.<sup>35</sup> The Commission's Office of General Counsel also has authorized the offer and sale in the United States of the MEFF RV futures contracts based on the IBEX-35 Index (August 9, 1994) and the S&P Euro Index and S&P Europe 350 Index (June 14, 2001).

## V. Exchange Rules

In addition to the regulatory requirements set forth above, all MEFF members are required to comply with Exchange rules and any guidance that MEFF may issue concerning the application or interpretation of such rules. As a self-regulatory organization, MEFF has its own comprehensive set of rules that include general rules ("Exchange Rules"), trading conditions, clearing conditions, fee regulations, arbitration rules, and other regulations. As mentioned above, MEFF's rules are approved by the CNMV. To protect all market participants, MEFF observes, surveils, and documents all market activity through complex computer programs. Thus, it is possible to intervene in the market immediately in the event of any irregularities, and it is also possible to verify the correctness of past market activities.<sup>36</sup>

Members of MEFF are required to comply with comprehensive regulations promulgated by the Exchange. Rules are applicable to trading on MEFF without regard to jurisdictional boundaries because the obligations thereunder arise by virtue of the contractual relationship between MEFF and its members. The rules promulgated by MEFF are designed to enable MEFF to fulfill its licensing obligations, including the requirement that MEFF ensure that its markets are fair and orderly and operated with due regard for the protection of investors. Members and each of their authorized traders and other registered staff are subject to disciplinary action for failure to comply with the rules governing the Exchange. Disciplinary action could include

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<sup>35</sup> 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.

<sup>36</sup> As previously discussed, MEFF's surveillance system includes two Commissions for Supervision and Surveillance, one for MEFF RV and one for MEFF RF, and a single Surveillance Centre. The Commissions, comprised mainly of Exchange members, are responsible for ensuring orderly trading, directing the work of the Exchange's compliance staff, and ensuring compliance with the rules by all participants, including the Exchange itself.

finer, suspension, or expulsion. All disciplinary actions are undertaken by the CNMV based upon referrals from MEFF or based upon the CNMV's own investigations.

The rules promulgated by MEFF and the CNMV contain both substantive provisions relating to membership matters and trading and procedural requirements relating to discipline, arbitration, and the default of members. Among other things, these rules require MEFF members to: (1) satisfy minimum financial resource requirements; (2) observe high standards of integrity, fair dealing, and market conduct; (3) act with due skill, care, and diligence; (4) avoid or manage conflicts of interest; (5) when the member is acting for a non-member customer, provide written notice to the non-member customer in a form prescribed by the CNMV that contains risk disclosure and other statements regarding the relationship between the member and its customer; (6) calculate the margin liability for each customer with respect to open positions on its books each day; (7) promptly collect the margin liability of its customers; (8) record all details of customer orders, execute customer orders promptly, and submit details of customer trades to the Exchange for registration and clearing; (9) maintain proper accounting and other records sufficient to create an audit trail with respect to business conducted on MEFF; (10) submit financial statements on a regular basis; (11) take the necessary steps to reduce the customer's liability when a customer defaults; and (12) ensure that the appropriate procedures and controls are in place with respect to the business the member conducts.

## **VI. 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 MEFF S/MART directly from MEFF.<sup>37</sup> Additional information relevant to MEFF, MEFF S/MART, and MEFF S/MART participants will be available to the Commission and its staff through certain information-sharing arrangements to which both the CFTC and the CNMV are parties. These include, without limitation, the *Memorandum of Understanding on Mutual Assistance and Exchange of Information between the Comision Nacional del Mercado de Valores of Spain and the United States Commodity Futures Trading Commission dated October 26, 1992* and the *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations, as amended, March 1998* (commonly known as the "Boca Declaration").<sup>38</sup>

## **VI. CONCLUSION**

Consistent with the Commission's June 2 Order, the Division has reviewed and considered MEFF Holding's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by

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<sup>37</sup> MEFF has agreed to provide relevant information to the Commission upon request. Email from Eudald Canadell to Duane C. Andresen, Division of Trading and Markets (March 7, 2002).

<sup>38</sup> The Division notes that the CNMV has confirmed that these information-sharing arrangements would extend to information requested by the CFTC in connection with the no-action relief provided herein. Letter from Antonio Mas, General Director, Secondary Markets, CNMV, to John Lawton, Director, Division of Trading and Markets, Commodity Futures Trading Commission (November 21, 2001).

MEFF Holding indicate that MEFF 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: MEFF, MEFF S/MART, and MEFF members are subject to oversight in Spain by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime; MEFF S/MART adheres to the IOSCO Principles; and the CFTC and the CNMV are parties to various information-sharing arrangements applicable to MEFF members and the activities of MEFF S/MART.<sup>39</sup>

Based specifically upon these and other representations made by MEFF Holding in support of its No-Action Request, the Division has determined that granting no-action relief to MEFF and the members of MEFF RV and MEFF RF, 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 MEFF or its members solely based upon MEFF's failure to obtain contract market designation or DTEF registration pursuant to Section 5 or 5a, respectively, of the CEA if: (i) MEFF RV and MEFF RF members trade for their proprietary accounts through the MEFF S/MART system in the United States; (ii) MEFF RV and MEFF RF members (including members of the CME who are granted the right of access to MEFF contracts pursuant to the GLOBEX® Alliance Agreement) who are registered with the Commission as FCMs submit orders of United States customers for transmission to the MEFF S/MART system; and (iii) MEFF RV and MEFF RF members (including members of the CME who are granted the right of access to MEFF contracts pursuant to the GLOBEX® Alliance Agreement) who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders from United States customers through AORSs for submission to the MEFF S/MART system.

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

- BONO-10 futures,
- IBEX 35 index futures and options thereon,
- S&P Europe 350 index futures and options thereon, and
- S&P Euro index futures and options thereon.

If additional futures and option contracts become available for trading through the MEFF S/MART system, MEFF may make such futures and option contracts available for trading through the MEFF S/MART system 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

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<sup>39</sup> 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 MEFF Holding 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.

contracts by foreign exchanges that are operating electronic trading devices in the United States pursuant to Commission staff no-action relief.<sup>40</sup>

The scope of the Division's no-action position is restricted to providing relief from the requirement that MEFF obtain contract market designation or DTEF registration pursuant to Sections 5 and 5a of the CEA and regulatory requirements that flow specifically from the contract market designation and DTEF registration requirements if the above-referenced contracts are made available in the United States for trading through the MEFF S/MART system, 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 MEFF 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 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 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)) of the foreign firm.<sup>41</sup> 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.<sup>42</sup>

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 the MEFF S/MART system 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 the MEFF S/MART system remain

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<sup>40</sup> 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, 2001). MEFF has represented that it would implement, prior to the installation of terminals in the U.S., filters applicable to transactions originating in the U.S. that would block access to any unauthorized transactions. No terminal would be installed in the U.S. without such filters. Email from Eudald Canadell to Duane C. Andresen, Division of Trading and Markets (March 7, 2002).

<sup>41</sup> See CFTC Staff Letter No. 88-15, Comm. Fut. L. Rep. (CCH) ¶24,296 (Aug. 10, 1988).

<sup>42</sup> See CFTC Staff Letter No. 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (Nov. 17, 1987).

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 the MEFF S/MART system 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, and other applicable federal securities laws or rules promulgated thereunder.

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

- MEFF will continue to satisfy the criteria for designation as a regulated market under the applicable laws of Spain with respect to transactions effected through MEFF S/MART.
- The laws, systems, rules, and compliance mechanisms of Spain applicable to MEFF will continue to require it to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.
- MEFF and MEFF S/MART will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Spanish law.
- Only members of MEFF (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) will have direct access (*i.e.*, not through an AORS) to MEFF S/MART from the U.S. and MEFF will not provide, and will take reasonable steps to prevent third parties from providing, such access to MEFF S/MART to persons other than MEFF members (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement).<sup>43</sup>
- All orders that are transmitted through MEFF S/MART by a member of MEFF (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) 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 member.
- All orders for United States customers accepted and transmitted by MEFF members (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) through MEFF S/MART will be intermediated by a MEFF member (or CME member under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) that is registered with

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<sup>43</sup> As stated above, “members” includes those persons identified in footnote 2 for the purposes of this no-action letter and the conditions imposed upon the relief provided herein.

the Commission as an FCM, to the extent required by Commission regulation.

- All orders for United States customers accepted through an AORS and transmitted by MEFF members (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) through MEFF S/MART will be intermediated by a MEFF member (or CME member under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) that is either registered with the Commission as an FCM or is a Rule 30.10 Firm, to the extent required by Commission regulation.

- Prior to their operating pursuant to the no-action relief provided herein, MEFF will require current and future members of MEFF who are not registered with the CFTC as FCMs to file with MEFF a written representation, executed by a person with the authority to bind the member, stating that as long as the MEFF member operates pursuant to the no-action relief provided herein, the member agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the no-action relief. MEFF will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief and shall make such representations available to the Commission upon the request of a Commission representative.

- Prior to their operating pursuant to the no-action relief provided herein, MEFF will require current and future members of MEFF who are not registered with the CFTC as FCMs to file with MEFF 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”<sup>44</sup> that are issued by or on behalf of the Commission. MEFF will maintain the foregoing appointments as long as the relevant member is operating pursuant to the no-action relief and shall make such appointments available to the Commission upon the request of a Commission representative.

- Prior to their operating pursuant to the no-action relief provided herein, MEFF will require current and future members of the Exchange who are not registered with the CFTC as FCMs to file with MEFF a written representation, executed by a person with the authority to bind the member, stating that as long as the member operates pursuant to the no-action relief provided herein, the member will provide, upon the request of the Commission, the United States Department of Justice or, 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 MEFF S/MART is installed or used in the United States. MEFF will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief. MEFF will make such representations available to the Commission upon the request of a Commission representative.

- Prior to operating pursuant to the no-action relief provided herein, MEFF will file with

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<sup>44</sup> 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.

the Division, and maintain thereafter as long as MEFF and MEFF S/MART operate pursuant to the no-action relief, 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 to MEFF by or on behalf of the Commission.

- MEFF will maintain the following updated 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 MEFF S/MART, the total trade volume originating from electronic trading devices providing access to the system in the United States compared with the total trade worldwide volume for such products traded through the MEFF S/MART system and the total worldwide trade volume for such products traded on MEFF generally; and
  - A listing of the names, NFA ID numbers (if applicable), and main business addresses in the United States of all MEFF members (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) that have access to MEFF S/MART in the United States.
- MEFF 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;<sup>45</sup>
  - Any material change in MEFF Rules or the laws, rules, and regulations in Spain relevant to futures and options;
  - Any matter known to MEFF or its representatives that, in MEFF's judgment, may affect the financial or operational viability of MEFF, including, but not limited to, any significant system failure or interruption.
- MEFF will promptly notify the CNMV, in order for the CNMV to promptly notify the CFTC, as provided for in the MOU signed between the CFTC and the CNMV, of the following:
  - Any default, insolvency, or bankruptcy of any MEFF member known to MEFF or its representatives that may have a material, adverse impact upon the condition of MEFF or upon any United States customer or firm;

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<sup>45</sup> 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: MEFF's membership criteria; the location of MEFF's management, personnel, or operations (particularly changes that may suggest an increased nexus between MEFF's activities and the United States); the basic structure, nature, or operation of the MEFF S/MART system; or the regulatory or self-regulatory structure applicable to MEFF, MEFF S/MART, or MEFF members.

- Any known violation by MEFF or any of its members (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) of the terms or conditions of the no-action relief provided herein.
- Any disciplinary action taken by the CNMV against any member of MEFF (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) 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 MEFF S/MART system or of an AORS to submit orders to MEFF S/MART.
- 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, provided directly by MEFF, regarding MEFF and the members of MEFF RV and MEFF RF (or CME members under the terms of the CME-MEFF cross-exchange access agreement signed pursuant to the GLOBEX® Alliance Agreement) operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of MEFF or its members 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 and to provide adequate protection to the public or United States contract markets.
- MEFF will employ reasonable procedures, to be determined by MEFF, 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 MEFF Holding'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 MEFF's activities in the United States to ascertain whether MEFF'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 MEFF and its members, 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 MEFF will be subject to those rules or guidelines in that event.

Mr. Eudald Canadell

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If you have any questions regarding this correspondence, please contact me or Duane C. Andresen at (202) 418-5430.

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