



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

CFTC letter No. 04-35  
December 15, 2004  
No-Action  
Division of Market Oversight

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

Mr. M. J. Gagné  
President and CEO  
Winnipeg Commodity Exchange Inc.  
400 Commodity Exchange Tower  
360 Main Street  
Winnipeg, Manitoba  
Canada R3C 3Z4

Re: Sections 5 and 5a - Winnipeg Commodity Exchange, Inc.: Request  
for No-Action Relief from Contract Market Designation and  
Derivatives Transaction Execution Facility Registration Requirements

Dear Mr. Gagné:

This is in response to your letter dated August 27, 2004 to the Division of Market Oversight ("Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission").<sup>1</sup> By this correspondence, you request, on behalf of the Winnipeg Commodity Exchange, Inc. ("WCE" or "Exchange"), that the Division grant no-action relief to permit the Exchange to make its electronic trading and order matching system, known as the e-cbot® trading platform powered by LIFFE CONNECT® (referred to herein as "e-cbot" or the "e-cbot System"), available to US-based market participants in the United States<sup>2</sup> ("No-Action Request"). Specifically, the Exchange wishes to make the e-cbot System available to: (1) WCE Participants<sup>3</sup> who wish to use terminals located in the United States giving them access to e-cbot

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<sup>1</sup> Letter from M.J. Gagné, President and CEO, Winnipeg Commodity Exchange, Inc., to the Director of the Division of Market Oversight, Commodity Futures Trading Commission (August 27, 2004).

<sup>2</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>3</sup> For purposes of this letter and the relief provided herein, the term, "WCE Participant" shall include Direct Access Trading Participants (which must either be Clearing Participants of the WCE Clearing Corporation or have a Clearing Authorization in place) or Trading Participants (which trade through the facilities of a Direct Access Trading Participant and are entitled to reduced fees). Furthermore, references herein to WCE Participants shall

to trade on the WCE for their proprietary accounts<sup>4</sup>; (2) WCE 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 e-cbot to submit and transmit orders from United States customers<sup>5</sup>; and (3) WCE 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”)<sup>6</sup> who wish to accept orders through automated order routing systems (“AORSs”)<sup>7</sup> from United States customers for submission to e-cbot.

The Exchange requests that the Division confirm that it will not recommend that the Commission institute enforcement action against the WCE, the WCE Clearing Corporation (“WCECC”)<sup>8</sup>, or WCE Participants solely based upon the WCE’s failure to seek designation as a contract market (“DCM”) or registration as a derivatives transaction execution facility (“DTEF”)

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include any “affiliate” of any WCE Participant that has been granted access by the WCE Participant to the e-cbot System. An “affiliate” of a WCE Participant shall mean any person that: (i) owns 50% or more of the Participant; (ii) is owned 50% or more by the Participant; or (iii) is owned 50% or more by a third person that also owns 50% or more of the Participant. WCE represents that, as a condition of access to the e-cbot System, such affiliates would be required to comply with all WCE Rules and that WCE Participants remain responsible to WCE for ensuring their affiliates’ compliance. The Exchange has two additional categories of participants, Merchant Participants, which are entities involved in the delivery process, and Ancillary Participants, which are entities with a general interest in the Exchange. Entities in these two categories are not entitled to trading rights on the Exchange and will not engage in trading activity within the scope of this no-action letter.

<sup>4</sup> For purposes of this letter and the relief provided herein, the term "proprietary account" shall have the meaning set forth in CFTC Rule 1.3 (y). 17 C.F.R. § 1.3(y) (2004). Commission rules referred to herein are found at 17 C.F.R. Ch. I (2004).

<sup>5</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 CFTC Rule 30.1 (c).

<sup>6</sup> CFTC 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 recordkeeping 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 (2004).

<sup>7</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>8</sup> The WCECC is the clearinghouse and guarantor for all contracts traded on the Exchange. See Section II H below for more details.

pursuant to Sections 5 or 5a of the Commodity Exchange Act (“CEA” or “Act”),<sup>9</sup> respectively, or to comply with those Commission regulations that specifically relate to DCMs or DTEFs, in connection with the installation and use in the United States of terminals and/or AORSs that are used to submit orders to e-cbot.

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>10</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 promulgates rules or guidelines in this area (“June 2 Order”).<sup>11</sup> In accordance with this instruction, the Division has reviewed the WCE’s No-Action Request and the materials submitted in support thereof.

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

- Copies of the Articles of Incorporation of WCE Holdings, Inc. and its subsidiaries, Winnipeg Commodity Exchange Inc., and WCE Clearing Corporation;
- Materials relating to the e-cbot System, including the CBOT-WCE Hosting Agreement and an “e-cbot Electronic Trading Platform Commodity Futures Trading Commission Information Packet;”
- Copies of *The Commodity Futures Act (Manitoba)* (“CFA”) and the applicable regulations of the Manitoba Securities Commission (“MSC”);
- A copy of Order No. 3784 of the MSC, recognizing the WCE as a self-regulatory organization and as a commodity futures exchange pursuant to the CFA;
- A copy of the November 15, 2004 MSC Order approving WCE’s planned conversion from an open outcry to an electronic trading platform and granting WCE continued registration as an Exchange pursuant to Section 15 of the CFA;
- Copies of the current rulebooks of the WCE and the WCECC; and
- A representation from the WCE that, upon request, it will provide to the Commission information necessary to evaluate the continued eligibility of the Exchange and its Participants for the no-action relief, to enforce compliance with the terms and conditions

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

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

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

of the relief, and to enable the Commission to carry out its duties under the Act and Commission regulations.

Furthermore, at the WCE's request, the Manitoba Securities Commission wrote to the Commission to confirm that: (1) MSC will cooperate with the CFTC with respect to inquiries or investigations and enforcement proceedings in connection with the activities conducted pursuant to any no-action relief granted by the CFTC; (2) MSC will provide to the CFTC, on an "as needed" basis, information necessary to evaluate the continued eligibility of the WCE and its Participants for the no-action relief, or to enable the Commission to carry out its duties under the Act and CFTC regulations; and (3) MSC does not believe that any local laws or statutes serve as an impediment to such cooperation.

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

- Commission Orders pursuant to Rule 30.10 exempting WCE Participants from certain of the Commission's foreign futures and options rules based on substituted compliance with comparable regulatory and self-regulatory requirements of the MSC.<sup>12</sup>

Representations made by the WCE regarding the Exchange's activities in the United States, the Exchange's membership criteria, the e-cbot System, the relevant regulatory regime in Canada, and the information-sharing arrangements applicable to the e-cbot System are summarized in Sections I - V below. For purposes of its response to the No-Action Request, the Division has relied upon the Exchange's representations and has not conducted an independent review to confirm their accuracy.<sup>13</sup>

## **I. GENERAL INFORMATION REGARDING THE EXCHANGE**

The WCE is a commodity futures exchange that facilitates trading in futures and options contracts on canola, flaxseed, feed wheat and western barley. Its main office and place of business is in Winnipeg, Manitoba. It is governed by *The Commodity Futures Act (Manitoba)*, which is administered by the MSC.

The WCE was founded in 1887 with cash markets in grains and grain products, followed shortly by forward, futures and option markets. WCE is the only agricultural futures and option exchange in Canada.

Currently, all WCE contracts trade by open outcry. However, the Exchange has determined to convert the trading platform from open outcry to electronic trading. The

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<sup>12</sup> The WCE received a Rule 30.10 exemption in 2001 (66 Fed. Reg. 27859 (May 21, 2001)). Pursuant to one of the conditions of the exemption, the Exchange provided the Commission with updates on its activities through letters dated July 17, 2002 and April 14, 2003.

<sup>13</sup> As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by the Exchange in support of its No-Action Request and the understandings of the Division in this letter. 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.

electronic trading platform chosen by WCE is the e-cbot® trading platform powered by LIFFE CONNECT®. The trading host provider is the Chicago Board of Trade (“CBOT”). The Exchange plans to implement the changeover from open outcry to electronic trading on December 20, 2004.

As of November 1, 2001, the Exchange demutualized, converting from a membership organization to a share capital, for-profit Manitoba corporation under the name of WCE Holdings, Inc.<sup>14</sup> WCE Holdings owns 100% of the shares of both WCE and WCE Clearing Corporation. To carry on business in Manitoba, an exchange must be recognized as a commodity futures exchange by the MSC pursuant to section 15(1) of the CFA, and may also be recognized as a self-regulatory organization by the MSC pursuant to section 14(1). The recognition process involves a detailed review of the structure, operations, rules and finances of the applicant. The MSC recognized the restructured WCE as both an SRO and a commodity futures exchange on May 31, 2002. A copy of the MSC’s Order No. 3784 (the “Recognition Order”) was attached to the Exchange’s no-action request.

WCE is recognized as an SRO by, and registered as a commodity futures exchange with, the MSC. As such, it is subject to the extensive supervisory powers of the MSC as provided in the CFA. In addition to the Exchange and its clearinghouse, the WCECC, being registered with the MSC, WCE Participants that trade with the retail public in Manitoba are required to be registered with the MSC. Exchange rule changes must be submitted to the MSC for approval prior to implementation. The MSC oversees not only the Exchange’s rules, but also its compliance with the trading rules of the CFA, which include requirements concerning margins, reporting, recordkeeping, and various customer protection measures.

As noted, the Exchange offers futures and options on canola, flaxseed, feed wheat and western barley. All transactions are cleared through WCECC. Contract specifications for all products are filed with the MSC.

The Exchange 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 conduct any direct solicitation or marketing efforts in the United States using US-based individuals. It does not provide any investment advice to US persons whatsoever. It does not have any trading or clearing facilities in the United States. The Exchange also notes that it does not communicate in any way whatsoever with retail clients.

## **II. OVERVIEW OF THE E-CBOT TRADING PLATFORM POWERED BY LIFFE CONNECT**

At the outset, the Division notes that the description of the e-cbot System set forth herein is based upon representations made by the WCE or its representatives. The Division has not performed an independent assessment of the security or soundness of the e-cbot System. Nevertheless, it should also be noted that the e-cbot System for trading and clearing futures is

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<sup>14</sup> Demutualization required both a significant corporate reorganization and major amendments to Exchange rules. These matters were the subject of WCE’s update letters to the Commission dated July 17, 2002 and April 14, 2003.

virtually identical to the NASDAQ LIFFE electronic trading platform, using LIFFE CONNECT, and that NASDAQ LIFFE was previously designated as a contract market by the Commission.<sup>15</sup> Furthermore, Commission staff undertook a thorough review of the e-cbot System in connection with the CBOT's October 31, 2003, self-certification to the Commission of a set of rule changes to replace its a/c/e electronic trading system with the e-cbot electronic trading system using LIFFE CONNECT.

#### **A. Introduction**

The trading host provider for the WCE's proposed electronic trading system will be the CBOT and the trading system utilized will be the e-cbot System, powered by LIFFE CONNECT. WCE Holdings Inc. and the WCE have entered into a Memorandum of Understanding and a Hosting Agreement with the CBOT whereby CBOT has sub-licensed the use of the e-cbot System for "Hosted Products," initially, all of the futures and options currently traded on the WCE. As noted above, the e-cbot System has already undergone an exhaustive technology review prior to its launch. The Exchange represents that that system required only slight enhancements to extend the e-cbot platform to host the WCE markets. These enhancements include system enhancements that will: (1) route WCE-specific matched trades to WCE's back office clearing service provider, the Kansas City Board of Trade Clearing Corporation; (2) provide WCE-specific market data to the CBOT Quote Vendor System for redistribution; and (3) provide WCE-specific matched trade data and audit data files of participants and exchange activity to WCE for regulatory and investigation activities. The e-cbot System will also be given operational enhancements to: (1) load and maintain WCE products within the e-cbot trading platform; (2) provide appropriate market operations functions; and (3) administer and maintain WCE Participant trader rights, user access and participant connectivity.

#### **B. The Order System**

WCE represents that orders received by a WCE Participant shall be entered into the e-cbot System in the sequence received. Orders that cannot be immediately entered into the e-cbot System must be entered when the orders become executable in the sequence in which the orders were received. Orders that may be introduced into the e-cbot System include market orders, market on open ("MOO") orders, limit orders, and good-till-cancelled-limit ("GTC") orders. Market orders are executed at the best price or prices available in the order book at the time the order is received until the order has been filled in its entirety.<sup>16</sup> MOO orders can only be submitted for futures products. They are accepted only during the pre-open period and are intended for execution at the opening market price.<sup>17</sup> Limit orders are orders to buy or sell a

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<sup>15</sup> The Commission approved NASDAQ LIFFE, LLC, a joint venture of the NASDAQ Stock Market and the London International Financial Futures Exchange (LIFFE) as a Designated Contract Market on August 22, 2001. On July 24, 2003, NASDAQ LIFFE ended its relationship with NASDAQ and the Exchange was renamed NQLX.

<sup>16</sup> A market order will not trade outside of the dynamic price limits and any residual volume from an incomplete market order is cancelled. Market orders are rejected if the market is not open.

<sup>17</sup> MOO orders will be executed by the system at the opening price calculated after the uncrossing of limit orders in the market when the market opens. Any residual MOO orders not matched on the open will be converted automatically to limit orders at the opening price.

stated quantity at a specified price, or at a better price if obtainable.<sup>18</sup> GTC orders are eligible for execution for the current and all subsequent electronic trading system trade sessions until executed, cancelled or the contract month expires.<sup>19</sup>

Three types of order modifiers are permitted: minimum volume, complete volume, and immediate & cancel. Minimum volume orders are executed only if there is at least the designated minimum volume available at the stated price or better. Complete volume orders are executed only if there is sufficient volume available, at the stated price or better, to execute the order in its entirety. Immediate & cancel orders are executed against any existing orders at the stated price or better, up to the volume designated on the order. Any residual volume on the order is cancelled.

### **C. Trading Periods**

Unless specifically set out in the rules for a specific contract, trading hours on WCE for e-cbot System transactions<sup>20</sup> (both futures and options) will be divided into three periods: (1) pre-opening – 8:30 am to 9:29:59 am (CT); (2) trading – 9:30 am to 1:15 pm (CT); and (3) closing – 1:14 to 1:15 pm (CT). During the pre-opening period, traders may enter only MOO orders, limit orders, and GTC limit orders. Order modifiers are not permitted on orders entered during the pre-opening. Immediately upon the market open, the e-cbot System will apply an uncrossing algorithm to calculate the price at which the maximum volume will be traded. All orders executed pursuant to the uncrossing algorithm will be executed at a price equal to or better than that at which they were entered. MOO orders are processed immediately after the uncrossing. The closing period is used in calculating the settlement price.

The trading algorithm used by WCE is a *Pro-Rata Algorithm with Priority Order, a Minimum Volume Requirement, and a Maximum Volume Cap*. This was chosen by WCE from the algorithms available on the e-cbot System. With this algorithm a priority flag is given to the order that first enters the market at the best price if that order is above a certain volume (known as the "Minimum Volume"). When this priority flag is assigned it will trade across all incoming volume up to a certain maximum (known as the "Volume Cap"). When this volume cap is reached, all remaining volume is divided between incoming orders at the best price in proportion to the volumes specified on the resting orders at that best price.

The volume cap is intended to prevent a priority order from locking a particular market. Once the volume cap has been hit, the algorithm distributes any unassigned volume remaining in the incoming order in the normal pro-rata manner. Because of this, the priority order can be

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<sup>18</sup> Unless otherwise specified, any residual volume from an incomplete limit order is retained in the central order book until the end of the day unless it is withdrawn or cancelled.

<sup>19</sup> GTC orders can be given an expiry date and are valid until the end of trading on that date.

<sup>20</sup> Trading hours for Non-Trading System transactions are from 8:00 am to 4:00 pm (CT). Non-Trading System transactions are executed through the Exchange without process through, or reference to, the Trading System. These include exchanges for physicals (EFPs), exchanges for risk (EFRs), negotiated options, option exercises, give-ups, and position transfers (transfer of a position to a clearing account or to an account at another FCM).

allocated additional volume over that allowed by the volume cap. This mechanism is intended to encourage traders to improve prices by rewarding price improvement with volume. An order will gain priority status if it creates a price improvement in a market as it enters the order book. Only one order in a particular market can have priority status at any one time. Priority status will be passed to an order that meets or exceeds the Minimum Volume and creates a price improvement on the existing bid or offer, replacing any order that had priority status at the previous bid or offer price.

As discussed more fully below, all matched trades will be cleared by the WCE Clearing Corporation (“WCECC”). WCE and the WCECC have entered into an agreement with the Kansas City Board of Trade (“KCBT”) and the Kansas City Board of Trade Clearing Corporation (“KCBTCC”) whereby the KCBTCC will provide certain back office clearing processing services to WCECC.

#### **D. Trade Registration / Audit Trail**

WCE represents that it has access to all audit trail data. WCE will review all market data on both a real-time basis and through a review of computer generated reports on a next-day basis. Specifically, the WCE Regulatory Division (described at III B *infra*) will identify and follow up on all suspicious trades or patterns of trading and will investigate suspicious activity and potential misconduct in its markets under the broad jurisdiction provided to it under WCE Rule 10. The Regulatory Division also has the jurisdiction to compel its market participants to provide any information it requires relative to its markets.

Pursuant to Exchange Rules, WCE Participants are required to immediately record and time-stamp each order received from a customer. The order must be time-stamped again on execution and also at the time of any cancellation of the order. Order slips for business done on the electronic trading facility must contain the following information: participant or client identification, identity of the individual submitting the order to the Trading System and the individual trader mnemonic (“ITM”)<sup>21</sup> under which it is submitted, the identity of the individual completing the order record, buy/sell, volume, contract, put/call and exercise price (if applicable); delivery/expiry month, price of price limit, price range of strategy price, special instructions, *e.g.*, GTC, strategy type indicator (if applicable); and particulars of any amendments to the order.

Further, the Rules of the Exchange also require that all order documentation must be robust, secure and not able to be altered. The orders must be made available immediately on the day of the transaction and within a reasonable time thereafter as and when requested by the Exchange. They must be provided to the Exchange in a manner that is transparent and able to be easily understood. The Exchange Rules further provide that any Participant that chooses to employ an electronic system for order routing must have suitable contingency procedures in place in the event of a systems failure, which may include back up systems or recovery to a

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<sup>21</sup> The ITM is a three-character access key, used in conjunction with a member mnemonic, a firm identifier that provides details on the clearing firm, and a 16-character user ID that identifies the specific individual accessing the trading host.

paper-based audit trail, such that no loss of audit trail data can occur. All order information must be maintained for a minimum of seven years.

**E. System and Network Response Times**

WCE will use the same e-cbot network employed by the CBOT on the LIFFE CONNECT Trading System. WCE affirms that supporting applications, computer hardware and distribution networks have been implemented with sufficient capacity to accommodate planned launches, including the WCE launch on December 20, 2004, and to support projected growth.

WCE represents that orders from US customers will not be subject to any disadvantages due to differences in distance across the network among participants in different locations because the LIFFE CONNECT network is specifically designed to ensure the equality of response times across borders.

CBOT Market Operations monitors the entire electronic trading system on a real-time basis so they can immediately notify firms and traders of any problems. The Market Operations team also has the ability to log off traders that may be impacting the integrity of the system. If any anomalies are noticed for particular end-points, the problem is investigated immediately.

**F. Reliability and Failure Recovery**

WCE uses the same e-cbot Systems as the CBOT on the LIFFE CONNECT trading system and is therefore provided with the same high level of reliability and failure recovery. The e-cbot System has duplicate systems for reliability and failure recovery. The existing CBOT Computer Room will provide interface fault tolerance where possible. CBOT will also maintain a Remote Data Center (“RDC”) that will be used for Disaster Recovery of any/all interfaces as well as having fault tolerance support for selected interfaces within the RDC.

If an individual Trading Application or its link to the Trading Host fails, the Trading Application attempts to transfer all of the trader's orders to a nominated replacement. If that cannot be done, the trader's orders (except GTC orders) are withdrawn from the central order book. The withdrawn orders are held until they can be returned to the trader (or replacement), or until the end of the trading day, whichever is earlier.

In the event of a major failure or Trading Halt, CBOT Market Operations will notify all market participants by means of a System Message to all market participants. In addition, CBOT market operations will send an email to all Quote Vendors, Participants with a direct connection to the trading system, Clearing staff and internal staff. A fax will also be sent to all Participants. When the market is ready to be opened again, Market Operations will send a system message to all market participants, e-mail all quote vendors, members and staff and send a fax to all participants. In addition, CBOT will provide a 20-minute pre-open period before the actual market open. This ensures all traders are able to get ready for the market open.

**G. System Security**

WCE uses the same e-cbot Security System that is employed by the CBOT on the LIFFE CONNECT trading system. The Security System provides the means for authentication, confidentiality, and the integrity of the LIFFE CONNECT trading system. The e-cbot Security System maintains a list of currently certified users, authenticates users as they log on, distributes session keys as part of the login process and maintains a list of all currently logged-on trading applications. All entities using the e-cbot Security System must first logon to the Security System. The e-cbot Security System employs the following methods to ensure a secure trading environment:

- The Connect Trading Host uses a Public Key Infrastructure to strongly authenticate Traders.
- Network-level logical access control limits data flows to authorized connections.
- Administration of the Trading Host uses SSH<sup>22</sup> to protect usernames and passwords and host-based firewalls limit connections to trusted and monitored access points.
- Network connections are monitored by network based intrusion detection.
- The e-cbot Market Configuration System uses a limited application role-based security model that allows fine-grained user access control.
- The e-cbot Market Configuration System separates access for users and administrators by restricting the locations from which administrators can access the system.
- All data sent from the e-cbot Market Configuration System uses SSL<sup>23</sup> encryption.

## **H. Settlement and Clearing**

Clearing is the settlement of daily margins, the final settlement of positions resulting from futures and option trades, and the respective security management. The clearing process is carried out separately from trading by the WCECC, a wholly owned subsidiary of WCE Holdings, the parent company of the Exchange. WCECC was incorporated and became operational in 1998. WCECC's rules and procedures conform to the recommendations of the Futures Industry Association Global Task Force on Financial Integrity.

All futures and options contracts traded on WCE are cleared by WCECC. WCECC reconciles and matches trades, marks to market Clearing Participants' obligations each day, and

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<sup>22</sup> SSH is an acronym for "Secure Shell," a program used to securely login to and transfer information to a remote computer. The encryption features of SSH enable one to establish secure communications over an insecure communications path (e.g., the Internet). Everything, including the login username and password, can be encrypted and therefore protected.

<sup>23</sup> SSL is an acronym for "Secure Sockets Layer," a communications protocol that enables the secure transfer of data between a client (end-user PC) and a server. SSL is used on the web to provide for secure transmission of private information such as credit card numbers. A website whose URL begins with https (vs. http) is using SSL to protect information. SSL also uses encryption to provide that security.

guarantees Clearing Participants' financial obligations to each other in the event of a default by one or more of them through a system of mutualized risk sharing. WCECC provides for a multi-layered risk management approach to ensure the integrity of its processes, in particular the integrity of its guarantee. All Clearing Participants, by being required to meet and maintain financial capital standards, provide for margin and all pay/collect requirements by way of an irrevocable payment process, and deposit a contribution to the Clearing Fund, provide for a comprehensive credit ring.

All trades on WCE must be cleared through a WCECC Clearing Participant. All Clearing Participants must meet specified financial criteria and must be either a Direct Access Trading Participant or a Trading Participant of the Exchange ("WCE Participant," see Note 3 *supra*). Clearing FCMs are entitled to accept and clear trades for other market participants, provided the same are WCE Participants, or are their clients for both execution and clearing. Each Clearing FCM must enter into a Clearing Authorization for every WCE Participant it clears. The Clearing Authorization requires that the Clearing Participant assume all responsibility and liability for trading by the WCE Participants. Clearing FCMs, in addition to maintaining status as WCE Participants, must also obtain and maintain status in a Designated Self-Regulatory Organization ("DSRO") that regulates FCMs. At present, only Canadian FCMs are permitted to be Clearing Participants of WCECC. The Exchange is currently reviewing requests from several US FCMs who wish to become WCECC Clearing Participants.

WCECC has established a Clearing Fund to provide additional security against any Clearing Participant failing to fulfill its obligations to the WCECC. Each Clearing Participant is required to deposit in the Clearing Fund an amount equal to the greater of \$100,000 (Canadian) or the Clearing Participant's maximum open interest weighting<sup>24</sup> multiplied by the Clearing Fund Level.<sup>25</sup>

Clearing Participants must also meet the minimum capital requirements set out in the Rules of the WCECC, of the Exchange, of the CFA, and of all SROs of which they may be a member. At present, all Clearing Participants are in either the Merchant<sup>26</sup> or the FCM category. Under both DSRO rules and Exchange/WCECC rules (which incorporate the DSRO rules by reference), an FCM registered in Canada must meet the risk adjusted net capital requirements of its DSRO,<sup>27</sup> which also must be a member organization of the Canadian Investors Protection

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<sup>24</sup> A Clearing Participant's maximum open interest weighting is determined by dividing its largest open interest in all classes over the preceding month by the sum of all Clearing Participants' maximum open interest amounts over the same period.

<sup>25</sup> The Clearing Fund Level is an amount determined by the WCECC from time to time based on a percentage of the largest aggregate daily margin requirement of all Clearing Participants over the preceding calendar month.

<sup>26</sup> A Merchant Participant must maintain a financial position of at least \$2 million (Canadian) of adjusted net capital and a net worth that exceeds the total capacity of all of its elevators registered with the Exchange multiplied by \$50 (Canadian) per ton. As noted above, Merchant Participants are not expected to engage in trading activity within the scope of this no-action letter.

<sup>27</sup> The DSRO for a Canadian FCM is the Investment Dealers Association of Canada ("IDA") or the Bourse de Montreal, Inc. Pursuant to a 49-page IDA form, known as the "Joint Regulatory Financial Questionnaire and Report," referenced in IDA Bylaw No. 17, each Canadian FCM must complete and file with the Canadian Investor

Fund (“CIPF”).<sup>28</sup>

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

- All margin monies, including securities, margin collateral, or property of any kind held by WCECC in all of the defaulting Clearing Participant’s accounts (excepting client funds);
- The Clearing Fund deposits of the defaulting Clearing Participant;
- The Clearing Fund deposits of all clearing participants, which are paid on a pro-rata basis to cover any shortfall in the payments available from the defaulting Clearing Participant; and
- If all of the Clearing Fund is utilized, the rules allow for the WCECC to collect, from each Clearing Participant, an additional 100% of the amount in the Clearing Fund at the time of the insolvency/default.

In addition to the protection afforded by WCECC’s requirements and facilities, Canadian retail clients of Canadian FCMs are protected by the CIPF from losses resulting from an FCM’s insolvency up to the amount of \$1 million (Canadian) per client for all types of accounts (including commodity futures accounts).

WCE and WCECC (collectively “WCE”) have entered into a four-party agreement with the Kansas City Board of Trade and the KCBT Clearing Corporation (collectively “KCBT”) whereby KCBT will provide certain back office clearing processing services to WCECC. The agreement provides that KCBT will:

- Administer certain of WCE’s risk management procedures, including SPAN margining and marking to market all positions, to calculate the required payments to WCE. KCBT is not responsible for setting or determining any of these risk management processes, but will perform the necessary work to ensure they are carried out;
- Use its best efforts to have in place and to provide all technical infrastructure necessary to process trades, including telecommunications, routers, computer systems, software applications, and so forth;

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Protection Fund a risk-adjusted capital calculation on a monthly basis, and must also calculate its risk-adjusted capital on a daily basis and self-report on any day when its risk-adjusted capital drops below zero.

<sup>28</sup> The Canadian Investors Protection Fund is a protection fund set up by the Canadian investment industry to ensure the return of customers’ funds and property, within defined limits, in the event of a member bankruptcy. CIPF protects client assets up to a limit of \$1 million (Canadian) per account. Being an initiative of the Canadian brokerage industry, the CIPF provides coverage only to Canadian clients of Canadian-based FCMs. CIPF coverage will not apply to US FCMs that become WCE Participants under the relief sought in the WCE no-action request.

- Provide clearing processing services for WCE markets, based on the KCBT's existing programs and processes for the submission, edit and retrieval of trade and position information relating to WCE products;
- Calculate daily the amount of pays/collects required for each Clearing Participant and initiate the necessary banking instructions for the movement of funds;
- Provide a system to WCE Clearing Participants to enable them to edit non-critical trade data files, transferring positions between accounts of WCE Clearing Participants and give-ups between WCE Clearing Participants;
- Provide clearing processing services on days when WCE markets are trading and KCBT markets are not trading;
- Process for clearing any and all generic, or standard, futures and option contracts developed and listed for trading by WCE;
- Be responsible for technical operations and day-to-day help desk assistance;<sup>29</sup>
- Have and maintain a redundant off-site data center;<sup>30</sup> and
- Provide a minimum level of assurance that the clearing processing services it provides to WCE will be at least equivalent quality to those it provides for its own contracts.

KCBT is a service provider to WCE only and will not guarantee the performance of the WCE contracts. All guarantees will be provided by WCECC as the designated clearinghouse. Neither will KCBT be responsible for any part of the delivery processes under WCE contracts. The parties have agreed to an initial three-year term for provision of these clearing services, which term can be renewed. KCBT has also agreed to hold strictly confidential, and not make use of, any information received in its capacity as a clearing service provider to WCECC.

## **I. Adherence to IOSCO Principles**

The Exchange notes that the LIFFE CONNECT system has been reviewed by the Commission staff in connection with a request by LIFFE for similar no-action relief, that the e-cbot System, powered by LIFFE CONNECT, is virtually identical to the NASDAQ LIFFE electronic trading platform, using LIFFE CONNECT, and that NASDAQ LIFFE was previously designated by the Commission as a contract market. Furthermore, the CBOT has provided information on the e-cbot System powered by LIFFE CONNECT in connection with its status as a designated contract market. The foregoing approvals all require adherence to the principles

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<sup>29</sup> WCE, however, will be responsible for all other matters concerning the operation of an autonomous exchange and clearinghouse, including all contract development, marketing initiatives, regulatory matters, participant permissions, rule development and oversight, and other necessary ancillary matters.

<sup>30</sup> The Exchange represents that KCBT has advised that the off-site data center will become operational during the first quarter of 2005.

expressed in the International Organization of Securities Commissions (“IOSCO”) document entitled Principles for the Oversight of Screen-Based Trading Systems for Derivative Products (“IOSCO Principles”) published in 1990. Also, the MSC also is guided by the IOSCO Principles in its review of the Exchange’s systems and operations. Finally, WCE has specifically represented that it will comply with the IOSCO Principles in its operation of the e-cbot System.

#### **J. Demarcation of Responsibilities and Liability**

The Exchange’s Rules and its contractual relationship with WCE Participants provide that the Exchange will not be liable for any loss or damages as a result of the use of the Trading System or any part thereof. This limitation of liability is consistent with the position of other exchanges previously granted similar relief and similar to provisions of the Rules of the Exchange’s Trading Host, the CBOT.

### **III. REGULATORY REGIME GOVERNING THE EXCHANGE**

#### **A. Provincial Oversight of Futures and Options Trading**

Canada has both a federal government and provincial governments. Under the Canadian Constitution, regulation of securities, futures and options trading is an enumerated power reserved to the provincial governments. The province of Manitoba has established the Manitoba Securities Commission, a self-operating agency reporting to the Department of Finance of the provincial government, as the regulatory authority for futures and options trading in Manitoba. The MSC has jurisdiction over such trading, and the operations of the WCE, pursuant to *The Commodity Futures Act (Manitoba)* and MSC regulations. The MSC performs three primary functions: (1) administrative – administering the CFA, including registration of Exchange participants; (2) investigative – including broad investigative and enforcement powers; and (3) quasi-judicial – including hearing appeals from decisions by MSC staff and considering whether recognizing a contract market, designating an organization as a self-regulatory organization, or canceling or suspending the registration of a person or company, is in the public interest.

The cornerstone of the CFA is registration. All commodity futures exchanges and clearinghouses must register with, and be recognized by, the MSC. Likewise, Exchange Participants dealing with the retail public in Manitoba are required, by both the CFA and WCE rules, to register with the MSC. Exchange Participants dealing with the retail public in other jurisdictions must meet applicable requirements of the CFA and also must meet and maintain all regulatory requirements of those jurisdictions. Following its demutualization in 2001, WCE submitted an updated application to the MSC, including the following representations about its regulatory structure, which WCE states continue to hold true:

- The Exchange has the capacity to carry out the purposes of all governing laws and rules and its own rules, and is able to and does enforce compliance by its participants and their employees with those laws, rules and regulations;
- The Exchange treats all participants and applicants for participant status in WCE markets in a fair and consistent manner;

- The Exchange consistently and on an ongoing basis develops and amends rules that are designed to set standards of behavior for all participants and to promote the protection of the marketplace, including all participants in the marketplace;
- The Exchange will submit to the MSC its rules for review and approval as the MSC deems appropriate and will continue to assure that all of its rules are consistent with the public policy directives established by the MSC;
- The Exchange will cooperate in all ways with the MSC and with any other SROs designated under the Act by the MSC in investigating and enforcing applicable laws and regulations;
- The Exchange will enforce all of its rules and impose appropriate disciplinary sanctions for non-compliance;
- The Exchange assures a fair representation of market participants in the selection of its directors and in the administration of its affairs;
- The Exchange avoids rules that will create anticompetitive situations; and
- The Exchange will avoid using its SRO status to allow any market participant to unfairly gain advantage in the market.

As noted above, after reviewing the Exchange's updated application, the MSC issued an Amended and Restated Recognition Order No. 3784. As further noted above, the MSC also issued a November 15, 2004 Order approving WCE's planned conversion from open outcry to an electronic trading platform and granting WCE continued registration as an Exchange pursuant to Section 15 of the CFA.

In addition to requiring that all Exchange rules changes be submitted to it for approval, the MSC oversees Exchange compliance with comprehensive trading rules set out in the CFA. These statutory trading rules include provisions requiring, among other things, that:

- Prospective customers must receive, and acknowledge in writing, a standard required Disclosure Statement before an account may be opened;
- Upon request, customers must be provided with information concerning inherent risks and obligations of trading, contract terms and conditions, and commissions and other charges;
- Margin requirements must be met;
- Written confirmation of trades must be provided without delay to customers and guarantors of trades;

- Upon MSC request, persons trading in the capacity of a principal or agent must provide reports regarding transactions for their own accounts or the accounts of others; and
- Various representations are prohibited, including false, misleading or deceptive representations or advertisements.

The MSC has very broad investigative and enforcement powers, including: the right to compel testimony under oath and to compel the production of documents; the right to examine documents, regardless of whose possession they are under, and to search and seize pursuant to a judicial warrant; the right to freeze bank accounts and preserve property; and the right to appoint a receiver, where appropriate. The MSC implements these powers through its staff, including investigators, attorneys and a forensic accountant. Depending on the staff's recommendation, a matter may be dealt with in an administrative hearing before the MSC, or may result in the filing of charges before a provincial court judge. In an administrative hearing, a finding of guilt may result in suspension or removal of registration under the CFA. If a court proceeding results in a finding of guilt on any violation of the CFA, MSC regulations or certain Exchange rules, penalties can range up to \$1 million (Canadian) per violation, incarceration for up to two years per offense, or both.

The Exchange further notes, as pointed out above, that the Commission has granted Rule 30.10 "comparability" relief to the Exchange and its eligible Participants based upon a finding that the Manitoba regulatory regime resembles that which the Commission administers within the United States.<sup>31</sup> The Exchange represents that it is not aware of any statutory or regulatory development in Manitoba affecting its rights, responsibilities, or operations that has diminished the scope or quality of the regulatory regime in Manitoba since that time.

## **B. Internal Oversight**

All WCE Participants are contractually bound by the Exchange's Rules and Regulations. No US-based firm or affiliate of such firm would be able to trade on the Exchange from its own terminals situated anywhere in the world without becoming registered with the Exchange as a Participant.<sup>32</sup>

As an SRO, the Exchange has a comprehensive set of rules. The Exchange's Rules and Annexures establish: (1) financial and fitness criteria for Exchange Participants<sup>33</sup>; (2) reporting and recordkeeping 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.

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<sup>31</sup> See note 6, *supra*.

<sup>32</sup> If a US FCM were a client of another US FCM, which was a WCE Participant, then it would not be required to be registered with the Exchange. It could make trades on behalf of its customers, through an omnibus account, as a client of that "other" US FCM for all purposes of transactions and clearing.

<sup>33</sup> As noted, an FCM registered in Canada must meet the risk adjusted net capital requirements of its DSRO, which must also be a member organization of the CIPF. An FCM registered in the US must be a member in good standing of a DSRO as defined by the CFTC and must meet the standards of that DSRO and of the Commission.

The WCE is a wholly owned subsidiary of WCE Holdings, Inc. Both WCE and WCE Holdings are incorporated pursuant to the provisions of *The Corporations Act (Manitoba)*. WCE Holdings and WCE are both governed by the same 13-person Board of Directors. The Board is elected by the shareholders of WCE Holdings based on criteria outlined in the MSC Recognition Order, which provides that three of the individuals must be “outside directors” with no relationship to the Exchange. The Board deals with all matters other than regulatory issues. All regulatory issues, including the responsibility for staff of the Exchange’s Regulatory Division, are under the mandate of a separate committee with Board-equivalent powers, known as the Special Regulatory Committee (“SRC”).

The Regulatory Division and the SRC were formed after the Exchange demutualized in 2001. In view of the possible conflict in a for-profit environment, when the corporation is also an SRO required to ensure regulatory compliance, the Exchange looked to the June 2001 IOSCO Technical Committee report entitled, “Issues Paper on Exchange Demutualization.” Consistent with an IOSCO recommendation, the Exchange set up the Regulatory Division as a separate division within the corporation to handle all regulatory matters. The Regulatory Division is headed by the five-person SRC, which operates independently of the for-profit structure of the Exchange. The jurisdiction of the Regulatory Division and the SRC were recognized by the MSC in its Recognition Order recognizing WCE as an SRO.

Pursuant to Exchange Rules, and in conformance with the MSC Recognition Order, the WCE Board ceded the following powers to the SRC under rules that direct the SRC to:

- Ensure that the Regulatory Division has the resources necessary to carry out its duties;
- Ensure that the Regulatory Division carries out its duties and responsibilities in a manner that is fair, objective and free of conflict of interest;
- Report to the WCE Board annually on the Regulatory Division’s performance and report to the MSC as required on all matters of regulatory importance;
- Recommend rules and policies to the Board relating to applications for Participant status, standards of practice and business conduct for Participants, investigations and disciplinary matters, market surveillance matters, and administrative and operational rules;
- Hear and decide on hearings in the first instance when the Rules so require; and
- Hear and decide appeals from the Discipline Committee.

The Regulatory Division is comprised of the Vice President, Market Regulation, the Manager of the Regulatory Division, and an Assistant to the Manager. This staff is responsible for ensuring compliance with Exchange Rules by all Exchange participants, conducting investigations and inspections of all matters, whether brought forward by a client or Participant complaint or on its own initiative, and for ensuring that all matters of regulatory importance are

brought forward at regular meetings of the SRC. The Regulatory Division's market surveillance responsibilities include: monitoring compliance with Exchange trading Rules and Policies; identifying and investigating trading practices in contravention of the Rules and Policies, such as price manipulation, artificial price setting and pre-arranged trades; and carrying out all market surveillance.

Exchange Rule 10 provides for the powers necessary for the Regulatory Division to carry out its investigations and inspections. The processes and procedures under Rule 10 have been reviewed by the MSC to ensure they provide the necessary jurisdiction to fully investigate and oversee market integrity. Rule 10 recognizes that a fair market requires rigorous investigation powers, including requiring Participants to: cooperate fully with the staff of the Regulatory Division; produce relevant documentation as and when called for; and answer questions under oath. Failure to comply with these requirements will result in a hearing before a disciplinary committee with penalties up to and including revocation of Participant status. Once an investigation is opened, it cannot be closed without a detailed investigation report, written by staff of the Regulatory Division, setting out the details of the investigation and including a recommendation as to whether to proceed to a hearing or close the file. The report is then reviewed by the Vice President Market Regulation and submitted to a member of the SRC.

#### **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 the e-cbot System directly from WCE. Additional information relevant to the e-cbot System and System trading participants will be available to the Commission and its staff under the terms of information-sharing arrangements between the Commission and the MSC.

In its no-action request, WCE notes that it is a signatory to the "International Information Sharing MOU" (Companion Document to the *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations*, as amended, March 1998 – commonly known as the Boca Declaration). In that request, WCE further represents that it will provide to the Commission, upon request, sufficient information regarding the Exchange and its Participants operating pursuant to the requested no-action relief to: (1) evaluate the continued eligibility of the WCE or its Participants for the relief; (2) enforce compliance with the terms and conditions of the relief; and (3) enable the Commission to carry out its duties under the CEA and Commission regulations.

By letter dated September 27, 2004, the MSC confirms that: (1) MSC will cooperate with the CFTC with respect to inquiries or investigations and enforcement proceedings in connection with the activities conducted pursuant to any no-action relief granted by the CFTC; (2) MSC will provide to the CFTC, on an "as needed" basis, information necessary to evaluate the continued eligibility of the WCE and its participants for the no-action relief, to enforce compliance with the terms and conditions of the relief, or to enable the Commission to carry out its duties under the CEA and CFTC regulations; and (3) MSC does not believe that any local laws or statutes serve as an impediment to such cooperation. Pursuant to a request of the MSC, by letter dated October

28, 2004, the Commission confirmed to the MSC the jurisdiction of the CFTC to share information with the MSC on matters arising from the operation of the WCE.

## V. CONCLUSION

Consistent with the Commission's June 2 Order, the Division has reviewed and considered WCE's no-action request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by WCE indicate that WCE 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 WCE and its Participants are subject to oversight in Canada by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime, WCE adheres to the IOSCO Principles, and the MSC has agreed to information-sharing arrangements applicable to the activities of WCE.<sup>34</sup>

Based specifically upon these and other representations made by WCE in support of its no-action request, the Division has determined that granting no-action relief to WCE and its 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 WCE or its Participants solely based upon WCE's failure to obtain contract market designation or DTEF registration pursuant to Section 5 or 5a, respectively, of the CEA if: (1) WCE Participants located in the United States trade for their proprietary accounts through the e-cbot System; (2) WCE Participants who are registered with the Commission as FCMs submit and transmit orders for United States customers through the e-cbot System; and (3) WCE Participants 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 e-cbot System.

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

- Canola
- Flaxseed
- Feed Wheat
- Western Barley

If additional futures and option contracts become available for trading through the e-cbot System, WCE may make such futures and option contracts available for trading through the e-cbot System in the United States without obtaining written, supplemental no-action relief from

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<sup>34</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 WCE 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.

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.<sup>35</sup>

The scope of the Division's no-action position is restricted to providing relief from the requirement that WCE obtain DCM designation or DTEF registration pursuant to Sections 5 or 5a, respectively, of the CEA and regulatory requirements that flow specifically from the DCM designation or DTEF registration requirements if the above-referenced contracts are made available in the United States for trading through the e-cbot 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 WCE or its participants from compliance with any applicable requirements thereunder. Nor does the no-action position alter, restrict, or expand the coverage of existing Commission requirements or exemptions for particular products.

The Division specifically notes that its no-action position does not alter the general requirement that a firm operating pursuant to the no-action relief provided herein must be 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 that require 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 own account) be a registered FCM or a Rule 30.10 Firm. However, if a foreign firm solely carries accounts on behalf of United States customers that are the foreign firm's or any registered FCM's proprietary accounts (as defined in Rule 1.3(y)), or the foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM and its sole contact with a United States customer is that it carries the FCM's omnibus account, then the firm need not register under Rule 30.4 nor confirm relief under Rule 30.10.

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the United States. Thus, Rule 30.10 Firms cannot provide direct access to the e-cbot System in the United States (although they would be permitted to accept orders 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 System 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

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<sup>35</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, 2000).

appropriate action for fraud or manipulation. The Division specifically notes that the use of AORSs to transmit orders to the e-cbot 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, or any other applicable federal securities law or rule promulgated thereunder.

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

- WCE will continue to satisfy the criteria for registration as a commodity futures exchange under the applicable laws of Canada and the Province of Manitoba with respect to transactions effected through the e-cbot System.
- The laws, systems, rules, and compliance mechanisms of Manitoba applicable to WCE 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.
- WCE will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Canadian law.
- Only Participants of WCE will have direct access (*i.e.*, not through an AORS) to the e-cbot System from the US and WCE will not provide, and will take reasonable steps to prevent third parties from providing, such access to WCE to persons other than WCE Participants.<sup>36</sup>
- All orders that are transmitted through the e-cbot System by a Participant of WCE 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 WCE Participant.
- All orders for United States customers accepted through an AORS and/or and transmitted by WCE Participants through the e-cbot System will be intermediated by a WCE Participant that is registered with the Commission as an FCM or is a Rule 30.10 Firm, to the extent required by Commission regulations.
- Prior to their operating pursuant to the no-action relief provided herein, WCE will require current and future Participants of WCE who are not registered with the CFTC as FCMs to file with WCE a written representation, executed by a person with the authority to bind the Participant, stating that as long as the WCE Participant operates pursuant to the no-action relief provided herein, the Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the no-action relief. WCE will maintain the foregoing representations as long as the relevant Participant is operating pursuant to the no-action relief and shall make such representations available to the

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<sup>36</sup> As stated above, “Participants” includes those persons identified in footnote 3 for the purposes of this no-action letter and the conditions imposed upon the relief provided herein.

Commission upon the request of a Commission representative.

- Prior to their operating pursuant to the no-action relief provided herein, WCE will require current and future Participants of WCE who are not registered with the CFTC as FCMs to file with WCE 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>37</sup> that are issued by or on behalf of the Commission. WCE will maintain the foregoing appointments as long as the relevant Participant 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, WCE will require current and future Participants of the Exchange who are not registered with the CFTC as FCMs to file with WCE a written representation, executed by a person with the authority to bind the Participant, stating that as long as the Participant operates pursuant to the no-action relief provided herein, the Participant 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 WCE’s e-cbot System is installed or used in the United States. WCE will maintain the foregoing representations as long as the relevant Participant is operating pursuant to the no-action relief. WCE 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, WCE will file with the Division, and maintain thereafter as long as WCE, its Participants, or the e-cbot System 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 WCE by or on behalf of the Commission.
- WCE 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 the e-cbot System, the total trade volume originating from electronic trading devices providing access to the e-cbot System in the United States compared with the total trade worldwide volume for such products traded through the e-cbot System and the total worldwide trade volume for such products traded on WCE generally; and
  - A listing of the names, NFA ID numbers (if applicable), and main business addresses in the United States of all WCE Participants that have access to the e-cbot System in

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<sup>37</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 United States.

- WCE 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>38</sup>
  - Any material change in WCE Rules or the laws, rules, and regulations in Canada or the Province of Manitoba relevant to futures and options;
  - Any matter known to WCE or its representatives that, in WCE's judgment, may affect the financial or operational viability of WCE, including, but not limited to, any significant system failure or interruption;
  - Any default, insolvency, or bankruptcy of any WCE Participant known to WCE or its representatives that may have a material, adverse impact upon the condition of WCE, the WCE Clearing Corporation, or upon any United States customer or firm;
  - Any known violation by WCE or any WCE Participant of the terms or conditions of the no-action relief provided herein; and
  - Any disciplinary action taken by WCE against any Participant of WCE 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 a WCE terminal or of an AORS to submit orders to the e-cbot System.
- 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 WCE, regarding WCE operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of WCE or its 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 and to provide adequate protection to the public or United States contract markets.
- WCE will employ reasonable procedures, to be determined by WCE, for monitoring and enforcing compliance with the terms and conditions of the no-action relief provided herein.

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<sup>38</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: WCE's Participant criteria; the location of WCE's management, personnel, or operations (particularly changes that may suggest an increased nexus between WCE's activities and the United States); the basic structure, nature, or operation of the e-cbot System; or the regulatory or self-regulatory structure applicable to WCE Participants.

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 WCE'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 WCE's activities in the United States to ascertain whether WCE'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 WCE and its 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 WCE will be subject to those rules or guidelines in that event.

If you have any questions regarding this correspondence, please contact Donald H. Heitman, an attorney on my staff, at [dheitman@cftc.gov](mailto:dheitman@cftc.gov) or (202) 418-5041.

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 Market Oversight,  
Chicago Regional Office