

CFTC letter No. 04-32
October 25, 2004
No-Action
Division of Market Oversight

Philip McBride Johnson, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Re: Sections 5 and 5a – Sydney Futures Exchange: Request for No-Action Relief from Contract Market Designation and Derivatives Transaction Execution Facility Registration Requirement

Dear Mr. Johnson:

On August 11, 1999, the Division of Trading and Markets (T&M) of the Commodity Futures Trading Commission (Commission) issued a letter to the Sydney Futures Exchange (SFE or Exchange), a wholly-owned subsidiary of SFE Corporation Limited, stating that T&M would not recommend that the Commission institute enforcement action against SFE or its Exchange Participants based solely upon SFE making its electronic trading and order matching system, known as SYCOM®, available to Exchange Participants in the United States, without obtaining designation as a contract market under Sections 5 and 5a of the Commodity Exchange Act (Act).^[1] This relief was provided, subject to several conditions, with respect to: (i) Exchange Participants who trade for their proprietary accounts through SYCOM® in the United States; (ii) Exchange Participants who are registered with the Commission as futures commission merchants (FCM) or who are exempt from such registration pursuant to Rule 30.10 (Rule 30.10 Firm) and submit orders from United States customers for submission to SYCOM®; and/or (iii) Exchange Participants who are registered with the Commission as FCMs or who are Rule 30.10 Firms and accept orders through United States automated order routing systems (AORS) from United States customers for submission to SYCOM®.

By letter dated July 11, 2001, you requested, on behalf of SFE, that T&M extend the above no-action relief to permit SFE to place SYCOM® trading terminals in the facilities of non-Exchange Participants consistent with amendments to the Chicago Mercantile Exchange's (CME) rules applicable to trading on GLOBEX® by non-CME members.^[2] By letter dated July 30, 2001, T&M confirmed that, subject to compliance with certain conditions, it would not recommend that the Commission institute enforcement action against SFE or its Exchange Participants solely based upon SFE's failure to seek contract market designation or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act,^[3] if a non-Exchange Participant located in the United States is provided direct access to SYCOM® via a SYCOM® trading terminal.^[4] Included among the conditions were the following: (1) the non-Exchange Participant must be authorized to enter orders directly unto SYCOM® using a SYCOM®

trading terminal by an Exchange Participant qualified to clear transactions on SFE (authorizing Exchange Participant); and (2) the authorizing Exchange Participant must guarantee and assume all financial responsibility for all activity conducted through each non-Exchange Participant's trading terminal.

By letter dated August 3, 2004, you requested a modification of the relief granted in the July 30 letter.^[5] You represent that one or more of the Exchange Participants that carry customer accounts^[6] and that wish to place terminals with U.S. customers (non-Exchange Participants) have not been granted clearing privileges on SFE. You note, however, that all trades placed through these terminals will be cleared by an entity authorized by SFE Clearing to clear transactions on SFE (Clearing Entity) which, in that capacity, is required by SFE rules to take financial responsibility for all such trades. Therefore, you request that the no-action relief granted by the July 30 letter be made applicable to Exchange Participants that are registered FCMs or Rule 30.10 Firms that authorize placement of SYCOM® terminals with non-Exchange Participants in the United States in a manner where a Clearing Entity takes full financial responsibility for all trades placed through those terminals and both the Exchange Participant and the Clearing Entity conform with the other conditions of the relief granted by the July 30 letter. You represent that this relief is sought as a supplement to the relief provided to SFE and affiliates by the August 11 and July 30 letters.

The Division has reviewed the requested modification and the earlier no-action letters described above, and has determined that modifying the relief should not have a significant impact on the no-action relief as granted. The August 11 letter requires that every order placed by U.S. customers must be intermediated by an FCM or Rule 30.10 Firm for submission to SYCOM®. The Division believes that providing non-Exchange Participants located in the U.S. with direct access to SYCOM® via a SYCOM® trading terminal subject to the conditions specified herein and in the August 11 and July 30 letters will provide customers located in the United States with greater access to SFE without sacrificing any customer protections.

Accordingly, the Division confirms that it will not recommend that the Commission institute enforcement action against SFE, its affiliates, officers, directors, Exchange Participants or Clearing Entities solely based upon SFE's failure to seek contract market designation or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act if Exchange Participants that are registered FCMs or Rule 30.10 Firms authorize placement of SYCOM® terminals with non-Exchange Participants in the United States. This amended no-action position is subject to compliance with the following conditions:

1. the non-Exchange Participant must be authorized to enter orders directly into SYCOM® using a SYCOM® trading terminal by an Exchange Participant (authorizing Exchange Participant); and
2. the authorizing Exchange Participant must:
 - o assist the SFE in a timely manner in any investigation into potential violations of SFE Rules, the Act, or the terms and conditions set forth herein or in the August 11 and July 30 letters including, but not limited to, requiring the non-Exchange Participant to produce

documents, to answer questions from the SFE, and/or to appear in connection with the investigation;

- suspend or terminate the non-Exchange Participant's SYCOM® access if SFE determines that the actions of the non-Exchange Participant threaten the integrity or liquidity of any contract, violate any SFE Rules, the Act, or the terms and conditions set forth herein or in the August 11 and July 30 letters, or if the non-Exchange Participant fails to cooperate in an investigation; and

3. an entity authorized by SFE Clearing to clear transactions on SFE must guarantee and assume all financial responsibility for all activity conducted through each non-Exchange Participant's trading terminal.

The Division notes that its no-action position does not relieve the SFE from compliance with the applicable terms and conditions set forth in the August 11 and July 30 letters. 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.

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 SFE's request for no-action relief and the amendments thereto. Any materially different, changed, or omitted facts or circumstances may render this letter void.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, an attorney on my staff, at (202) 418-5492.

Very truly yours,

Richard A. Shilts
Acting Director

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

^[1] Letter from I. Michael Greenberger, Director, T&M, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, dated August 11, 1999 (August 11 letter). The relief set forth in the August 11 letter extended to the trading of products listed on the New Zealand Futures and Options Exchange, a wholly-owned subsidiary of SFE Corporation Limited.

^[2] Letter from Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, to John C. Lawton, Acting Director, T&M, dated July 11, 2001.

[3] The August 11 letter referred only to contract market designation because at that time there was no provision in the Act or rules thereunder governing a derivatives transaction execution facility. Because of the creation of that category of board of trade under the Commodity Futures Modernization Act, the Division amended its relief accordingly.

[4] Letter from John C. Lawton, Acting Director, T&M, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, dated July 30, 2001 (July 30 letter).

[5] Letter from Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, to Richard A. Shilts, Acting Director, Division of Market Oversight, dated August 3, 2004. On July 1, 2002, the Commission's staff was reorganized. Requests for no-action relief from the contract market designation requirement or derivatives transaction execution facility registration requirement are now reviewed by the Division of Market Oversight (Division).

[6] You represent that all Exchange Participants carrying U.S. customer accounts directly must be registered FCMs or Rule 30.10 Firms.