



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC letter No. 06-23
September 28, 2006
No-Action
Division of Market Oversight

Mr. Arthur W. Hahn, Esq.
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525 W. Monroe Street
Chicago, IL 60661-3693

Re: Sections 5 and 5a – MexDer, Mercado Mexicano de Derivados, S.A. de C.V.:
Request for No-Action Relief from Contract Market Designation and Derivatives
Transaction Execution Facility Registration Requirements

Dear Mr. Hahn:

This is in response to your letter dated June 5, 2006 to the Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”).¹ By this correspondence, you request, on behalf of the MexDer, Mercado Mexicano de Derivados, S.A. de C.V. (“MexDer” or “Exchange”), that the Division confirm that it will not recommend that the Commission take enforcement action against MexDer or its members² if, subject to the conditions set forth herein, MexDer does not seek designation as a contract market (“DCM”) or registration as a derivatives transaction execution facility (“DTEF”) pursuant to Sections 5 and 5a, respectively, of the Commodity Exchange Act (“CEA” or “Act”), or comply with any other section of the Act or regulations promulgated by the Commission thereunder relating to DCMs or DTEFs, in connection with the installation and use of the Exchange’s electronic trading and order matching systems, S/MART and SENTRA DERIVADOS (the “System” or the “MexDer System”), as well as its application programming interface (“MexFix API” or “MexFix”) by MexDer members that are registered futures commission merchants (“FCMs”) or that are exempt

¹ Letter from Arthur W. Hahn, Esq., Katten Muchin Rosenman LLP, to Richard A. Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (June 5, 2006).

² For purposes of the No-action request and the relief provided herein, references to the MexDer members shall include Floor Traders, Floor Brokers, Non-Floor Members, Electronic Traders and Electronic Brokers who are MexDer members. Furthermore, references herein to MexDer members shall include any affiliate of any MexDer member that has been granted access by the MexDer member to the S/MART or SENTRA-DERIVADOS trading systems. An “affiliate” of a MexDer member, means 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. MexDer represents that, to the extent a member permits an affiliate to use the S/MART or SENTRA-DERIVADOS trading systems, such affiliate will be required to comply with MexDer and MexFix rules relating to trading on the S/MART or SENTRA-DERIVADOS trading systems and the member shall ultimately be responsible to MexDer for ensuring their affiliates’ compliance.

from registration pursuant to Commission Regulation 30.10 (“Rule 30.10 Firms”)³ (“No-action request”).

Specifically, MexDer proposes to make the System and MexFix available to:

- (1) MexDer members located in the United States that trade on the System for their proprietary accounts (as defined in Commission Regulation 1.3(y));
- (2) MexDer members that are FCMs or Rule 30.10 Firms who submit orders from or on behalf of US customers directly to the System for execution (through MexFix or otherwise);⁴ and
- (3) MexDer members that are FCMs or Rule 30.10 Firms who transmit orders from or on behalf of US customers via an automated order routing system (“AORS”)⁵ for execution on the System.⁶

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

³ Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (SRO) can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the Act, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act.

Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief to a foreign regulatory or self-regulatory authority are the authority's: (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 (2006).

⁴ For the purposes of this letter, “US customers” means “foreign futures or foreign options customers” as defined in Commission Regulation 30.1(c).

⁵ For purposes of this letter, the term “AORS” shall mean any system of computers, software or other devices that allows entry of orders through another party for transmission to a MexDer System computer, the MexFix API, or other automated device where, without substantial human intervention, trade matching or execution takes place.

⁶ MexDer is requesting a no-action position to provide immediate, interim relief for itself and its members pending any adoption of rules or guidelines by the Commission regarding foreign boards of trade that wish to permit direct access to their electronic trading systems from the United States. MexDer accordingly acknowledges that this letter will be automatically modified in the event that the Commission or its staff adopts generally applicable rules or guidelines regarding the issues addressed herein, and agrees that MexDer would be subject to those rules or guidelines in such an event. MexDer additionally acknowledges that, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of any no-action relief.

electronic trading devices in the United States.⁷ 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").⁸ In accordance with this instruction, the Division has reviewed the MexDer's No-action request and the materials submitted in support thereof.

In connection with its No-action request, MexDer has forwarded the following information to the Division:

- General information about MexDer (e.g., its history, location and organization);
- A Glossary of Terms used in the No-action request and accompanying exhibits;
- MexDer's Internal Regulations;
- MexDer's Manual of Policies and Procedures;
- The Mandatory Rules for Corporations and Trusts Participating in the Establishment and Operation of a Market for Exchange Listed Futures and Options ("Mandatory Rules"), issued by the Mexican Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público or "SHCP");
- The Prudential Regulations to which Participants in the Market for Listed Futures and Options Will Adhere in their Operations ("Prudential Regulations"), issued by the SHPC;
- Information regarding the credit rating (Standard & Poor's, Moody's Investor Services and Fitch Ratings) of the Asigna, Compensación y Liquidación ("Asigna"), MexDer's clearinghouse;
- The General Admission Requirements for Remote/Overseas Trading Members Connecting to MexDer;
- The Manual of External Interface Specifications for MexFix, MexDer's application programming interface;
- Certification of authorized representative of MexDer as to the truth and completeness of the material facts set forth in the request for no-action relief; and
- Undertaking of authorized representative of MexDer to notify Commission staff if, prior to issuance of the no-action relief requested in the letter dated June 5, 2006, any material

⁷ Access to Automated Boards of Trade, 64 Fed. Reg. 14159 (proposed March 24, 1999).

⁸ Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, Release No. 4274-99 (June 2, 1999).

representation made in such request ceases to be true and complete.

The Division has also received separately from the CNBV, by letter dated August 30, 2006, a representation that the International Organization of Securities Commissions (“IOSCO”) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“MMOU”), and the May 11, 1995 Memorandum of Understanding on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information entered into between the CNBV and the CFTC, would extend to information requested by the CFTC in connection with the activities conducted pursuant to any no-action relief granted by the CFTC with regard to the placement in the United States of electronic facilities by MexDer, providing access to a CNBV-regulated market or products traded through a CNBV-regulated market.

Representations made by MexDer regarding the Exchange’s activities in the United States, the Exchange’s membership criteria, the Exchange’s electronic trading and order matching system, the relevant regulatory regime in Mexico, and the information-sharing arrangements applicable to the 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.⁹

I. GENERAL INFORMATION REGARDING MEXDER

The development of an exchange-listed derivatives market in México was initiated by the Mexican Stock Exchange (“Bolsa Mexicana de Valores” or the “Bolsa”) and its clearinghouse, the Securities Depository Institute (“S.D. Indeval”). The Bolsa financed the creation of the futures and options market that became MexDer, while S.D. Indeval assumed responsibility for the organization and initial financing of MexDer’s clearinghouse, Asigna. Together with the Mexican Securities Industry Association, the Bolsa and S.D. Indeval developed the infrastructure and facilities necessary to satisfy the legal, operational, systems and other requirements promulgated by the Financial Authorities.¹⁰ The incorporation of MexDer under the laws of México was authorized by SHCP, and MexDer began operations on December 15, 1998.

The capital stock of MexDer is comprised of common stock, with each share having an equal value and conferring the same rights and obligations. Currently, the Bolsa owns approximately 89% of these shares, the Spanish futures exchange, MEFF Sociedad Holding de Productos Financieros Derivados S.A. (“MEFF”), owns 7.5%, and MexDer members and other investors own the remaining shares. The MexDer Shareholders Assembly appoints the Board of

⁹ 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.

¹⁰ As used in MexDer’s no-action request, the term “Financial Authorities” includes the Comisión Nacional Bancaria y de Valores, or the National Banking and Securities Commission (“CNBV”), which functions as MexDer’s primary regulator, the Mexican Ministry of Finance and Public Credit (Secretaria de Hacienda y Credito Publico, or “SHCP”), and the Central Bank of Mexico (“Banco de Mexico”).

Directors, which is comprised equally of MexDer members and independent members.¹¹ The Board is supported by eight Committees made up of Board members, including: the Executive Committee, the Auditing Committee, the Compliance and Ethics Committee, the Committee on Discipline and Arbitration, the Committee on Admission and New Products, the Clearinghouse Committee, the Certification Committee and the Promotion Committee. The day-to-day operation of the Exchange is the responsibility of the Chief Executive Officer appointed by the Board. The Exchange's Compliance Officer (whose duties are described below) is appointed by the Shareholders' Assembly and reports to the Board of Directors.

MexDer initially proposes to make the following futures contracts (followed by the symbols used by the Exchange to identify those contracts) available for trading via the System:¹²

Exchange Rates

- Mexican Peso/US Dollar (DA)
- Mexican Peso/Euro (EURO)
- Inflation Index (UDI)

Equity Indices

- Mexican Stock Exchange Price and Quotations Index (IPC)¹³

Interest Rates

- 91-day Treasury Bill Certificate (CE91)
- 28-day Interbank Equilibrium Interest Rate (TE28)
- 3-year Bond (M3)
- 10-year Bond (M10)

All of the contracts offered by MexDer are based on products indigenous to México. With the exception of the Peso and Bond contracts, which are settled by delivery, all of these contracts are settled in cash, in Mexican Pesos, payable at Mexican banks. (The Peso/Dollar and Peso/Euro contracts are settled through agent banks with offices in México and in the United States and Europe, respectively. The Bond contracts are settled through S.D. Indeval by the delivery of bonds corresponding to the specifications set out in MexDer's Internal Regulations and payment therefor.) Thus, with the exception of the Peso/Dollar contract that is settled by the

¹¹ Independent members of the MexDer Board must be recognized authorities in the financial field who: (1) do not own any share in the capital or equity of the shareholders of MexDer, its clearing members or its trading members, or in financial institutions that are lenders to or owners of MexDer clearing members; and (2) are not employed or commissioned by any of the foregoing.

¹² If the relief requested herein is granted, MexDer will provide the Commission with at least ten business days notice prior to making any additional contracts available for trading pursuant to that no-action relief (except in the case of contracts that require prior approval from the Commission's Office of General Counsel). See 71 Fed. Reg. 19877 (April 18, 2006), corrected at 71 Fed. Reg. 21003 (April 24, 2006).

¹³ The Commission's Office of the General Counsel, on August 30, 2006, issued no-action relief allowing the IPC Index to be offered and sold in the United States.

exchange of Dollars for Pesos, the terms of these contracts have no nexus whatsoever to the United States.

MexDer has no offices in the US and does not intend to open a US office. MexDer's website is located at www.MexDer.com.mx. With the exception of the MexDer website, MexDer's marketing activities in the US are limited to: (1) MexDer's presence at industry events, such as the International Futures Industry Conference held annually in Boca Raton, Florida; and (2) occasional meetings between MexDer staff and US-based industry participants for the purpose of describing MexDer and products listed on the Exchange. MexDer endeavors as appropriate to describe the regulatory and legal restrictions applicable to US persons trading Exchange products. MexDer's staff does not provide investment services or accept, solicit, receive or direct orders in the US with respect to products traded on the Exchange, and no trade processing or clearance functions are performed by MexDer in the US.

II. MEMBERSHIP

A. Introduction

MexDer's members are classified as clearing members,¹⁴ trading members or market makers. Trading members may act as agents for customers and may also trade for their own accounts once they have been authorized to do so by the Exchange. Market makers are trading members that have been specifically approved by the Exchange to act as such. Trading members that act as market makers must conduct their market making activities in a separate account. A trading member also may act as the "manager" of a global (omnibus) account. A global account manager must be approved as such by MexDer and, if the global account manager is also acting as the clearing member for the global account, by Asigna.

B. Documentation Requirements

An applicant must submit audited financial statements, certified by an independent public accountant, for the three years preceding its application, as well as monthly financial statements for the three months preceding the application. Applicants for membership also must provide: (1) the names, resumes, and contact information for the individuals within the applicant organization who will be responsible for marketing, trading, risk management and account administration; (2) the applicant's General Functional Plan;¹⁵ and (3) its Manual of Policies,

¹⁴ Except as otherwise noted, references herein to "clearing members" are to the four leading Mexican banks that have established payment and administration trusts that are, in fact, the clearing members of Asigna. See Section III K below for details regarding the clearing system.

¹⁵ The General Functional Plan must contain the following elements: (1) a description of the manner in which the duties of the applicant's various departments engaged in trading futures contracts are to be coordinated; (2) the members of the firm's board of directors or technical committee, as well as that body's leading executives and employees; (3) the definition and establishment of a program for reviewing objectives, goals, and trading and control procedures by the general management of the clearing member or trading member; (4) systems for monitoring whether personnel involved in trading futures contracts comply with and abide by the rules and regulations promulgated by the Financial Authorities, MexDer and Asigna, as well as the clearing member or trading member's own internal policies; and (5) technical and ethical training programs aimed at assuring that responsible personnel obtain the necessary certifications.

Procedures, Risk Controls and Liquidity.¹⁶ The foregoing materials must be accompanied by detailed reports explaining the applicant's account administration and risk control systems.

Applicants that seek to act as clearing members must additionally submit a copy of their proposed form of customer agreement (including a statement advising the customer of the risks associated with futures trading), a detailed description of the firm's order routing system, the firm's trust indenture and, if applicable, an application for approval as a global account manager. Clearing members and trading members whose applications have been approved are required to report the level of their equity to MexDer on a daily basis; clearing members are additionally required to include in those reports information reflecting the allocation of their assets among the permitted categories.¹⁷ Both clearing members and trading members are required to file with the Exchange: (1) monthly financial statements, within twenty days of the close of each calendar month; and (2) quarterly financial statements, within a month following the close of each calendar quarter. Clearing members also must publish their quarterly financial statements in a newspaper within a month of the quarter-ending date, while trading members are obligated to publish their financial statements on an annual basis. Finally, clearing members and trading members must submit audited annual financial statements to the Exchange within five months following the close of the clearing member's or trading member's fiscal year. With the exception of the requirement for the filing of audited annual statements, none of the financial filing requirements apply to "remote" (non-Mexican) trading members.

C. Foreign Trading Members

MexDer membership is open to foreign (*i.e.*, non-Mexican) entities that: (1) trade and/or clear on a market that is recognized by MexDer;¹⁸ (2) are organized under the laws of countries whose regulatory authorities are members of the Technical Committee of IOSCO; (3) consent to the jurisdiction of the Exchange with respect to disciplinary measures; and (4) have entered into an appropriate services agreement with a MexDer clearing member. The MexDer Board of Directors will consider the applicant's capitalization and whether the applicant is suitably authorized in its country of origin to engage in transactions and activities related to the trading, clearing and settlement of derivatives. A foreign entity that wishes to act as a manager for global accounts or carry such accounts with a clearing member also must comply with the Mandatory Rules, the Prudential Regulations and MexDer's Internal Regulations applicable to the management of global accounts.

¹⁶ A MexDer member's Manual of Policies, Procedures, Risk Controls and Liquidity must address, among other things: (1) the member's maximum risk tolerance limits; (2) the internal criteria used by the member to analyze, evaluate, and establish trading limits for customers; (3) procedures for resolving conflicts of interest; (4) a description of the firm's data processing, risk management and account valuation and management systems, including back-up systems; (5) independently validated valuation models; (6) new account documentation; and (7) annual audits of the member firm's internal controls.

¹⁷ Clearing member equity may be invested in short-term bank deposits, government securities maturing in less than 90 days, or repurchase agreements on those securities maturing in less than 90 days. In addition, up to thirty percent of that equity and any excess may be invested in MexDer shares, Asigna "trust rights certificates" (shares), and any other assets that may be approved by the Financial Authorities.

¹⁸ At present, MexDer recognizes the American Stock Exchange, Bourse de Montreal, Chicago Board of Trade, Chicago Board Options Exchange, Chicago Mercantile Exchange, Eurex, Euronext Liffe, International Securities Exchange, MEFF and OneChicago.

D. Accreditation Requirements

Clearing members and trading members are required to take steps to ensure that their sales personnel, desk traders (who are responsible for the use and operation of the computers and other equipment used to trade on the System), risk managers and account administrators are approved, by an accredited certifying agency that has itself been recognized by MexDer, in order to demonstrate that they possess the necessary technical knowledge in derivative financial instruments prior to engaging in trading-related activities. They also must certify that they have undergone ethics training by an agency that has been approved by MexDer for such purposes. These requirements are waived for sales personnel and desk traders in other countries who have demonstrated their proficiency by passing an approved examination in the country in which they do business. The Series 3 examination, a prerequisite to registration with the Commission as an associated person, is recognized by MexDer for this purpose and US registrants that have passed the Series 3 are required only to certify that they have familiarized themselves with those portions of the MexDer Operating Manual relating uniquely to the MexDer market.

Additional requirements apply to trading members and clearing members that wish to carry (“manage”) omnibus accounts, including compliance with the minimum financial requirements established under the Mandatory Rules. A trading member that is not a financial institution and that seeks to act as a global account manager also must have procedures comparable to those required of or applicable to financial institutions under money laundering prevention rules set forth in the Criminal Code of Mexico and the Mandatory Rules.

Individuals employed by Asigna in management positions must at all times be certified as account administrators by a self-regulatory institution authorized by the Exchange to certify the technical capacity of clearinghouse personnel. These certifications must be renewed at least once every three years. Accreditation will be denied if the applicant has been convicted of certain offenses (including crimes against property), expelled from a foreign or domestic stock or derivatives exchange, the applicant’s application has previously been denied or the applicant fails to maintain his or her proficiency by taking and passing periodic examinations.

III. OVERVIEW OF THE MEXDER TRADING SYSTEM

At the outset, the Division notes that the description of the MexDer electronic trading systems (the “System”) set forth herein is based upon representations made by MexDer or its representatives. The Division has not performed an independent assessment of the security or soundness of the System. Nevertheless, it should also be noted that the S/MART system, which the Exchange uses in connection with trading IPC futures and options and individual stock futures and options,¹⁹ is licensed from MEFF and is virtually identical to the MEFF electronic trading platform, which was reviewed in the context of an earlier Division foreign terminal no-action letter.²⁰

¹⁹ MexDer has represented, through an August 18, 2006 memorandum from its counsel, that it will not permit trades to be made in unapproved products (*e.g.*, individual stock futures and options) for the account of any MexDer member that is located in the US.

²⁰ MEFF received foreign terminal no-action relief in 2002. *See* CFTC Letter 02-29 (March 8, 2002).

A. Introduction

As noted above, all trading on the Exchange is conducted electronically, through the transmittal of bids and offers to the System. MexDer uses both the S/MART and SENTRA-DERIVADOS trading systems, each having a different technology and software structure. MexDer has licensed the S/MART electronic trading system from MEFF in conjunction with the development of a stock options market in México. The S/MART system has been used by MexDer since March 22, 2004, in connection with the trading of IPC futures and options and individual stock futures and option contracts listed on MexDer. SENTRA-DERIVADOS, MexDer's first electronic trading system, is based on software licensed from the Mexican Stock Exchange and is used for trading all other futures listed on MexDer. MexDer additionally provides an application programming interface, known as "MexFix," through which a member's front-end trading and back-office applications communicate with the System.

The System architecture is designed to provide parity for all orders, without regard to their origin. Stated differently, an order entering the system through the MexFix API is processed in the same manner and at the same speed as orders transmitted to the System by trading members doing business in Mexico who connect to the System directly (*i.e.*, not through the API).

B. S/MART

The S/MART system as employed by MexDer consists of one main component, the trading host, which provides the order matching service for S/MART. The primary features of the S/MART system are automated trading through intelligent terminals connected to the two central servers, and reconnection mechanisms that cover the possibility of failure in communications lines, allowing for alternative communications media. S/MART functionality includes trading hours, passwords, bid and offer entry, modification and cancellation of bids and offers, cross trades, and communication and interface with other systems involved.

MexDer has configured S/MART to accept limit and spread 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 spread order consists of simultaneous input of a pair of 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 the member and the Exchange.

A trader may cancel his or her orders 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 allows traders to cancel all of their existing orders in just one action. Once entered into the system, orders are matched by the S/MART 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 time-stamped upon arrival to the trading host. When an order has been executed, S/MART notifies both sides of the

trade, without identifying the counterparty. Asigna, which is notified at the same time, is responsible for clearing and settlement through its own systems.

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 alert will be generated.

C. SENTRA-DERIVADOS

SENTRA-DERIVADOS replaced open outcry securities trading in México. MexDer has licensed both the object code and source code of the SENTRA-DERIVADOS system from the Mexican Stock Exchange, and has customized the system for use in connection with the trading of futures contracts.

SENTRA-DERIVADOS operates remotely, in totally automated fashion and in real time. Through the SENTRA-DERIVADOS system, traders can enter buy and sell bids and offers and perform cross transactions and settlement price transactions. They can also monitor bids and offers in the system, gauge market depth and identify cross trades. The SENTRA-DERIVADOS system also allows information to be received on-line before being sent by the same media to MexDer's Integral Automated Securities System, which then disseminates the information to the entire financial system. MexDer has configured SENTRA-DERIVADOS to process limit and spread orders in the same manner as S/MART (described above).

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" cancellation mechanism that cancels all existing orders in a single action.) Once entered into the SENTRA-DERIVADOS system, orders are matched by the SENTRA-DERIVADOS trading host in the central order book according to a price and time priority algorithm. Priority is given first to the order having the best price. Where two or more orders are entered at the same price, priority is given to the oldest standing order. Orders are time-stamped upon arrival. Once an order has been executed, SENTRA-DERIVADOS notifies both sides of the trade, without identifying the counterparty. Asigna is notified at the same time, and is responsible for clearing and settlement through Asigna's own systems.

MexDer represents that it has employed the best available expertise in the design, building and implementation of the SENTRA-DERIVADOS system and updates thereof to ensure that the system infrastructure follows best industry practice and quality standards. In developing SENTRA-DERIVADOS and operating the System (both SENTRA-DERIVADOS and S/MART), MexDer 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”) and adopted by the Commission on November 21, 1990.²¹ MexDer also has satisfied the CNBV, which has endorsed the IOSCO Principles,²² that the features and facilities provided by the System, as well as the use of the System’s technology, are satisfactory in light of the IOSCO Principles. MexDer represents that it will continue to comply with the IOSCO Principles in the provision of electronic trading facilities and the operation of the System.²³

D. Application Programming Interface

MexDer has developed MexFix, a FIX Protocol²⁴ remote access interface for direct connection to MexDer, via which traders can enter bids, perform trades and obtain market information in real time. The MexFix interface has been available for use in a real-time trading environment since February 7, 2006.

MexDer supplies detailed specifications to enable member developers and independent software vendors (“ISVs”) to develop software conforming to MexFix. Testing of a trading application is accomplished utilizing MexDer’s specialized testing environment, which may be accessed by using a virtual private network via the Internet. The testing system employs encryption and security mechanisms to help ensure that only authorized personnel can access the network, and that the transmitted information is not intercepted. Once tests of a trading application have been completed, a user must notify MexDer in writing and register with the Exchange. Connection to the System via MexFix may be carried out via the Internet, through a virtual private network, or via a private direct line.

Access to S/MART and SENTRA-DERIVADOS is through a single specification and a single point of access for remote users. A FIX engine receives the connections from the members and delivers the information to the appropriate trading platform, based on the type of contract being traded. For example, if the trade is to be matched utilizing the SENTRA-DERIVADOS system, the FIX engine makes the conversion from the FIX protocol to the proprietary formats of SENTRA-DERIVADOS. The header to the FIX messages contains a specified code to determine which messages to send to SENTRA and which to S/MART.

E. Access to the System

All clearing members and trading members who have received authorization from MexDer’s Board of Directors to trade on the Exchange can enter bids and offers through the System. To guarantee that access to the System is limited to authorized individuals, each user has a confidential electronic signature consisting of a user name and an individual password that

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

²² The CNBV endorsed the IOSCO Principles on September 18, 1991.

²³ Also, as noted above, the S/MART system is licensed from MEF. MEF has endorsed, and the S/MART system is fully compliant with, the IOSCO Principles. See CFTC Letter 02-29, (March 8, 2002).

²⁴ “FIX Protocol” means the standard international FIX (Financial Information Exchange) Protocol, version 4.

must be changed by the user on a regular basis.

Specifically, upon the written request of a clearing member or trading member, MexDer assigns to the clearing member or trading member a “registration code” for the System, delivering the registration code to the individual who made the request. Additionally, each time a clearing member or trading member complies with all requirements to commence trading on the Exchange, or accredits a desk trader with the Exchange, MexDer will supply the clearing member, trading member and/or desk trader an “access code” for the System. To further regulate access to the System, MexDer additionally sets the number of means of entry any single clearing member or trading member may have and publishes that determination in the Exchange’s Bulletin.

F. Disaster Recovery

MexDer is fully committed to employing all appropriate measures for anticipating and controlling crisis situations that may arise. MexDer accordingly has adopted and implemented a coordinated strategy for restoring the critical functions of its systems, operations and data in the event of a disaster or other occurrence causing a material failure or degradation of the performance of MexDer’s technological infrastructure. MexDer’s Business Continuity Plan includes detailed procedures for re-establishing operations at the primary or an alternate site and, when necessary during brief emergencies, conducting processes by manual means. Each of these procedures is designed: (1) to help ensure continuity of MexDer’s basic business functions with a minimum of interruption; and (2) in the event of such an occurrence, to advise market participants and the Financial Authorities of any delays in opening the market or the suspension of trading.

MexDer currently maintains a back-up system for each of its primary technological systems, including both S/MART and SENTRA-DERIVADOS, at MexDer’s alternate site at a geographically separated location. Each backup system is configured and ready to conduct operations in the event of a contingency. The alternate site has additionally been equipped with emergency power, air conditioning, sprinkler systems and other important environmental controls, all of which are of a level at least comparable to those power supplies and environmental control systems utilized at MexDer’s primary data center. MexDer maintains data backup tapes at both its alternate and primary sites and also maintains redundant communications links between the two sites.

To carry out MexDer’s disaster recovery procedures, MexDer has engaged Bursatec, an affiliated company that provides technology services for MexDer and the Bolsa, to operate systems at the alternate site in accordance with specifications provided by the Exchange. MexDer has additionally assigned specific disaster recovery tasks to MexDer employees, and both MexDer and Bursatec personnel have been trained to handle the disaster recovery tasks that have been assigned to them.

MexDer and Bursatec conduct periodic testing of MexDer’s business continuity procedures. Specifically, MexDer and Bursatec test the disaster recovery procedures twice each year, utilizing both MexDer’s primary and alternate sites as data processing centers. MexDer’s

plan additionally includes testing remote trading at least once per quarter. The results of each testing session are analyzed, and any updates to the contingency procedures suggested by such testing are promptly developed and implemented.

G. Service Hours

The System currently is available between the hours of 7:00 a.m. and 4:00 p.m. México City time (GMT-6), except on Saturdays, Sundays and on holidays specified by the Exchange.

H. Anonymity of Trading

The parties to a transaction and their clearing members are notified electronically upon execution of a trade on the System. MexDer maintains the confidentiality of the clearing member or trading member who submits, modifies or cancels bids and undertakes trades via the System, unless the Exchange is required to disclose such information to comply with applicable laws or regulations.

I. Trade Registration/Audit Trail

MexDer's electronic trading and order matching systems (both S/MART and SENTRA DERIVADOS) capture a broad range of information for every transaction, including: (1) the specific futures or option contract (including commodity and contract month); (2) the unique identification code for the trading member(s); (3) the price and number of contracts traded; (4) the transaction type (buy or sell); (5) identification numbers for the buy and sell orders; (6) the date and time to the nearest second of each order and each trade; and (7) the identification code for each clearing member. All of this information is retained by MexDer for 10 years. Trading members and clearing members are separately required to record, report as appropriate, and retain for five years, information relating to all orders and trades. This information includes, for all orders and transactions: (1) the account identifier; (2) transaction ID number; (3) volume; (4) price and time; and (5) whether the order or transaction is for a proprietary or customer account.

J. Market Data Distribution

MexDer distributes real-time electronic market data (including prices and volume data) to clearing members, CNBV, and third-party vendors, such as Bloomberg and Reuters. MexDer also disseminates volume and open interest information on its website (and through data vendors) after the close of trading.

K. Settlement and Clearing

1. Introduction

Asigna is an administration and payment trust that is responsible for the clearing and settlement of all transactions effected on MexDer. Asigna's primary purpose is to serve as a counterparty and guarantor of all financial obligations that result from the trading of contracts on MexDer. Like MexDer, Asigna must comply with the Mandatory Rules issued by the Financial Authorities and the Prudential Regulations issued by CNBV. Asigna maintains its own Internal

Regulations and Manual of Operational Policies and Procedures to which clearing members must adhere.

2. Structure of Asigna

Asigna was established in December 1998 by S.D. Indeval and the four leading Mexican banks that were to become Asigna's clearing members – Banamex Citigroup, BBVA Bancomer, ScotiaBank Inverlat, and Santander-Serfin. Asigna, which is organized as an administration and payment trust, consists of equity contributed by S.D. Indeval and the respective administration and payment trusts for which those banks act as administrators and trustors.²⁵ The trusts established by a prospective clearing member must be approved by Asigna and MexDer, and not disapproved by SHCP. Although an applicant is free to do business solely as a “proprietary position” clearing member, each of the trustor banks has established separate payment and administration trusts to act in that capacity and also to clear for customers (“third-party position clearing members”).

The Board of Trustors, which establishes how trust equity is created and the purposes for which it may be used, is Asigna's governing body. The Board of Trustors delegates certain administrative functions to its Technical Committee, which is comprised of representatives of its clearing members, and any equity partners or independent members, and which has established Audit, Compliance and Ethics; Discipline and Arbitration; Admission and Risk Management; and Administration Subcommittees. The administration of Asigna's operating functions, such as clearing and settling trades, investing resources and monitoring risk, are carried out through Asigna's General Director, who is appointed by the Technical Committee.

3. Systems

Asigna licenses INTRACS/400 from The Options Clearing Corporation and uses it as its central system for clearing and settlement on a real-time continuous basis. MexDer's trading engines – S/MART and SENTRA DERIVADOS – transmit trade data and information to clearing members on a real-time basis. The affected clearing members, in turn, are required to identify the relevant transactions as either an “open” or “close” within 10 minutes and retransmit the information to Asigna with the appropriate open/close code. MexDer determines and transmits settlement prices for all contracts within fifteen minutes after the market closes for the day. Daily settlements, consisting of mark-to-market amounts, deposits and returns of original margin, and contributions to the Clearing Fund,²⁶ are effected between 9:00 and 10:00 a.m. each business day through the Interbank Electronic Payment System administered by Banco de México. Asigna also uses the Interbank Electronic Payment System to administer extraordinary margin calls, which must be paid in cash within one hour.

²⁵ A “trustor” is the civil law equivalent of a trust grantor or settlor – *i.e.*, the person that establishes the trust and contributes the assets that constitute the trust's property. Thus, as a formal matter, Asigna's clearing members are the eight trusts that have been established by Banamex Citigroup, BBVA Bancomer, ScotiaBank Inverlat, and Santander-Serfin (each of the four banks has established two trusts, a proprietary trust and a third-party administration and payment trust). As stated above, except as otherwise noted, references in this no-action letter to “clearing members” are to the trustor banks that have established, and whose personnel manage, the payment and administration trusts that are, in fact, the clearing members of Asigna.

²⁶ The Clearing Fund consists of deposits made by clearing members over and above their required margin deposits.

4. Risk Management

Asigna has developed and implemented methodologies and procedures to establish risk parameters for the products traded on MexDer. Among other things, Asigna's Risk Management and Monitoring System allows Asigna to monitor compliance with position and trading limits, as well as price trends and the volatility of underlying assets and to conduct simulations of market risks.

5. Margin System

Asigna uses the Theoretical Intermarket Margin System ("TIMS") under a license from The Options Clearing Corporation to calculate margins on portfolios of futures and options contracts. Asigna uses TIMS, which is based on the Cox Ross Rubinstein option pricing model, to generate margin requirements based on the simulation of movements in the prices of underlying assets, taking into account, among other things, maximum expected price changes, spread positions and delivery requirements. TIMS accordingly calculates the maximum expected variance, using five upside prices and five downside prices and taking into account the price and volatility of the underlying asset, the risk-free rate, term to maturity and, where applicable, the amount of any dividends or interest payments.²⁷ The resulting information is integrated into Asigna's risk control systems and the INTRACS/400 clearing and settlement system, as well as clearing members' account management systems.

6. Default Remedies and Procedures

The trustee of each clearing member trust must irrevocably authorize, prior to commencing operations, Asigna to transfer any of its open contracts to one or more other clearing members in the event it is in default. A global account manager similarly must provide Asigna with an irrevocable mandate so that Asigna may, in the event of default, transfer the open contracts in the global (omnibus) account to another clearing member.

Clearing members also must be authorized by their customers to close out the customer's open positions in the event the customer fails to honor its obligations and to apply the defaulting customer's margin deposits (contributions) to the payment of those obligations. Further, clearing members must transfer open contracts when requested to do so by a customer, and must obtain authorization from their customers to transfer contracts in the event the clearing member is subject to an intervention by reason of default with Asigna.

Asigna's Chairman (or, in his or her absence, the Chief Executive Officer) is authorized to declare and execute preventive measures when the financial or operating condition of a

²⁷ TIMS determines the hypothetical liquidation gains and losses of the entire integrated portfolio by algebraically adding the theoretical liquidation gains and losses of each position to address the possibility of liquidation gains and losses among positions that are influenced by the underlying asset's price fluctuations in opposite ways. In order to determine the maximum hypothetical loss, TIMS projects theoretical liquidation gains and losses for each integrated portfolio of futures contracts according to a sequence of ten scenarios of underlying asset prices across the margin interval. Futures risk margin, therefore, is set equivalent to the highest theoretical losses (worst case scenario) arising from multiple price scenarios calculations.

clearing member or trading member that manages global accounts so requires. This includes instances where a clearing member is at risk of default on its obligations as a consequence of a customer default. Asigna may in such circumstances impose restrictions on the clearing member or trading member, including permitting it to trade for liquidation only, requesting that it close out positions, requiring an increase in its capital, or ordering the clearing member or trading member to transfer open contracts from its customer accounts. Asigna will in such circumstances promptly notify MexDer and the Financial Authorities of the preventive measures that have been taken.

7. Safety Net

No clearing member has ever defaulted to Asigna. Asigna nonetheless has in place a three-tiered safety net that is designed to reduce the risk of loss and help ensure that a customer (or clearing member) default remains isolated and does not spread to other customers or clearing members, or adversely affect the stability of Asigna itself.

If a customer were to default, the clearing member would, as a threshold matter, apply that customer's margin deposits, including any excess over the amount required by Asigna,²⁸ and any funds realized upon the liquidation of the defaulting customer's open positions. If the application of those funds still leaves a shortfall, the clearing member may use the portion of its Clearing Fund deposit that will be refunded to it upon the closing out of the defaulting customer's positions.²⁹ Any remaining shortfall is required to be made up from the clearing member's own capital.

Asigna's safety net is triggered only in the unlikely event that the excess capital of a clearing member – all of which were formed by leading international banks that have a significant investment in the Mexican capital markets – is insufficient to cover the shortfall. Asigna would in such a case step in and take control of the defaulting clearing member and transfer the funds and positions of other customers that are not in default. Such a transfer would result in the release of the defaulting clearing member's remaining Clearing Fund deposits (effectively, 10% of the margin deposited by the clearing member's non-defaulting customers), all of which may be applied to cover the shortfall.

If the defaulting clearing member's obligation is still not covered, Asigna has the right to apply that clearing member's minimum equity (an amount equal to the greater of (i) 5,000,000 Inflation-Indexed Investment Units (Unidades de Inversion or "UDIs"),³⁰ or approximately

²⁸ As is customary in other markets (including the United States), clearing members are free to require their customers to deposit margin in excess of the minimum amounts that are required by an exchange or clearinghouse. These excess funds totaled 1,537,114,257 Mexican Pesos (approximately US\$136,270,000) as of May 19, 2006.

²⁹ Upon the close-out of a customer's positions, Asigna will refund to the clearing member that portion of the clearing member's Clearing Fund deposits that were attributable to the now-closed positions. This amount will be equal to 10% of the margin deposited by that clearing member with Asigna in respect of those positions. In essence, therefore, the liquidation of a defaulting customer's positions will result in approximately 110% of the margin deposited with Asigna in respect of those positions being returned to the clearing member, after deduction for any trading losses incurred by that customer.

³⁰ One UDI is equal to slightly more than \$.30.

US\$1,636,000, and (ii) eight percent of the defaulting clearing member's original margin deposits) to cover all or a portion of the shortfall.

If the shortfall persists, Asigna will take control of the defaulting clearing member's proprietary positions and the funds in the proprietary position trust. Asigna would apply the excess margins and excess minimum equity of the proprietary position clearing member, any open proprietary positions would be closed or transferred, any Contribution or Clearing Fund deposits attributable to those positions would be applied to help cover the shortfall and, if there is still a deficiency, the minimum equity of the proprietary position clearing member would be drawn down.

Then, and only then, would Asigna draw upon the Clearing Fund and order the remaining clearing members to replenish their contributions to the Fund. There is no cap or ceiling on this obligation, and Asigna may require a clearing member to deposit additional funds into the Clearing Fund as necessary to cover the amount of any withdrawals caused by the default of one or more clearing members.

IV. REGULATORY REGIME GOVERNING THE EXCHANGE

MexDer and its members are subject to a comprehensive regulatory regime that establishes, *inter alia*, financial and other fitness criteria for Exchange members and other industry participants; reporting and recordkeeping requirements; procedures governing the treatment of customer funds and property; sales practice and other conduct of business standards; measures designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse and market manipulation.

A. Applicable Law

The Financial Authorities have jointly promulgated Mandatory Rules for Corporations and Trusts Participating in the Establishment and Operation of a Market for Exchange-Listed Futures and Options (the "Mandatory Rules"). The Mandatory Rules set forth requirements for the establishment and approval of futures and options exchanges, the implementation of internal regulations containing self-regulatory standards and procedures to govern the Exchange's operations, and the Exchange's Manual of Policies and Procedures, each in accordance with the Prudential Regulations to Which Participants in the Market for Listed Futures and Options Will Adhere in Their Operations (the "Prudential Regulations")³¹. The Mandatory Rules further impose on MexDer duties in regard to governance, dispute resolution, audits, provisions designed to maintain the integrity of the Exchange, recordkeeping, and monitoring. The Mandatory Rules additionally include specific requirements to which MexDer, Asigna and their respective members must adhere.

³¹ The Prudential Regulations are promulgated by CNBV in consultation with SHCP and Banco de México. In broad terms, the Prudential Regulations further elaborate upon the Mandatory Rules and establish additional requirements with which MexDer, Asigna and their respective members must comply.

B. Authorization

In order to obtain approval by SHCP, MexDer was required to demonstrate that it was in compliance with those provisions of the Mandatory Rules that set forth the requirements for a party wishing to organize a company for the purpose of providing facilities and other services for the quotation and trading of futures and options contracts, while Asigna was required to demonstrate its compliance with the requirements applicable to full-service banks that seek to act as trustees of trusts created to operate as a clearinghouse.

Specifically, MexDer and Asigna each submitted written requests for authorization to SHCP, together with the detailed documentation specified in Section 3 of the Mandatory Rules. In respect of MexDer, that documentation included: its articles of incorporation; internal organizational and functional regulations; a listing of Board members and managers to be appointed; an enumeration of the requirements for prospective shareholders, together with a list of prospective shareholders and their intended capital contributions; the rights and obligations of shareholders; Internal Regulations, containing self-regulatory standards and procedures specifying how MexDer proposed to operate in accordance with the Prudential Regulations; a Manual of Policies and Procedures prepared in accordance with the Prudential Regulations; a description of audit programs to be implemented by trading members and clearing members; and a description of programs to be implemented to verify that the Exchange's price formation processes are carried out with transparency, accuracy and integrity. Other than the Manual of Policies and Procedures, none of these documents may be revised or amended without the approval of SHCP.

Asigna's authorization was contingent upon it providing the following documentation to SHCP, as required by the Mandatory Rules: a trust contract; Internal Regulations; a description of the mechanisms to be used for clearing and settlement and for delivery of "minimum initial contributions" (original margin); ongoing audit programs to be applied to clearing members and mechanisms to be used to monitor the equity status of clearing members; measures to be adopted in the event of a clearing member default or insolvency; a Manual of Policies and Procedures; and methods to be used in determining margin requirements.

As noted above, the Mandatory Rules establish minimum requirements for the operation of an exchange. Among other things, the Mandatory Rules condition MexDer's licensing on the establishment of suitable facilities, mechanisms and procedures for the design, listing and execution of futures contracts and options contracts to be traded on the Exchange.

The Mandatory Rules additionally require MexDer to establish, and MexDer has established, internal committees to address matters relating to: its clearinghouse (Asigna); finance; admission, contentious and disciplinary matters; compliance and ethics; self-regulation; and conciliation and arbitration. The Mandatory Rules further require that MexDer establish admission requirements, subject to approval by the Financial Authorities, and implement ongoing audit programs for clearing members and trading members.

MexDer also is required to establish processes for the oversight of transparency, accuracy and integrity of the prices resulting from trading on the Exchange, including an internal control system that ensures precise monitoring of, and full information on, each transaction. MexDer is

further charged with strict observance of applicable trading standards to ensure that trading adheres to specified procedures and sound market practices and complies with applicable regulations. MexDer, therefore, has established contractual penalties for violations of applicable requirements.

In furtherance of these requirements, MexDer is required to maintain documentation of trading and other activities and to inform the Financial Authorities of all transactions executed on the Exchange. MexDer is additionally required to publish the names of its clearing members.³²

C. Compliance

1. Internal Controls and Systems

The Prudential Regulations impose upon MexDer a continuous duty to oversee the activities of Asigna, trading members, clearing members, and customers. Consistent with those requirements, MexDer has developed compliance and operational programs that facilitate its discharge of these obligations.

In particular, MexDer's internal control systems accurately and comprehensively record trade data and information, including the unique account identifier assigned by MexDer to each member,³³ customer account or global account, transaction date, time, price and volume, the identity of the trading members, their clearing members, and whether the trade has been made for a proprietary or customer account. Clearing members and trading members are required to prepare manuals and implement surveillance procedures that will result in compliance with MexDer regulations prohibiting: wash trading; alteration or falsification of transaction records; price manipulation; the misuse of inside information; the improper execution or settlement of transactions; and the misuse by market makers of information related to customer orders. Internal control systems include programs that are designed to identify and detect such violations of the Internal Regulations.

These internal controls and systems are augmented by a program for auditing clearing members, trading members and Asigna. Compliance audits entail the review, examination and verification of the contracts, manuals, records and operating and accounting systems of clearing members, trading members, Asigna and MexDer itself to verify compliance with MexDer Rules. The auditors examine account administration and risk control systems, the handling of funds and the settlement of transactions. These audits are conducted by the Compliance Officer in accordance with the audit program previously approved by the Audit Committee. In the event a violation of MexDer Rules is discovered during the auditing process, the Compliance Officer must initiate an appropriate investigation and, if applicable, disciplinary proceedings before the Committee on Discipline and Arbitration. The Board of Directors and the Financial Authorities must be notified of any such violation.

³² A complete list of MexDer clearing members is available at [http://www.mexder.com.mx/MEX/Open an Account - Trading and Clearing Members.html](http://www.mexder.com.mx/MEX/Open_an_Account_-_Trading_and_Clearing_Members.html)

³³ As noted earlier, to guarantee that access to the System is limited to authorized users, each user has a confidential electronic signature consisting of a user name and an individual password that must be changed by the user on a regular basis.

2. Compliance Officer

The duties of MexDer's Compliance Officer are set out in the Prudential Regulations and MexDer's Bylaws and Internal Regulations. Among other things, the Compliance Officer is responsible for overseeing compliance by clearing members, trading members and their accredited personnel with MexDer Rules, as well as other regulations applicable to MexDer that may be issued by the Financial Authorities. The Compliance Officer, whose staff currently consists of four full-time professionals exclusively devoted to MexDer matters (in addition to the Compliance Officer himself), additionally is responsible for monitoring compliance with MexDer Rules, to the extent applicable, by customers, Exchange employees and officers, directors and other members of MexDer's Committees, and Asigna.

The Compliance Officer is further charged with responsibility for: analyzing reports from the CNBV and MexDer's examiners and external auditors³⁴ and submitting his or her opinion on that information to the Board in written form; proposing to the Board of Directors measures to prevent conflicts of interest and avoid the improper use of information; participating in (but not voting at) meetings of the Board of Directors; and reporting monthly to CNBV on the Compliance Officer's discharge of his or her duties. In addition to those regular monthly reports, the Compliance Officer must immediately notify CNBV of any market irregularities.

D. Financial Requirements

3. MexDer

The Mandatory Rules establish a minimum capital for MexDer that is the Mexican Peso equivalent of 4,000,000 UDIs, or approximately US\$1,300,000; MexDer's capital totaled approximately 129,900,000 Mexican pesos, or approximately US\$11,500,000, as of April 30, 2006.³⁵ The Exchange's minimum capital must be fully subscribed and paid in and made up of shares without the right of withdrawal. MexDer is required to submit monthly financial statements to CNBV and to publish MexDer's audited annual balance sheet in the Official Gazette.

³⁴ The reports from CNBV generally cover regulatory or operational issues arising from CNBV's periodic audits of MexDer. With respect to MexDer's own examiners and external auditors, the Compliance Officer analyzes their reports to detect any kind of violation of the regulatory or self-regulatory framework that the reports may identify.

³⁵ Throughout this letter, the US Dollar equivalents of amounts denominated in UDIs or Mexican Pesos reflect the exchange rates in effect therefor on May 22, 2006. The Inflation Index is an accounting unit that reflects the constant real value of the Mexican Peso. The percentage change in the value of the UDI, from the 10th to the 25th of each month is equal to the change in the National Consumer Price Index ("INPC") in the second half of the immediately preceding month. The change in the value of the UDI from the 25th of the month to the 10th of the following month is equal to the change in the INPC in the first half of the former of these two months. To determine the changes in the value of the UDI that correspond to the other days of the publication period, the bi-weekly change in the INPC immediately preceding each of these periods is distributed among the number of days included in the publication period, in order to assign a uniform change in the value of the UDI to each of those days. The Banco de México publishes the value of the UDI in Mexican Pesos for each day in the Official Gazette of the Federation of Mexican States.

4. Asigna

In accordance with the Mandatory Rules, Asigna's minimum capital consists of: (1) the Contributions Fund; (2) the Clearing Fund; and (3) the Mexican Peso equivalent of 15,000,000 UDIs (approximately US\$4,900,000).

The Contributions Fund consists of the sum of all minimum initial contributions (clearing member margin deposits) with Asigna for open positions held in proprietary position or third-party (customer) position payment and administration trusts. The Contributions Fund contained approximately 7.5 billion Mexican Pesos, or approximately US\$667,000,000, as of May 19, 2006.

The Clearing Fund consists of: (1) a preoperational deposit by each clearing member, currently established as 100,000 Mexican Pesos; (2) a percentage determined by the Risk Management Sub-Committee (currently, 10%) based on the average of each clearing member's margin requirements over the preceding 30 business days; and (3) a percentage determined by the Risk Management Sub-Committee (also currently 10%) of each clearing member's margin requirements for the immediately preceding trading day. A clearing member must use its own capital (and not customer margin deposits) for its Clearing Fund deposit.

Asigna's remaining capital – in other words, the equity contributed by its trustors and its retained earnings, but not including the Contributions and Clearing Funds – was 222,448,214 Mexican Pesos (approximately US\$19,720,000) as of May 19, 2006.

Asigna must furnish its financial statements to CNBV on a monthly basis. In addition, Asigna is required to publish its financial statements and its audited annual balance sheet in a newspaper of general circulation on a quarterly basis.

5. Clearing Members

The Mandatory Rules additionally establish minimum financial requirements for clearing member trusts. A proprietary position clearing member – or, more precisely, a proprietary position payment and administration trust – must at all times maintain a minimum equity in Mexican Pesos equivalent to the greater of 2,500,000 UDIs (approximately US\$818,000) or four percent of the total of all minimum initial contributions maintained by that clearing member with Asigna. Clearing members that settle futures or options contracts for customers or other third parties (a third-party position payment and administration trust) must at all times maintain a minimum equity equal to the greater of the equivalent in Mexican Pesos of 5,000,000 UDIs (approximately US\$1,636,000) or eight percent of the total of all minimum initial contributions maintained by that clearing member with Asigna. Clearing member contributions to the Contributions Fund and the Clearing Fund do not count toward the clearing member's minimum equity.

Asigna's clearing members had a combined total of 948,740,684 Mexican Pesos (approximately US\$84,109,000) in supervisory capital as of May 19, 2006. (This amount is the minimum required by the Mandatory Rules and does not reflect any excess over a clearing member's minimum requirement.) One hundred percent of a clearing member's minimum equity must be contributed in cash, but may be invested in short-term bank deposits, government

securities maturing in less than 90 days, or repurchase agreements on those securities maturing in less than 90 days. In addition, up to thirty percent of that equity and any excess may be invested in MexDer stock, Asigna “trust rights certificates,” and any other assets that may be approved by the Financial Authorities.

6. Trading Members

Trading members are required by the Mandatory Rules to maintain minimum capital equivalent in Mexican Pesos to 100,000 UDIs (approximately US\$32,700). A trading member that carries omnibus (“global”) accounts must maintain capital equal to at least 1,000,000 UDIs (equivalent to approximately US\$327,000). This capital must be invested in short-term bank deposits, government securities maturing in less than 90 days, or repurchase agreements on those securities maturing in less than 90 days. Trading members are not required to own shares in MexDer; if they do, those shares can be applied against the trading member’s capital requirement.

E. Position Limits

The Exchange, in consultation with Asigna, establishes quantitative and qualitative criteria for positions in open contracts. (Quantitative criteria relate to clients’ resources, assets, funds, and financial positions; qualitative criteria relate to clients’ ethics and creditworthiness.) Limits, which are continuously reviewed by the Risk Management Subcommittee, are set for each customer individually for each futures contract, and customers are required to notify their clearing member in the event that they open an account with more than one clearing member. MexDer and Asigna also establish special position limits specifically for global accounts. Any such limits have one or more of the following components: (1) position limits below those that are published on the MexDer website; (2) a limit on gross open positions, the net open position in different delivery months and the net open position in the spot month or last trading day; or (3) a limit on net open positions in related products. If necessary, the global account manager will be prohibited from establishing new positions and/or directed to liquidate existing positions.

Position limits are imposed to ensure that trading members and clearing members have the necessary financial capacity to meet all potential obligations resulting from their or their customers’ trading activities. Furthermore, the use of position limits represents an important tool for Asigna to limit excessive positions and market concentration. Position limits are measured in terms of: (1) the gross open position allowed in a given contract; (2) the net position in that contract; (3) the net position in the delivery month; and (4) the net position allowed on the final trading day. Clearing members are authorized to establish their own position limits for their customers. Any such limits cannot exceed the limits established by MexDer.

MexDer, acting through the Chairman of the Board or, in his or her absence, the Chief Executive Officer, also may impose precautionary measures to protect the Exchange, clearing members, trading members and customers in cases where there is a risk that a clearing member or trading member may not be able to provide the necessary security to continue operating, or when a clearing member or trading member engages in inappropriate activity on the Exchange. These measures include, but are not limited to, the imposition of reductions in position limits, which may be imposed: (1) when the Exchange believes that one or more trading members’

positions represent an excessive concentration that may jeopardize appropriate price formation; (2) when the Exchange believes that doing so will help preserve the security of customers, clearing members and trading members, Asigna and the Exchange; and (3) when Asigna so requests.

The Chief Executive Officer also may modify the maximum number of net open contracts that a clearing member or trading member may maintain in its proprietary accounts or in its customers' accounts. In addition, in extraordinary circumstances, the Chief Executive Officer may set a market-wide limit on one or more contracts. Any such limits are required to be allocated *pro rata* among all clearing members and trading members based on the total number of contracts each of them maintains in its proprietary and customer accounts at the close of the day immediately preceding the date on which the global limit takes effect. The resulting reduction in each clearing member's and trading member's proprietary positions and individual customer positions must be performed on a pro rata basis.

V. INFORMATION-SHARING

As described more fully below, the Commission will be entitled to receive certain specified information regarding MexDer, the System and MexDer's market participants directly from MexDer pursuant to the terms and conditions of the no-action relief requested herein. Among other things, MexDer is a signatory to the companion memorandum to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations (commonly referred to as the "Boca Declaration"). As such, MexDer supports the sharing of relevant information between certain derivatives exchanges and clearing organizations in order to combat potential hazards to the stability, safety and soundness of the international financial markets. Under Mexican law, MexDer may not disclose the beneficial ownership of an account, but is otherwise permitted to disclose directly to the Commission (and the general public) information related to transactions effected on MexDer.

The Commission also will be entitled to receive information regarding market participants, including information regarding the beneficial ownership of an account, directly from the Financial Authorities. In particular, Mexican law authorizes CNBV to obtain information, in addition to that which is available to the general public, from clearing members and trading members and to reveal that information to foreign financial supervisory and regulatory agencies, such as the Commission. Mexican law additionally authorizes CNBV to assist international bodies performing market surveillance and to furnish information to these foreign authorities pursuant to exchange of information agreements, such as the Memoranda of Understanding discussed below.

Consistent therewith, the Commission and CNBV entered into a Memorandum of Understanding on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information ("MOU") on May 11, 1995. The MOU addresses information sharing and is intended to assist both the Commission and CNBV in regulating and preventing fraud and abuse in the financial markets. The MOU remains in effect, and contemplates CNBV and the Commission providing the fullest measure of mutual assistance to facilitate their respective

futures market oversight functions and to enforce the laws and regulations applicable to futures markets. In addition, CNBV is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the “MMOU”), which promotes mutual cooperation and consultation among IOSCO Members (including both the Commission and CNBV) to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations. The CNBV has confirmed to the Commission that it is committed to fulfill the scope of assistance established in Article 7 of the MMOU and that the information-sharing terms of the MMOU will extend to information requested by the Commission regarding the activities conducted pursuant to any no-action relief granted to MexDer.

VI. CONCLUSION

Consistent with the Commission's June 2 Order, the Division has reviewed and considered MexDer's No-action request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by MexDer indicate that MexDer 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 MexDer and its members are subject to oversight in Mexico by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime, MexDer adheres to the IOSCO Principles, and the CNBV has agreed to information-sharing arrangements applicable to the activities of MexDer.³⁶

Based specifically upon these and other representations made by MexDer in support of its No-action request, the Division has determined that granting no-action relief to MexDer and its members, pending the adoption by the Commission of rules or guidelines regarding direct access to foreign boards of trade from 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 MexDer or its members solely based upon MexDer's failure to obtain contract market designation or DTEF registration pursuant to Section 5 or 5a, respectively, of the CEA if: (1) MexDer members located in the United States trade for their proprietary accounts through the MexDer System; (2) MexDer members who are registered with the Commission as FCMs or who are Rule 30.10 Firms submit and transmit orders for United States customers through the MexDer System; and (3) MexDer members 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 MexDer System.

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

³⁶ 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 MexDer, 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.

- Mexican Peso/US Dollar (DA)
- Mexican Peso/Euro (EURO)
- Inflation Index (UDI)
- Mexican Stock Exchange Price and Quotations Index (IPC)³⁷
- 91-day Treasury Bill Certificate (CE91)
- 28-day Interbank Equilibrium Interest Rate (TE28)
- 3-year Bond (M3)
- 10-year Bond (M10)

If additional futures and option contracts become available for trading through the MexDer System, MexDer may make such futures and option contracts available for trading through the MexDer System from the United States in accordance with the provisions of the Commission's Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that have Received Staff No-Action Relief to Provide Direct Access to their Automated Trading Systems from Locations in the United States.³⁸

The scope of the Division's no-action position is restricted to providing relief from the requirement that MexDer 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 MexDer 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 MexDer 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 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.³⁹

³⁷ Approved by OGC no-action letter of August 30, 2006.

³⁸ 71 Fed. Reg. 19877 (April 18, 2006); corrected at 71 Fed. Reg. 21003 (April 24, 2006). Furthermore, MexDer has represented that it will not permit trades to be made in unapproved products for the account of any MexDer member that is located in the US.

³⁹ At this time, the Commission has not issued a Rule 30.10 order to MexDer permitting its members to conduct brokerage activities on behalf of US persons without having to register as an FCM. However, MexDer members otherwise may qualify as a Rule 30.10 firm pursuant to other orders issued by the Commission pursuant to Rule

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 Commission 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 MexDer 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 appropriate action for fraud or manipulation. The Division specifically notes that the use of AORSs to transmit orders to the MexDer 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:

1. MexDer will continue to satisfy the criteria for registration as a commodity futures exchange under the applicable laws of Mexico with respect to transactions effected through the MexDer System.
2. The laws, systems, rules, and compliance mechanisms of Mexico applicable to MexDer 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 Financial Authorities.
3. MexDer will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Mexican law.
4. Only members of MexDer will have direct access (*i.e.*, not through an AORS) to the MexDer System and MexFix from the US and MexDer will not provide, and will take reasonable steps to prevent third parties from providing, such access to the System and

30.10. See, *e.g.*, 67 FR 30785 (May 8, 2002) (permitting firms authorized by Eurex Deutschland to solicit and accept orders from US persons for otherwise permitted transactions on all non-US exchanges where such members are authorized to conduct business on behalf of customers pursuant to German law).

MexFix to persons other than MexDer members.

5. All orders that are transmitted to the MexDer System by a MexDer member 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 such MexDer member's proprietary account.

6. All orders for United States customers accepted through an AORS and transmitted by MexDer members to the System pursuant to the relief granted herein will be intermediated by a MexDer member that is either registered with the Commission as an FCM or is a Rule 30.10 Firm.

7. Prior to their operating pursuant to the no-action relief provided herein, MexDer will require current and future members of MexDer that are not registered with the CFTC as FCMs to file with MexDer a written representation, executed by a person with the authority to bind the member, stating that as long as the MexDer 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. MexDer 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.

8. Prior to their operating pursuant to the no-action relief provided herein, MexDer will require current and future members of MexDer who are not registered with the CFTC as FCMs to file with MexDer 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"⁴⁰ that are issued by or on behalf of the Commission. MexDer 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.

9. Prior to their operating pursuant to the no-action relief provided herein, MexDer will require current and future members of the Exchange who are not registered with the CFTC as FCMs to file with MexDer 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 the System is installed or used in the United States. MexDer will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief. MexDer will make such representations available to the Commission upon the request of a Commission representative.

⁴⁰ 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.

10. Prior to operating pursuant to the no-action relief provided herein, MexDer will file with the Commission, and maintain thereafter as long as MexDer, its members or the 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 MexDer by or on behalf of the Commission.

11. MexDer 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:

- a. For each contract available to be traded through the System, (1) the total trade volume originating from electronic trading devices providing access to the System in the United States, (2) the total trade volume for such products traded through the System worldwide, and (3) the total trade volume for such products traded on MexDer generally; and
- b. A listing of the names, NFA ID numbers (if applicable), and main business addresses in the United States of all MexDer members that have access to the System in the United States.

12. MexDer will promptly provide the Division with written notice of the following:

- a. Any material change in the information provided in its No-action request, including any information contained in the documents submitted in support thereof;⁴¹
- b. Any material change in MexDer Rules or the laws, rules, and regulations in Mexico relevant to futures and options; and
- c. Any matter known to MexDer or its representatives that, in MexDer's judgment, may affect the financial or operational viability of MexDer, including, but not limited to, any significant system failure or interruption;
- d. Any default, insolvency, or bankruptcy of any MexDer member known to MexDer or its representatives that may have a material, adverse impact upon the condition of MexDer, Asigna or any United States customer or firm;
- e. Any known violation by MexDer or any of its members of the terms or conditions of the no-action relief provided herein; and

⁴¹ The Division notes that “material” changes in the information provided to it in support of this no-action request would include, without limitation, a modification of: MexDer's membership criteria; the location of MexDer's management, personnel, or operations (particularly changes that may suggest an increased nexus between MexDer's activities and the United States); the basic structure, nature, or operation of the MexDer System; or the regulatory or self-regulatory structure applicable to MexDer, the System or MexDer's members.

f. Any disciplinary action taken by MexDer against any member of MexDer operating pursuant to the no-action relief provided herein that involves market manipulation, fraud, deceit or conversion or that results in suspension or expulsion and that involves the use of the System or an AORS to submit orders to the System and either (1) the MexDer member against whom disciplinary action is taken is based in the United States, or (2) the disciplinary action results (in whole or in part) from conduct that: (i) involves use of a terminal or an AORS that is located in the United States to accept or submit an order to the System; (ii) involves a US customer or firm or registered FCM; or (iii) might have a material adverse impact upon any US customer or firm.

13. Satisfactory information-sharing arrangements between the Commission and the relevant Mexican regulatory authorities will remain in effect.

14. The Commission will be able to obtain sufficient information regarding MexDer and the members of MexDer operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of MexDer 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 Act and Commission regulations and to provide adequate protection to the public, US contract markets and derivative transaction execution facilities.

15. MexDer will employ reasonable procedures, to be determined by MexDer, 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 MexDer'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 MexDer's activities in the United States to ascertain whether MexDer'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 MexDer 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 may 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 MexDer 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 or (202) 418-5041.

Very truly yours,

Richard A. Shilts
Director

cc: Gregory C. Prusik, Vice-President Compliance and Registration, NFA