



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

CFTC Letter No. 08-14  
August 20, 2008  
No-Action  
Division of Market Oversight

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Re: Nord Pool ASA, Request for No-Action Relief from Contract Market Designation and Derivatives Transaction Execution Facility Registration Requirements

Dear Mr. Yeres:

This is in response to your letter dated May 21, 2008 to the Division of Market Oversight (Division) of the Commodity Futures Trading Commission (CFTC or Commission).<sup>1</sup> By this correspondence, you request, on behalf of Nord Pool ASA, (NP or the Exchange) that the Division confirm that it will not recommend that the Commission take enforcement action against NP or its members<sup>2</sup> if NP does not seek designation as a contract market (DCM) pursuant to Section 5 of the Commodity Exchange Act (CEA or Act) or registration as a derivative transaction execution facility (DTEF) pursuant to Section 5a of the Act, or Commission rules thereunder, in connection with the installation and use by NP members in the United States<sup>3</sup> of the Exchange's electronic trading and order matching system and application program interface (API) (referred to hereafter as its trading system or ETS). (no-action request).

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<sup>1</sup> Letter from David Yeres, Esq., Clifford Chance US LLP, to Richard A. Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (May 21, 2008).

<sup>2</sup> For purposes of this letter and the relief provided herein, references to the members of NP shall include any "affiliate" of any NP member that has been granted access by the NP member to the Exchange's Trading System. An "affiliate" of a NP member shall mean any person, as that term is defined in Section 1a(28) of the Act, 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. An affiliate will be deemed a client of a NP member when trading for the affiliate's own account. NP represents that under its rules such affiliates would be required to comply with NP's Market Conduct Rules and that NP members remain responsible to NP for such compliance.

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

Specifically, NP wishes to make its trading system available through direct access<sup>4</sup> to NP members that:

(1) trade in the U.S. for their proprietary accounts, as defined in Commission Regulation 1.3(y), on ETS and MTS (described below) and that qualify as (i) “Professional Clients” (as defined in the EU “Markets in Financial Instruments Directive” (MiFID))<sup>5</sup> or as (ii) “eligible contract participants” (ECP) (as defined in Section 1a(12) of the Act);

(2) are registered with the Commission as futures commission merchants (FCM) that submit orders to the trading system for execution for U.S. customers<sup>6</sup> that qualify as Professional Clients or as ECPs;

(3) are registered with the Commission as commodity pool operators (CPO) or commodity trading advisors (CTA), or are exempt from such registration pursuant to Commission Rules 4.13 or 4.14, and that submit orders for execution on behalf of U.S. pools they operate that qualify as Professional Clients or ECPs or accounts of U.S. customers that qualify as Professional Clients or ECPs, for which they have discretionary authority, respectively, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees without limitation all such trades of the CPO or CTA effected through submission of orders on the trading system; and

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<sup>4</sup> For purposes of this letter and the relief provided herein, the term “direct access” refers to the explicit grant of authority by NP to a NP member to enter trades directly into the Exchange’s trading system.

<sup>5</sup> Currently, in order to become an NP Member and engage in any trading activity, each entity must qualify as a “professional client” as defined under Annex II of the MiFID, a European Union law which harmonizes the regulatory regime for investment services across 30 member-states of the European Economic Area. As a result, the relief requested and provided herein is applicable to members and U.S. customers who qualify as “professional clients” or eligible contract participants.

MiFID defines a “professional client” as “a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs” and, as a rule (subject to limited exceptions set forth in Section II of Annex II of the MiFID), includes the following four categories of entities: (1) entities which are required to be authorized or regulated to operate in financial markets, such as credit institutions, investment firms, other authorized or regulated financial institutions, insurance companies, collective investment schemes and management companies of such schemes, pension funds and management companies of such funds, commodity and commodity derivatives dealers, locals, and other institutional investors; (2) large enterprises meeting two of the following three size requirements on a company basis: (i) balance sheet total: EUR 20,000,000 (\$31,200,600), (ii) net turnover: EUR 40,000,000 (\$62,401,200), and (iii) own funds: EUR 2,000,000 (3,120,060); (3) governments, public bodies that manage public debt, Central Banks, international and supranational institutions and other similar international organizations; and (4) other institutional investors whose main activity is to invest in financial instruments. Further, Annex II of the MiFID also provides for client reclassification as a “professional client” upon such client’s request, provided that such client meets the criteria specified with respect to experience, expertise and size requirements. See MiFID Annex II as well as Sections 10-2 and 10-5 of the Norwegian Securities Trading Regulations 2007, implementing the MiFID provisions, for the complete “professional client” definition.

<sup>6</sup> For purposes of this letter and the relief provided herein, the term “United States customers” shall have the same meaning as the term “foreign futures or foreign options customers” as it is defined in Rule 30.1(c).

(4) are registered with the Commission as FCMs, or are exempt from such registration pursuant to Commission Rule 30.10 (Rule 30.10 Firms),<sup>7</sup> that accept orders through automated order routing systems (AORS)<sup>8</sup> from U.S. customers that qualify as Professional Clients or ECPs for transmission to the trading system.<sup>9</sup>

As you know, the Commission, on October 27, 2006, issued a policy statement that affirmed the use of the no-action process to permit foreign boards of trade to provide direct access to their electronic trading systems from the U.S. (Policy Statement).<sup>10</sup> The Division has reviewed NP's no-action request and the materials submitted in support thereof in accordance with the Policy Statement and the June 2, 1999, Commission Order (June 2 Order) which first directed the Commission staff to consider requests from foreign exchanges for interim no-action relief to allow them to provide direct access to their trading systems from the U.S.<sup>11</sup>

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

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<sup>7</sup> Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (SRO) can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the 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: (i) requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States. Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules, 17 C.F.R. Part 30, Appendix A (2007).

<sup>8</sup> 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 (an intermediary) that has been granted direct access to the trading system where, without substantial human intervention, trade matching or execution takes place.

<sup>9</sup> NP 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. NP accordingly requests that this letter and the relief provided herein 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 NP would be subject to those rules or guidelines in such an event. NP 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.

<sup>10</sup> Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 Fed. Reg. 64443 (November 2, 2006).

<sup>11</sup> Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, 64 FR 32829, 32830 (June 18, 1999).

- General information about NP, including its history, location and organization;
- Information about membership criteria;
- Information about various aspects of NP's trading system (including the order-matching system, the audit trail, response time, reliability, security, and adherence to the IOSCO Principles) and information about settlement and clearing;
- Information about NP's home country regulatory regime and information regarding NP's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance);
- A description of current information-sharing agreements to which NP and its regulator are parties;
- The Norwegian Stock Exchange Act 2001 (the Exchange Act 2001);
- The Regulated Markets Act 2007 ((the Exchange Act 2007) (excerpts);
- The Norwegian Securities Trading Act (STA 2007);
- Norwegian Securities Trading Regulations 2007 (STR 2007);
- NP's trading and clearing rules for all products, including Financial Electricity Contracts;
- NP's ethical guidelines and market conduct rules;
- Certification of an authorized representative of NP as to the truth and completeness of the material facts set forth in the no-action request and undertaking to notify the Commission staff if, prior to the issuance of no-action relief requested in the no-action request, any material representation made in such request ceases to be true and complete.

The Division also received separately from Kredittilsynet, the Financial Supervisory Authority of Norway, NP's regulatory authority, a representation regarding information-sharing with the CFTC in connection with the granting of direct access to NP's trading system from the U.S. This representation is described below in section VII.

Representations made by NP regarding the structure of NP, NP's activities in the U.S., NP's membership criteria, NP's electronic trading and order matching system, the regulatory regime in Norway, and the information-sharing arrangements applicable to NP and its regulator are summarized in Sections I - VII below. For purposes of this response to the no-action request, the Division has relied upon NP's representations and information provided by NP and has not

conducted an independent review to confirm their accuracy.<sup>12</sup> Commission staff, however, did conduct an on-site visit at NP and Nord Pool Clearing to meet Exchange staff and discuss issues relevant to the request for no-action relief with respect to NP's activities. Separately, Commission staff met with representatives of NP's regulatory authority and discussed, among other things, the Norwegian regulatory approach to exchange licensing and ongoing oversight.

## **I. GENERAL INFORMATION REGARDING NP**

### **A. The Nord Pool Group**

NP is a Norwegian public limited company authorized by the Norwegian Ministry of Finance as an exchange under the Norwegian Stock Exchange Act of 2001 (the Exchange Act 2001) and the Exchange Act 2007.<sup>13</sup> NP is supervised by Kredittilsynet, the Norwegian Financial Supervisory Authority (FSA of Norway or NFSA). NP lists cash settled Financial Electricity Contracts, which comprise futures contracts, as well as forward contracts, option contracts and contracts for differences, related to prices quoted for electric power and EU Emission Allowances. NP acts as a central market for trading in the listed products.

Nord Pool is the world's first multinational exchange for trading electric power derivatives. Established in 1993 following Norway's deregulation of its power markets pursuant to the Energy Act of 1990, NP is owned by the two national public electricity grid operators, Statnett SF in Norway (50%) and Affärsverket Svenska Kraftnät in Sweden (50%). Statnet SF is wholly owned by the Norwegian state. Svenska Kraftnät is an agency of the Swedish state. At present NP has more than 70 employees with headquarters located near Oslo in Lysaker, Norway, and branch offices in Stockholm, Sweden, Fredricia, Denmark and Helsinki, Finland. In 2006 representative offices were opened in Amsterdam, the Netherlands, and Berlin, Germany.

The Nord Pool Group comprises NP, Nord Pool Spot AS, and NP's wholly-owned subsidiaries Nord Pool Clearing ASA (NP Clearing),<sup>14</sup> which was established as a separate Nord

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<sup>12</sup> As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by NP in support of its No-action request. Any materially different, changed, or omitted facts or circumstances may render the no-action relief void or cause the Division, in its discretion, to condition further, modify, suspend, terminate, or otherwise restrict the relief.

<sup>13</sup> NP, a public limited liability company, is regulated by the Act on Public Limited Liability Companies 1997 No 45 (the PLC Act), to the extent there are no special provisions in the Exchange Act 2001. A new Regulated Markets Act was enacted in June 2007 (the Exchange Act 2007), generally superseding the Exchange Act 2001.

<sup>14</sup> You represent that NP has contracted with OMX AB, a company organized under the laws of Sweden, to sell to OMX AB, a subsidiary of The NASDAQ OMX Group, Inc., 100% of NP Clearing and NP Consulting (the OMX Transaction). The OMX Transaction is expected to close in the summer/autumn of 2008. Upon closing of the OMX Transaction, the Nord Pool markets that are the subject of this no-action letter, will continue to be operated by NP, which will also continue to be responsible for all self-regulatory and market surveillance functions. All Nord Pool market clearing shall be done exclusively by NP Clearing. There will be no change in the ownership of NP upon closing of the OMX Transaction. No material change is expected as result of the consummation of the OMX Transaction with respect to any licensing standards, regulatory oversight, membership and capital requirements, as described in the no-action request with respect to NP Clearing. However, it is understood that consideration is been

Pool business on January 1, 1999, and Nord Pool Consulting,<sup>15</sup> of which NP acquired full ownership as of January 1, 2004. Other companies which are owned in part by NP include Nord Pool Spot AS and Nord Pool Finland Oy. Nord Pool Spot AS is owned 20% each by NP, Statnett SF, Svenska Kraftnet, Fingrid and Energinet.dk. Nord Pool Spot AS owns 100 % of Nord Pool Finland Oy.<sup>16</sup> The Nord Pool Group has more than 420 members in total, including members and representatives in 21 countries.

Pursuant to its Articles of Association, NP is led by a Board of Directors (Board) comprising a maximum of six directors elected at the general meeting of the company shareholders. The chair and deputy chair of the Board are also elected at the general meeting from among the directors representing Statnett SF and Svenska Kraftnät. The president cannot be a director. The Board is assisted in its operations by the Market Council, an advisory board for all activities on the Nordic power exchange that is comprised of 10 power traders and industry representatives and reports to the Board. The Board is also assisted in its operations by a control committee, an in-house risk committee and internal audit function, and a disciplinary committee.

The control committee monitors to assure compliance with requirements that follow from legislation, regulations and license terms and that the management and Board comply with company articles of association and decisions of NP's governing bodies. The control committee also assesses capitalization and security aspects of the business. The control committee is elected at the general shareholder meeting of the company and submits annual reports on its work at the general meeting and to the NFSA. The risk committee, which reports to the chief executive officer, systematically and continuously analyzes the risks that might threaten the companies' strategic and operational goals. The disciplinary committee advises the Board with respect to breaches of NP's rules. Appointed by the Board, the committee, whose duties are directly related to building a secure market, works on cases identified by the Exchange's market surveillance department.

NP is also advised by the product group, comprised of eight exchange members from the financial group, on issues concerning the financial market and its members. The group's key roles are to develop the financial market and promote the market as a whole through the right products, exchange services and exchange rules and regulations so that the financial market is

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given to future transference of the clearing function to an affiliate, OMX Technology AB, or another affiliated clearing organization in Sweden, in which case, prior review and written approval by the Division will be required to maintain the effectiveness of this relief.

<sup>15</sup> Nord Pool Consulting AS assists governments to plan for changes in their electricity markets. Much of its activity is carried out indirectly through the World Bank and the European Bank for Reconstruction and Development.

<sup>16</sup> Nord Pool Spot AS operates the spot exchange for the Nordic electricity market. In a daily auction, Nord Pool Spot produces the next 24 hours' electricity prices per hour for each price area. A total index called the "system price" is also produced and is the basis for settlement of the forward and futures contracts traded at NP. Nord Pool Spot ASA also operates the hourly balancing markets in certain price areas.

adapted to the markets' and the members' needs as well as ensuring its integrity, neutrality and security.

## **B. Products**

NP proposes to make available for direct access its cash-settled Financial Electricity Contracts and its physically-settled Financial European Union (EU) Allowances Contracts, all of which you represent to be futures contracts. The Financial Electricity Contracts include futures contracts,<sup>17</sup> forward contracts,<sup>18</sup> option contracts,<sup>19</sup> and CFDs<sup>20</sup> related to prices quoted for electric power in the Nordic, German and Dutch regions.<sup>21</sup> The Financial EU Allowances Contracts include forward contracts and spot contracts<sup>22</sup> for the sale and purchase of European Union Allowance Certificates (EU Allowances).<sup>23</sup> The terms of these contracts generally have no nexus to the United States, nor do they raise any particular U.S. regulatory interest or need for enhanced information-sharing or market surveillance.

## **C. Presence in the United States**

NP intends to permit entities located in the U.S. to become Exchange members and/or clearing members/clearing clients with direct access to the trading system, either directly through ETS or via telephone through NP's telephone-based system for Exchange trading (MTS). NP does not intend to permit any individuals located in the U.S. to become Exchange members. NP does not have any offices in the U.S. and represents that it does not intend to establish a physical

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<sup>17</sup> Futures contracts traded on NP are standardized contracts for future delivery subject to the daily cash settlement based upon the net change in their value.

<sup>18</sup> Forward contracts traded on NP are standardized contracts for future cash settlements subject to the daily valuation process and settlement only at maturity. In the interim, exposures are addressed by additional collateral deposits, letters of credit or financial guaranties of qualifying banking institutions.

<sup>19</sup> Option contracts traded on NP are standardized European-style options on a cash-settled futures contract. Option contracts are subject to daily valuation process and settlement only at maturity. In the interim, exposures are addressed by additional collateral deposits, letters of credit or financial guaranties of qualifying banking institutions.

<sup>20</sup> CFDs traded on NP are standardized contracts subject to the daily valuation process and settlement only at maturity. In the interim, exposures are addressed by additional collateral deposits or financial guaranties of qualifying banking institutions. CFDs are cash-settled contracts relating to differences between the Nordic, German or Dutch (as applicable) area electricity prices and the Nordic electricity system price.

<sup>21</sup> These contracts are settled based upon prices published by Nord Pool Spot AS, a licensed operator of the Nordic market for physical electricity delivery, licensed and supervised by the Norwegian Department of Energy.

<sup>22</sup> Spot contracts are physically settled standardized contracts trading for one day and subject to next trading day delivery and settlement.

<sup>23</sup> The certificates entitle the holder to dispose of CO<sub>2</sub> gas under the EU regime established to meet the requirements under the Kyoto Protocol. The certificates may be purchased to allow certain regulated entities to produce emissions of CO<sub>2</sub> gas in excess of the emission quotas imposed by local environmental authorities.

presence in the U.S. in the future. NP's employees periodically visit the U.S. on business-related matters. NP's English-language website is located at: <http://www.nordpool.com/asa/>.<sup>24</sup>

## **II. MEMBERSHIP**

### **A. Introduction**

Direct access to the NP markets is limited to Exchange members. Exchange members may trade for their own accounts or for the accounts of clearing members or clearing clients of NP Clearing or others (trading clients).

### **B. Exchange and Clearing Members**

Exchange members must be limited companies or other corporate entities incorporated under the laws of their home states with regular business involving trading in listed products. The members must have entered into an Exchange Membership Agreement with NP for principal and/or client trading and must have satisfied NP's requirements as specified in that agreement.<sup>25</sup> No individuals are permitted to become members. In signing the Exchange Membership Agreement, the member agrees to be bound by the relevant NP rules.

Each Exchange member must meet the requirements set out in the NP Trading Rules (trading rules) and NP Clearing Rules (clearing rules) for Financial Electricity Contracts and EU Emission Allowances. In general, these rules require entities admitted to Exchange membership to demonstrate to NP that they are fit and proper. Applicants must send NP a written application and, by signing the Agreement, represent that the applicant: (a) is properly staffed and well organized with personnel who have the necessary competence and knowledge for Exchange trading in listed products and is aware of the characteristics of the listed products and the risks involved in trading in such products; (b) has all requisite power and authority and legal right to enter into the Exchange Membership Agreement and to effect Exchange trading in accordance with the trading rules and to perform its obligations with respect to Exchange trading; (c) has taken all necessary actions to authorize the execution, delivery and performance of the Exchange Membership Agreement, implying that the trading rules and each contract entered into in accordance with the trading rules constitutes a legal, valid and binding obligation enforceable against the member; and (d) holds any public licenses needed to conduct its affairs under the trading rules.

To become an Exchange member an entity must also submit the Clearing Membership Agreement, meet the requirements for clearing with respect to the relevant contracts, and, as a general rule, become a clearing member of NP Clearing. NP Clearing (on behalf of NP) evaluates the applicant's financial soundness based mainly on the applicant's audited financial

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<sup>24</sup> NP's website includes general information relating to the Exchange, its corporate organization, the contracts traded thereon, and the operation of the trading system and of the market. In addition, NP's website includes its rulebooks and provides the public with access to various market data.

<sup>25</sup> You represent that only a minority of Exchange members engages in client trading.

statements, in addition to any quarterly or semi-annual accounts or reports available. NP Clearing performs a credit evaluation of the applicant based upon, among other things, its legal status, financial soundness, expected trading behavior, and organization and level of competence. NP Clearing's stated objective is not to have any uncovered risk in relation to any members. The financial evaluation is used to guide the size of the initial call for collateral, which must be posted by the applicant before trading and clearing may commence (Initial Margin or base collateral).<sup>26</sup> The Initial Margin is a fixed amount that is designed to cover overnight risk for new trades, *i.e.*, risk in excess of daily variation margin and mark to market settlements. Pursuant to NP Clearing rules, the Initial Margin for a clearing member for clearing Financial Electricity Contracts is Norwegian Kroner (NOK) 1,000,000 or the Euro equivalent (approximately \$195,000), or a higher amount as determined by NP Clearing. If the applicant is unable to post the required base collateral, NP Clearing will reject the application. NP Clearing continuously monitors the member's financial situation and, if a member's equity ratio is low, will increase the Initial Margin to a level which NP Clearing finds sufficient for the participant's level of trading activity.<sup>27</sup>

As discussed further below, NP and NP Clearing are presently amending their rulebooks to implement an amended clearing model, which would include Exchange members who are not clearing members. Exchange members who are not clearing members will be required to have a contractual relationship with a clearing member in order to gain access to NP and NP Clearing. All transactions entered into by a non-clearing member will be automatically booked on clearing accounts established in the name of the respective general clearing member, which will assume responsibility for any trades carried out by such non-clearing member.

As part of the approval procedure for Exchange/clearing membership, NP and/or NP Clearing may require further information as well as a legal opinion with respect to the applicant's legal status, financial soundness, organization, technical systems, level of experience and competence and other relevant matters for evaluating if the applicant is fit and proper for Exchange membership. Exchange trading may start only after NP Clearing has approved the Exchange member and has opened a clearing account for registering the member's trades.

An Exchange member that wishes to trade through ETS must also enter into an ETS Agreement and be assigned one or more ETS Licenses or one or more identities providing ETS internet access. Further, such member must appoint at least one Exchange trader responsible for the member's trading. Only Exchange traders, who are subject to approval by NP, may communicate orders to ETS. NP may stipulate specific conditions for approval of Exchange

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<sup>26</sup> "Initial Margin" represents a good faith collateral deposit made by a clearing firm against possible future obligations and required as a condition to clearing membership. Thus, Initial Margin is similar to a U.S. clearing firm contributing to a guaranty fund of a clearing organization or purchasing shares of such organization as a membership requirement. Initial Margin does not refer to a good faith deposit with respect to any specific trading transaction, but rather is a required component of a prospective clearing member's relationship with NP Clearing. The amount of the Initial Margin is fixed depending on the nature of the expected trading activity.

<sup>27</sup> As used by NP, equity ratio refers to an indicator of the level of leverage used by the prospective clearing member and is usually calculated by dividing the member's total liabilities by paid-in equity. As such, the equity ratio would indicate what proportion of equity and debt the clearing member is using to finance its assets.

traders, including requirements on qualifications and experience with respect to the relevant contracts. The NP member is responsible without any limitations for all trading carried out by its Exchange trader(s) and is held to have authorized the subsequent clearing of the Exchange trade at NP Clearing.

### **C. Client Representatives**

An Exchange member may, with special approval from NP, act as a client representative and trade for the accounts of clients.<sup>28</sup> In order to trade on behalf of clients, the member must submit a written application to NP and be specifically approved by the Exchange.<sup>29</sup> NP may require further information from the applicant Exchange member with respect to the applicant's future operations as a client representative and may impose specific conditions for approval. Pursuant to NP Clearing rules, the Initial Margin for a client representative for clearing Financial Electricity Contracts is NOK 1,500,000 or the Euro equivalent (approximately \$292,000), or a higher amount as determined by NP Clearing based, among other things, on the number of clearing clients and separate clearing accounts.

Pursuant to the trading rules, client representatives bear full responsibility to NP in connection with all client trading. In accordance with the clearing rules, client representatives also have responsibility to NP Clearing for the clearing of client trades. The clearing member must, in order to represent a clearing client or another clearing member, enter into a Clearing Client Agreement with NP Clearing and the clearing client, who will be allocated accounts with NP Clearing for registering transactions in the clearing client's name. Upon entering into the Clearing Client Agreement, the clearing client appoints the Exchange member/clearing member as its clearing representative, thereby obtaining the right to have its trades cleared with NP Clearing through the client representative.<sup>30</sup>

An Exchange member may also trade on behalf of trading clients who are not clearing clients or clearing members. Trades executed for the accounts of these clients are booked in the clearing account of the relevant Exchange member. Client representatives trading on behalf of such trading clients must further ensure that the trading clients sign the statement contained in the Market Conduct Rules agreeing to submit to the Market Conduct Rules and must keep a record of such statements. NP may at any time require access to the statements.<sup>31</sup>

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<sup>28</sup> Trading clients may be clearing members or clearing clients with NP Clearing or other entities or persons.

<sup>29</sup> A Client Representative is subject to the insider trading rules, market abuse rules and the rules of good business conduct including best execution principles, as well as general fraud rules under Norwegian criminal law.

<sup>30</sup> Each clearing client acknowledges that it is bound by the Market Conduct Rules, an appendix to the clearing rules (and the trading rules), upon signing the Clearing Client Agreement to appoint the clearing representative.

<sup>31</sup> NP also recognizes brokers, which are entities which have entered into a Broker Agreement with NP Clearing giving the broker access to the clearing desk application for the purpose of registering clearing requests with NP Clearing on behalf of clearing members and/or clearing clients for trades matched outside the Exchange by the broker. A broker who has no other relationship to NP may be appointed by an Exchange member as an Exchange trader responsible for the member's trading and thereby have access to ETS. Brokers are subject to the same regulations as other intermediaries, including the applicable Market Conduct Rules.

NP has adopted Ethical Guidelines which provide that an Exchange or clearing member acting on behalf of clients as intermediary or agent shall endeavor to protect the interest of the client in all cases where there are possible conflicts between the members' own interests and their client's best interests, and shall ensure that clients are treated equally and in a fair and non-discriminatory manner. Further, the Ethical Guidelines provide that members, when performing investment services, must attend to clients in a "correct and loyal" manner, in accordance with national legislation and international standards as to good business practice. In addition, the Market Conduct Rules, which promulgate proper business practices in exchange trading, set forth a general prohibition on any abusive market practices, including improper handling of customer orders.<sup>32</sup>

### **III. OVERVIEW OF THE NP TRADING SYSTEM**

At the outset, the Division notes that the description of NP's trading system, ETS, set forth herein is based upon representations made by NP or its representatives. The Division has not performed an independent assessment of the security or soundness of ETS in connection with this request. Nonetheless, Commission staff did observe ETS operations during a demonstration conducted during the staff's onsite visit. ETS uses the OMX CLICK electronic trade matching system, for which it has a perpetual license.<sup>33</sup>

#### **A. Introduction**

Access to ETS, a fully automated electronic trading system, is granted to Exchange members through fixed telecom lines or via internet connection.<sup>34</sup> Alternatively, Exchange members may also place orders to buy and sell listed products through NP's telephone-based system for Exchange trading, known as MTS.<sup>35</sup> NP's trading hours, published on NP's website,

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<sup>32</sup> As discussed below, the supervision of the proper handling of customer orders by intermediaries is not regulated by NP directly, but rather by the NFSA in instances involving intermediaries licensed as investment firms.

<sup>33</sup> OMX provides technology to over 60 exchanges, clearing organizations and central securities depositories in more than 50 countries. Commission staff has previously reviewed earlier versions of OMX trading systems. The OM CLICK trading system, used by BrokerTec Futures Exchange, L.L.C. (BTEX), was thoroughly examined by the Division and the Commission's Office of Information Resources Management in connection with BTEX's application to become a DCM. The Commission approved BTEX as a DCM on June 18, 2001; it ceased operations in November 2003. Commission staff also has previously described OM CLICK in connection with the granting of direct access no-action relief to the OM London Exchange Limited (OM London). *See* CFTC Staff Letter 00-93 (September 21, 2000). OM London is no longer in operation.

<sup>34</sup> Access to users in the U.S. will be by internet connection only. NP represents that a virtual private network (VPN) PowerCLICK link-up via the internet is as fast and stable as the fixed-lines solution, even at high system loads.

<sup>35</sup> With MTS, discussed further below, Exchange members place orders by telephone to NP employees who subsequently enter the orders in ETS.

are 8.00 a.m. to 3.30 p.m. Oslo time each trading day, defined as each day that is neither a Saturday nor Sunday nor a Norwegian national holiday.<sup>36</sup>

## **B. ETS**

Exchange members may place (register) electronic orders on ETS. An order is a binding offer to buy or sell a certain number of contracts that is subject to registration, ranking and automatic matching without any further approval from the member. To register an order in ETS, the member must enter the following information: (a) the product series; (b) whether the order is to buy or sell; (c) the size of the order (referred to as the order volume and described below); (d) the futures price, forward price, CFD price, option premium or allowance spot price limit; (e) whether the order is an order book order (a limit order) or a market order; and (f) possible combination order terms.<sup>37</sup> An order is deemed registered and becomes binding when the member placing the order has received an electronic confirmation of the registration in ETS. Orders can be registered either as order book orders or as market orders. An order book order that is not immediately matched is automatically stored in ETS for the entire trading day, after which it is cancelled. A market order is automatically cancelled if it cannot be matched immediately.<sup>38</sup>

Order volume determines whether there are any restrictions on matching protocols or how order size will be displayed. For order book orders, matching may take place for part of the order volume. A market order must be identified as either fill-or-kill, where the order is either matched for the entire order volume or cancelled, or fill-and-kill, where the order is matched for as much of the order volume as possible and then cancelled for the remaining order volume. Orders may be registered with a hidden (non-disclosed) volume, where only part of the order is displayed in ETS. When the displayed order volume is matched, ETS will automatically restate the displayed order volume until the full hidden volume is matched. Members may also register combination orders, defined as orders to simultaneously buy and/or sell contracts in two or more different product series. Standardized combination orders, which concern two orders with the same volume, may be registered as order book orders or market orders. Non-standardized combination orders must be registered as market orders. For all combination orders, matching only takes place for two or more orders at the same time.

Orders to buy or sell listed products received by ETS are ranked based upon price and time, and trades are automatically entered into upon a match. To create a basis for matching, orders are automatically ranked in ETS. The order with the best price, including the best net price for combination orders, always has priority. Order book orders at the same price are

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<sup>36</sup> A financial help desk and a clearing desk to assist members are open during similar hours.

<sup>37</sup> The same information must be registered when changing or cancelling an order in ETS.

<sup>38</sup> Among the data to which the member has access through ETS are the following: (1) best buy and sell price, as well as order depth; (2) last traded price, as well as highest and lowest price distributed during the day; (3) the total volume behind the individual prices; (4) intraday graphs displaying price and volume movements throughout the trading day; and (5) an overview of the orders posted to the market and the trades executed by the member during the trading day.

ranked by time of registration (first registered, first matched); and combination orders are ranked before other orders at the same price and volume. If the terms of a registered order are changed, the order acquires a new registration time except where the change is a reduction in order volume, in which case the order retains the original registration time.

An Exchange trade occurs, and a contract is automatically entered into for the account of the member that entered the registered order, when a matching order is registered in ETS. A matching order is an opposite order at the same price for the same product series, or with a lower price limit when the first order is a buy order, or with a higher price limit if the first order is a sell order. In the event that a newly-registered offer price is lower than the best bid price then registered in ETS, the trade will be matched at the bid price. In the event that a newly-registered bid price is higher than the best offer price then registered in ETS, the trade will be matched at the offer price. As previously discussed, certain orders may be matched for less than the entire order volume.

### **C. MTS**

Trading in MTS, NP's telephone-based trading system, is affected by Exchange members calling in registration orders or non-registration orders, described below, by telephone to NP employees at MTS who subsequently enter the orders in ETS. MTS is available to any member, irrespective of whether the member has an electronic link to ETS. When registering, changing or canceling registration orders, members are required to provide the same information as when registering an order in ETS. For example, when placing registration orders by phone, an Exchange member must specify whether the order is an order book order or a fill-or-kill market order or a fill-and-kill market order. A registration order is considered registered by NP when MTS provides a telephonic confirmation of the entry of the order in ETS. A registered registration order remains valid until changed or cancelled by the member and MTS has confirmed this by telephone or until the end of the trading day the registration order was called in. An Exchange trade occurs, and a contract is automatically entered into for the account of the member that entered the registered order in MTS, when a matching order is registered in ETS.

Alternatively, an Exchange member may, subject to certain conditions, call in non-registration orders to MTS. Non-registration orders are binding on the member only when the member is in telephone contact with MTS or for a time period agreed upon between NP and the member. A non-registration order must state a better price than the best bid price registered in ETS (in respect of a bid) and a better price than the best offer price (in respect of an offer) for an order volume that NP finds to be sufficient. NP may refuse to receive further non-registration orders and, without notifying members with non-registration orders, stop handling some or any such orders for a pre-defined or indefinite period of time, if considered necessary to assure MTS continues to function the properly.

Upon receipt of a non-registration order, NP checks to determine whether an order in ETS matches the non-registration order and, if so, registers an order in ETS on behalf of the member in order to execute a trade. If no matching order is registered in ETS, NP contacts by telephone the members with the best price in ETS in the relevant series following the price/time

priority ranking, including the best net price for combination orders, and invites the Exchange members to match the price of the non-registration order. If a matching order is received, NP immediately registers an Exchange trade in ETS.

If no matching order is received, NP may contact by telephone the market makers in the relevant series, ranked internally by the price of their orders in ETS. If a matching order is received from a market maker, NP immediately registers an Exchange trade in ETS. If no matching order is received, NP may contact the Exchange member submitting the non-registration order by phone and ask whether the member wants a quote request, which is an electronic notice to all members linked to ETS inviting them to meet a non-registration order in a specified series, without identifying any price limit. Exchange members responding to a quote request are ranked according to the price and timing of their responses. If no members respond to the quote request, NP may contact by telephone any Exchange member with registered orders in the relevant series, as well as other members that staff believes may be willing to meet the non-registration order. Any matching orders subsequently submitted are ranked according to the price and time of response.

#### **D. Trade Confirmations and Trading Errors**

Exchange members with links to ETS have immediate access to electronic confirmation in ETS as soon as matching has taken place. Members that do not have a link to ETS are informed by NP by telephone as soon as practically possible when an Exchange trade is matched. NP also, as soon as practicably possible, and at the latest within final trade confirmation time, makes available electronic trade confirmation specifying the respective member's Exchange trades on the trading day in question. The final trade confirmation time is the time specified in the trading schedule by which the trade confirmation must be made available to the member by NP, currently 5:00 p.m. Norwegian time.

If a trade is registered at a price or volume in ETS that at least one of the two parties to the trade believes to be incorrect, the member must notify NP through telephone to MTS as soon as possible, and no later than two minutes after the registration of the trade in ETS. In the event of a late complaint, the trade will be upheld without change and the Exchange members will be legally bound by the registered trade.

NP is required to pass on timely complaints regarding possibly incorrect trades on an anonymous basis to the other affected Exchange members to allow them to evaluate the complaint. If these members consent to a cancellation or change, NP registers the cancellation or change in ETS. If the other affected Exchange members do not consent, the trade generally will remain valid and unchanged unless, among other things, the erroneous trade involved a market maker and was caused by a simultaneous registration or change of several orders by a market maker or the trade, was matched outside market maker hours or when no market maker was operative, is outside the theoretical market spread or has a trade volume exceeding the volume limit in the trade error schedule. With respect to trading through MTS, an Exchange member claiming that a trade confirmation received from NP contains errors and that consequently the trade is not legally binding must notify NP immediately, but no later than the final trade

complaint time.<sup>39</sup> The procedures and guidelines described above regarding correct and timely complaints in connection with ETS trading errors are generally also applicable to Exchange trades in ETS based on registration by MTS, as supplemented by some remedies specifically applicable to MTS trading.

#### **E. Trade Registration/Audit Trail/Market Data Distribution**

Every match that takes place on ETS is immediately disclosed in the system (on the PowerCLICK screens through VPN). These trades are also registered real-time and automatically transferred to NP Clearing for clearing through the Clearing Desk Application. Information about trade registration is saved for 10 years. Real-time and historical data are available through Market Data Service. The information saved by NP/NP Clearing contains information about all contracts entered into by each individual participant, including time of trade, historical price information, volume, and type of contract and accumulated financial information.

As described above, the transactions are automatically transferred and in real-time processed to the clearing system, and the information with respect to each completed transaction is immediately disclosed electronically to all participants. You represent that historically, the system has been available and open for trading 99.96% of the time, which is in accordance with NP's requirements as specified in the servicing contract with the systems provider, OMX Technology. Pursuant to the requirements of the Exchange Act 2007, NP makes trade data in all its listed products (including bids, offers, trade prices and trade quantity) publicly available on its web-page at no cost, subject to a short delay of approximately 15 minutes. Trade data are also available for the public without delay through commercial information providers (Reuters, Montel, etc.). The trade data published also include daily volume, highest/lowest prices, open interest and closing prices.

#### **F. Anonymity of Trading**

All NP trading is effected with anonymity - the NP order book is an "anonymous order book" that does not disclose the identity of the traders. NP Clearing enters into the trades as central counterparty as soon as a trade is matched and consequently anonymity is maintained. Only NP Clearing and the market surveillance department of NP, all subject to a duty of confidentiality, know the identity of the traders.

#### **G. Provisions for Disaster Recovery**

NP has taken steps to anticipate and control crisis situations that may arise. To ensure the continuity of NP's business system, NP has a geographically-separate disaster recovery site that is capable of being fully operational if the location at Lysaker is unavailable. NP procedures call for NP operations to be moved to the disaster recovery site if NP is unable to open the market

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<sup>39</sup> The final trade complaint time is the time specified in the trading schedule by which a complaint by a member regarding a trade error must be received by NP.

within three hours. The disaster recovery program for NP and NP Clearing include an overall disaster plan, an operational disaster plan, and a detailed resource and operational plan in the event of a disaster. This plan provides for the market and clearing to be fully functioning within 24 hours of any inability to open the market.

The main clearing system, Power SECUR, is operated by OMX AB in Stockholm, Sweden. NP, NP Clearing and OMX have contractual agreements that a disaster recovery site will be fully operational within 24 hours in the event of a disaster at OMX AB's main operational site. This disaster recovery site is positioned outside of Stockholm and contains all the transaction data necessary for a disaster recovery. NP's matching platform, Power Click, is also included in this disaster site. All other NP and NP Clearing systems, gateways and WEB servers are replicated in a disaster site geographically separated from NP Clearing's headquarters and comprise a "hot back up" of the main system.

The disaster recovery program also covers the physical availability of staff for the systems - NP and NP Clearing have staff situated both at Lysaker, Norway and in Stockholm, Sweden. The entire clearing system may be operated from either of these two sites, as well as by the operational staffing situated either at the headquarters or in the disaster site. At least once every third quarter NP and NP Clearing perform a complete disaster site test. All discrepancies from plans and performance requirements are reported in due course. NP and NP Clearing also perform an annual evaluation of the requirements and propose any necessary corrective actions. Pursuant to the disaster recovery plans, these evaluations and tests are documented and the results subject to approval.<sup>40</sup>

## **H. Adherence to IOSCO Principles**

NP represents that European and Norwegian law set very high standards with respect to the functioning of regulated markets and that 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,<sup>41</sup> are reflected in the legislation applying to Norwegian regulated markets (the Exchange Act 2007 and further regulations) and regulatory supervisory policy with respect to such markets. In addition, NP conducts regular self-assessments based on the ten IOSCO Principles. In this regard, NP has licensed the OMX CLICK electronic trade matching system. Commission staff previously has found the OM CLICK electronic trade

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<sup>40</sup> You represent that NP Clearing has experienced occasional operational disturbances during this past year, but nothing that caused market closure. None of the incidents caused any loss of transaction data, recovery of operations has been adequate where there is failure, and all key systems are able to handle volume under stress conditions. OMX AB's performance, which contractually requires the system to be capable of handling stress volume, is continuously monitored by NP Clearing and the key systems are tested regularly.

<sup>41</sup> 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).

matching system to comply with the IOSCO Principles.<sup>42</sup> Kredittilsynet, NP's regulatory authority, represents that it supports the IOSCO Principles and that the principles are implemented in the legislation applying to Norwegian regulated markets and in NFSA's supervisory policy with respect to such markets.

#### **IV. SETTLEMENT AND CLEARING**

##### **A. Introduction**

NP Clearing, granted a license as a clearinghouse on March 5, 2002, in accordance with the Norwegian Securities Trading Act of 1997 (STA 1997), provides clearing services for both Exchange and non-Exchange trades (OTC or bilateral) in listed products.<sup>43</sup> NP Clearing commenced operations as a licensed clearinghouse on March 18, 2002,<sup>44</sup> and currently has 415 participants, including clearing members and clearing clients from eleven countries. Clearing operations are governed by the NP Clearing rules. All contracts traded on NP are cleared by novation of NP Clearing, which provides central counterparty clearing services whereby it enters into the trades as counterparty to guarantee settlement.<sup>45</sup> The trade settlements are made in cash for Financial Electricity Contracts and by transfer in the relevant registers of Certificates and Allowances for EU Allowances. Cash settlement and collateralization is conducted through settlement banks under agreement with NP. Cash settlements occur through bank accounts opened with the settlement banks.

##### **B. The NP Clearing System**

Before a trade on NP can be cleared, each counterparty must first open a clearing account with NP Clearing. The account may be that of a clearing member, an NP member that may trade and clear on its own behalf, or a clearing client, an entity that is required to place any NP trades

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<sup>42</sup> See CFTC Staff Letters No. 00-93 (September 21, 2000) granting foreign terminal no-action relief to OM London.

<sup>43</sup> In June 2007, the Norwegian Parliament adopted the revised Norwegian Securities Trading Act of 2007 (STA 2007), which ratified most of the provisions of the STA 1997 and implemented certain additional requirements on regulated markets promulgated, among others, under the European Markets in Financial Instruments Directive (MiFID).

<sup>44</sup> NP clearing's license was initially limited to clearing derivative contracts with electrical power as the underlying commodity. On February 4, 2005, the NP Clearing's license was expanded to include CO2 derivatives, and, starting from 2006, the NP Clearing license currently comprises all types of commodity derivatives.

<sup>45</sup> As shown above, NP Clearing has a counterparty relation to all participants in the market (utilizing a direct clearing model or DCM). NP represents that NP Clearing expects to introduce a general clearing model (GCM), where clearing members may clear trades for clients that have no membership or client relationship directly with NP Clearing. The GCM is expected to become effective in August 2008. Under the DCM, client trades are registered with the registered NP Clearing accounts established in the name of individual clients that enter into a contract with NP Clearing. Under the GCM, however, investment firms and credit institutions (and others) will be able to clear client and proprietary trades through NP Clearing as "General Clearing Members", without being required to obtain membership with NP Clearing. Client trades will be registered in joint client accounts or individual client accounts established in the name of a General Clearing Member, and a contractual relationship will exist between a particular General Clearing Member and NP Clearing, rather than directly among the individual clients and NP Clearing.

through a client representative.<sup>46</sup> Each clearing member or clearing client must have a cash account with one of the approved settlement banks with the base collateral requirements (Initial Margin) deposited with that bank. The collateral requirements may be satisfied either by cash deposited on a pledged cash account (pledged in favor of NP Clearing) or by letters of credit/guaranties of qualified banking institutions non-pledged bank account in combination with an on-demand bank guarantee). If the applicant cannot provide enough cash as collateral or, for example, there is doubt as to whether the pledge over the cash account will be valid and/or upheld in bankruptcy under the laws of the home state of the applicant, NP Clearing requires the member to provide appropriate letters of credit/guaranties. You represent that NP Clearing's rulebook, information technology structure and operational routines are in compliance with all national regulations and meet or exceed the IOSCO recommendations for clearing systems.

NP Clearing utilizes a modified version of the SECUR clearing system, Power SECUR, facilitated by OMX Technology AB in Sweden, for the clearing of the NP market. Power SECUR includes the entire clearing member, clearing client and product database and is utilized to record information regarding the members' and clients' accounts, as well as all cleared contracts and open interest. NP Clearing has implemented an adjusted version of the SPAN® risk model (the SPAN model), which is the basis for the daily margin and settlement calculations. The results of these calculations are daily and automatically transferred to the settlement banks for settlement and confirmation purposes. All trades registered in ETS are automatically transferred to Power SECUR after being matched. A similar procedure applies to off-exchange trades that are registered in the Clearing Desk Application for confirmation. Upon confirmation, these trades are automatically transferred to Power SECUR for clearing approval by NP Clearing.

In order to ensure effective and satisfactory control within the clearing system, NP Clearing has a process for actively identifying, analyzing and addressing its operational risk, including risks arising from its outsourced operations and other activities. The clearinghouse establishes strategy and policy as a result of these processes and, among other things, maintains close contact with, and regularly schedules and attends Joint Operational Steering Group Committee meetings with OMX Technology AB. NP Clearing also maintains close contact with the concentration bank, discussed below, and the settlement banks. A settlement bank may be (i) any bank which is licensed by the Organization for Economic Cooperation and Development (OECD), has a minimum BBB+ or similar rating by S&P, Moody's or Fitch, has a membership with SWIFT© S.C.R.L (SWIFT)<sup>47</sup>, and has a direct access to the TARGET2<sup>48</sup> system for

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<sup>46</sup> As previously discussed, a client representative is a clearing member approved by NP and NP Clearing to trade on a clearing client's behalf, and allocate the trade to a client's account. The clearing client and the client representative are jointly responsible for meeting the margin requirements calculated by NP Clearing.

<sup>47</sup> SWIFT is a co-operative established by and for the financial industry, setting forth standards for bank communication. SWIFT is the global provider of secure financial messaging services among various banking institutions.

<sup>48</sup> TARGET stands for Trans-European Automated Real-time Gross settlement Express Transfer system and was first introduced in 1999 as the unified payment mechanism for all Euro area countries. TARGET2, the successor to the original TARGET system, commenced operations in May, 2008. TARGET2 provides real-time processing and settlement of payments in the Euro currency.

settlement of payments in Euro currency, or (ii) any Norwegian bank with access to the Norwegian payment and settlement system and a SWIFT membership.

In order to become a settlement bank, a qualifying bank must enter into a Settlement Bank Agreement with NP Clearing. The settlement bank participates in the reporting and settlement systems of NP Clearing, which are established in Euro, in order to effect cash settlement and cash collateralization for transactions cleared by NP Clearing. In its capacity as a settlement bank, the bank will be entitled to open Euro cash accounts, as applicable, in the name of clearing members and clearing clients, and to link such accounts to the NP Euro cash system by opening a settlement account with the concentration bank. Currently, there are 22 settlement banks.

Nordea Bank Norge ASA (Nordea) functions as NP Clearing's concentration bank. Nordea's responsibility as such is to effect net settlement between the settlement banks' various settlement accounts opened with Nordea. Further, Nordea, through its cash management system, provides information about the clearing members' and clearing clients' balance and payment instructions among the settlement banks, NP Clearing and Nordea. NP Clearing calculates the settlement amounts for members and the settlement banks. All settlements between NP Clearing and the settlement banks take place as a daily net settlement on the respective settlement banks' settlement accounts in Nordea. This settlement is operated by Nordea in accordance with instructions received from NP Clearing. Settlements between NP Clearing and the members takes place daily on each member's cash account in the settlement bank in accordance with instructions from NP Clearing.

### **C. Risk Management**

The NP Clearing risk management group (RMG) has the overall responsibility to oversee NP Clearing counterparties, the margin system and the handling of any default. On a daily basis, the RMG monitors volatility, counterparties, trades and collateral. RMG may, on short notice, change risk parameters in the margin model based on rapid changes in volatility or choose to call for extraordinary margin with one hour notice. Watch list participants are monitored daily with focus on trading and exposure limits or changes in the daily margin call. NP Clearing calculates a collateral call once daily, based on a net position, and all participants must cover the collateral call with cash or a bank guarantee by 11:00 a.m. the next business day. All risk parameters are updated frequently and the volatility is benchmarked every day against the market volatility.

NP conducts stress- and back-testing with respect to both the participants and the risk parameters to identify any risk exposure of each NP clearing member and to ensure that the risk parameters are optimal to allow NP Clearing to have a sufficient amount of capital in light of such risk exposure.<sup>49</sup> The risk parameters are determined by RMG with regard to historical

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<sup>49</sup> Pursuant to the IOSCO recommendation that a central counterparty should maintain sufficient financial resources to withstand, at minimum, a default by the participants to which it has the largest exposure in extreme but plausible conditions, NP Clearing stress tests a close out of the largest counterparty, or a close out of the third and fourth largest counterparties combined, to determine the size of recommended clearing capital and a satisfactory credit rating among the counterparties.

volatility data. The paying ability (creditworthiness) of a clearing member is then back-tested against such risk parameters, which allows NP to evaluate the effectiveness and sufficiency of the risk parameters with respect to trading activity that will occur in the future by applying such parameters to the available data on the clearing member's past positions at various assumed price and volatility levels and evaluating whether the proposed risk parameters would have been sufficient. NP Clearing calculates a margin requirement on a daily basis in order to cover its counterparty risk.

#### **D. The Margin System**

The margin system comprises three main elements: the Initial Margin or base collateral, the daily margin call, and the extraordinary margin call. The Initial Margin, previously described, covers overnight risk associated with intra-day position changes not covered by the previous margin calculation and is mainly dependent on the trading pattern and credit rating of the counterparty. The Initial Margin must be covered by collateral before trading can begin.<sup>50</sup> The daily margin call is calculated daily and covers NP Clearing's credit and price risk in the case of a member default and the closing out of open positions. The daily margin call consists of (a) the mark-to-market value (profit/loss) and (b) the scenario or market risk. The extraordinary margin call provides for special circumstances, including price fluctuations and changes to the financial situation, and requires that collateral must be posted within one hour. The liquidation value is the mark-to-market value (profit or loss) of the portfolio. The profit/loss of futures contracts is settled every day, and the liquidation value is zero. The liquidation value of a power option is equal to its current market price. The liquidation value of held options is positive, while the liquidation value of written options is negative.

The SPAN® model is used in the scenario risk calculation. The scenario risk reflects a portfolio's market risk during a close-out period, *i.e.*, how large is the worst-case loss a portfolio would have during a close-out period of five days, if the prices should move up to three standard deviations of observed historical price movements. The SPAN® model uses up to 16 price and volatility scenarios in order to simulate worst case losses for futures, forward and option positions. The worst-case loss is used as the scenario risk for a position in a contract series.

NP Clearing calculates a separate margin call for the net positions in each contract series. The SPAN® model allows for netting of margins *inter alia* for contracts with opposing positions and overlapping delivery periods, or for different delivery periods with a certain degree of correlation.<sup>51</sup> In special circumstances, NP Clearing can change the risk parameters in SPAN®, or, as noted above, call for extraordinary margin, with one hour's notice. Acceptable collateral

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<sup>50</sup> The purpose of the Initial Margin is similar to the default fund contribution at some other cleared markets. In contrast however, the Initial Margin only covers the risk of the specific clearing member and cannot be used to cover other members' losses.

<sup>51</sup> The scenario risk is similar to the initial margin in other cleared markets, but usually the initial margin is semi-fixed, while the scenario risk varies daily with changes in prices and volatility.

to NP Clearing is cash on a pledged cash account and/or an on-demand guarantee according to a standard template. The cash account will be opened in a bank approved by NP Clearing.

#### **E. Default Procedures**

The collateral call for the previous trading day must be covered by the clearing member no later than 11.00 a.m. CET on the current trading day. If the deadline is not met, NP Clearing will declare a default according to the NP Clearing rules and will take all necessary steps to reduce its counterparty risk.

Pursuant to the NP Clearing rules, RMG has the initial responsibility to handle any defaults and different responsive actions are taken, depending on the seriousness of the default. RMG instructs the member to take whatever steps are necessary to remove the cause of the default and may subsequently cancel the default situation.<sup>52</sup> Other possible actions include an “administrative close out,” under which the participant is forced to close out a position to reduce its exposure risk but may still operate in the market under the supervision of the clearinghouse. In the most severe default situation, NP Clearing would exclude the participant from the market and take over the portfolio and close it out. In both cases, a special default committee, a pre-defined group whose members have different pre-defined areas of responsibility, would handle the default. The default committee’s role is to close down a portfolio and minimize the loss for both the defaulting party and the clearinghouse, with a minimum affect on the market prices.

In the case of a default by a clearing member, losses are initially covered by the collateral posted by the defaulting member. Pursuant to the NP Clearing rules, NP Clearing may proceed with a number of available remedies including, among others, suspension of the clearing member from NP Clearing; entering into close-out trades for the clearing member’s account for some or all of the member’s open positions; transference of its clearing clients’ clearing accounts to another client representative; and/or termination of the clearing member’s membership. Losses exceeding the collateral are covered by a combination of NP Clearing’s equity and default insurance. NP Clearing is required by the STA 2007 to maintain a minimum of NOK 50 million (\$9.7 million) in its own funds at all times. NP Clearing’s share capital is NOK 500 million (\$97.3 million). In addition, NP Clearing has default insurance coverage with Radian Insurance Inc. in the amount of U.S. \$110 million.

### **V. THE REGULATORY REGIME IN NORWAY**

#### **A. Regulation of NP**

The regulatory requirements for NP are primarily set forth by the Exchange Act 2007, a continuance of the Exchange Act of 2001 which also incorporates additional rules and requirements relating to regulated markets and exchanges under the MiFID.<sup>53</sup> The stated

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<sup>52</sup> A minor default always results in an evaluation of the need for an extraordinary margin call.

<sup>53</sup> Section 3 (i) of the Exchange Act 2007 sets out the definition of a regulated market which comprises both licensed exchanges and other regulated market places: “(1) [A] ‘regulated market’ shall mean an undertaking

purpose of the Exchange Act is to “provide the basis for markets for financial instruments that are efficient and orderly and inspire confidence.”<sup>54</sup>

The European Union initial approach to the regulation of “regulated markets” was found in Council Directive 3/22/EEC of May 10, 1993, on investment services in the securities field – Investment Services Directive (ISD). Among other things, ISD introduced the concept of the regulated market, aiming to harmonize certain conditions governing the operation of regulated markets. Further, ISD sets out some basic high-level provisions governing the organization and conduct of business requirements for investment firms, creating a “European Passport” for these firms. The European passport means that restrictive legislation in member states preventing cross frontier branching and freedom of services will have to be dismantled, allowing authorized European Union investment firms to operate across borders within the European Union. MiFID (Council Directive 2004/39), incorporated into Norwegian law by the Exchange Act 2007 and STA 2007,<sup>55</sup> has the same basic purpose as ISD, but it makes changes to the regulatory framework to reflect developments in financial services and markets since the ISD was implemented.<sup>56</sup>

The Norwegian regulatory regime went further than the ISD and addressed a number of broad public policy objectives, including protection of market price integrity in regulated markets and establishment of fair trade practices, now also applicable on a European level under the MiFID. The prohibitions on insider trading and market manipulation and the general ban on unfair market practices for commodity derivatives promulgated under the STA 2001, as well as the Exchange Act 2001 requirement that regulated markets (including NP) establish proper market surveillance, were motivated by these policy concerns. MiFID introduced similar requirements on a European level, now implemented in the Exchange Act 2007 and STA 2007.

Further, there are specific provisions in the Exchange Act 2007 requiring exchange activities to be carried out with due consideration to the principles of efficiency, neutrality and equal treatment of all participants, as well as to ensure that the market offers a high degree of transparency and the process of price quotation reflects the current market value of the instruments listed. In accordance with the principles-based regulatory approach practiced in Norway, Section 22 of the Exchange Act 2007 states that an exchange is required to operate such

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authorized under section 4 [of the Exchange Act 2007] that decides to list financial instruments in the market and which organizes or operates a multilateral market for regular trading in the listed instruments in accordance with laws, regulation and non-discretionary trading rules issued by that market. (2) [An] ‘exchange’ shall mean a regulated marked licensed under section 33 [of the Exchange Act 2007].”

<sup>54</sup> Section 1 of the Exchange Act 2007.

<sup>55</sup> The Exchange Act 2001 and 2007 are also partly based on the guidelines issued by the Committee of European Securities Regulators (CESR) for regulated markets.

<sup>56</sup> Under the MiFID, as implemented in Norway to date, investment firms are subject to a full array of detailed customer protection requirements, including requirements for disclosure, funds protection and trading abuse prevention. However, these requirements do not presently apply to intermediaries for commodities derivatives. Thus, an Exchange member that is engaged solely in commodities derivatives intermediation, as opposed to other financial investment, would not be subject to those requirements.

systems for carrying out trading, price quotation, transparency, information distribution and market surveillance as are necessary in relation to the manner in which the business activities are organized. NP's compliance with these principles is evaluated at the judgment of the NFSA.

Among the other provisions of the Exchange Act 2007 rules and conditions applicable to the business operations of NP are the following: (a) the exchange must be organized as a public limited liability company; (b) the exchange's articles of association and amendments thereto must be approved by the Ministry of Finance; (c) the persons who effectively run the exchange operations must have relevant experience and be of good repute; (d) the board of directors of the exchange must ensure that guidelines for the internal control of the exchange are laid down; (e) employees and officers of an exchange are subject to confidentiality obligations; (f) as a rule, no one can represent more than ten percent of the share capital or the votes of an exchange; (g) in a general shareholder meeting, no one can vote for more than ten percent of the votes of the company or for more than 20 percent of the votes represented in the general meeting; (h) an exchange must have funds appropriate to the operations conducted; (i) the exchange must have sufficient liquid/current assets or access to such assets taking into consideration the business of the exchange at all times; and (j) the exchange must have rules supplementing the law.

In addition to the Exchange Act 2007, the conduct of trading on NP is governed by other broad prohibitions on insider trading, price manipulation and improper business methods generally. Norway is signatory to the European Economic Area (EEA) Treaty<sup>57</sup> with the European Union and, accordingly, the financial directives of the European Union are applicable in Norway. Most important in this respect is MiFID and the Market Abuse Directive,<sup>58</sup> implemented in Norway by the STA 2007, and supplemented by European Commission Directives and European Commission Regulations that also apply to Norway. The Market Abuse Directive, which extends to commodity derivatives, prohibits, among other things, misuse of insider information, market manipulation and the use of unreasonable business methods, and provides for criminal penalties for certain actions. In furtherance of this prohibition, the Norwegian Ministry of Finance issued regulations that include a list of "red flags" concerning market manipulation.

The avoidance of insider trading and market manipulation is a key objective for the NFSA in its supervision of the financial markets. NFSA has taken an active stance in this respect in the Norwegian market, and is also actively involved in the works of CESR, the organization of European financial regulators. CESR has addressed market manipulation and the types of action that CESR members consider to constitute market manipulation. You represent that NFSA is following the market manipulation guidelines as set forth by the CESR.<sup>59</sup>

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<sup>57</sup> The EEA Treaty is an agreement among member states of European Free Trade Association (EFTA), the European Community and all member states of the EU, which created the EEA and allowed EFTA member states (which include Iceland, Norway, Switzerland, and Liechtenstein) to participate in the European Single Market without joining the EU.

<sup>58</sup> Directive 2003/6/EC on insider dealing and market manipulation.

<sup>59</sup> You represent that NP monitors the function of its markets, but does not have the primary responsibility for monitoring the relationship between market intermediaries and their clients. Under Norwegian law, direct regulation of the intermediaries, to the extent that they are licensed investment firms, is the NFSA's responsibility.

With respect to financial requirements, the Exchange Act 2007, as noted above, sets out only a general capital requirement stating that NP as an exchange at all times shall have its own funds which provide a satisfactory level of capital adequacy based on the business of the Exchange. Various factors must be considered when assessing the exchange's capital adequacy, including the risk of the business of the exchange, contractual risk, operational risk and other special risks to which the exchange is exposed. Further, the Exchange Act 2007 provides that an exchange shall have a reserve of liquidated assets, or access to such assets, which are adequate when taking into consideration the business of the exchange. NP's current share capital is NOK 240 million (\$47 million).

## **B. Regulation of NP Clearing**

The clearing business of NP Clearing is mainly regulated under the Norwegian Securities Trading Act 2007, pursuant to which clearing operations may only be conducted by a clearinghouse with an authorization from the Ministry of Finance. Clearing is defined in the STA 2007 as business activity which consists of entering as a party into, or otherwise guaranteeing the fulfillment of, agreements related to trading in certain financial instruments (including derivatives) and commitments related to securities lending.

Among the conditions of the STA 2007 which must be satisfied before authorization as a clearinghouse under the STA 2007 may be granted and maintained are the following: (a) the clearinghouse must be organized as a public limited company; (b) the persons who effectively run the clearing operations must have relevant experience and be of good repute; (c) authorization as a clearinghouse may be denied if a shareholder with a substantial shareholding in the clearinghouse is not deemed fit to ensure sound and prudent management of the clearinghouse;<sup>60</sup> (d) the clearinghouse must have a control committee, appointed by the general membership at its annual meeting, which shall oversee the institution's operations and ensure that the clearinghouse complies with laws, regulations, terms and conditions as well as the company's articles of association; (e) the general meeting must lay down instructions for the control committee, which must be approved by the NFSA; (f) no one can own more than 20 per cent of the share capital of a clearinghouse;<sup>61</sup> (g) a clearinghouse must have a level of funds that is appropriate to the operations conducted by the clearinghouse (the minimum requirement is NOK 50 million, or approximately \$9.7 million);<sup>62</sup> (h) a clearinghouse may only pursue activities which are naturally related to the performance of clearing operations (the NFSA may request the clearinghouse to keep business-related activities separate from the clearing business); (i) a clearinghouse must ensure that it has sufficient security to guarantee the performance of contracts that it enters into as a party or otherwise guarantees the performance of (the

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<sup>60</sup> Acquisition of a qualifying holding of the clearinghouse or any increase in the qualifying shareholding whereby a shareholder's proportion of the share capital or voting rights reaches or exceeds 20%, 33% or 50% may only take place after the NFSA been notified in advance.

<sup>61</sup> The Ministry of Finance has exempted NP Clearing from this requirement.

<sup>62</sup> An amount equivalent to a minimum of 50 percent of the company's own funds must comprise deposits and unconditional drawing rights in credit institution at all times.

clearinghouse shall calculate and require the provision of such security on a continuous basis); and (j) employees and officers of a clearinghouse are subject to confidentiality obligations. NP Clearing's current share capital is NOK 500 million (\$97.3 million).

### **C. Supervision by Kredittilsynet/NFSA**

NP Clearing and NP are both subject to the supervision of Kredittilsynet, the Norwegian Financial Services Authority, which is an independent government agency that implements and expands upon laws and decisions emanating from the Parliament (Stortinget), the Government and the Ministry of Finance, and is also guided by international standards for financial supervision and regulation.<sup>63</sup> Kredittilsynet's aim is to ensure that financial institutions and markets function securely and efficiently in the best interest of society and users of financial services, and that institutions and markets have an appropriate regulatory environment. According to the Norway Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc., Kredittilsynet shall "ensure that the institutions it supervises operate in an appropriate and proper manner in accordance with law and provisions issued pursuant to law and with the intentions underlying the establishment of the institution, its purpose and articles of association."

Kredittilsynet is headed by a Board of Directors comprised of five members and two alternates appointed for a four-year period by the Ministry of Finance. Day-to-day operations are overseen by the Director General, who is also appointed by the Ministry of Finance and is supplemented by a management team of four deputy directors general, a general counsel and a head of communications. Kredittilsynet has approximately 200 employees and is organized in three supervisory departments, an administrative department and support functions at various levels.

Through its supervision of enterprises and markets, Kredittilsynet strives to promote financial stability and orderly market conditions and to instill confidence that financial contracts will be honored and services performed as intended. Kredittilsynet is responsible for the supervision of banks, finance companies, mortgage companies, insurance companies, pension funds, investment firms, securities fund management and market conduct in the securities market, stock exchanges and authorized market places, settlement centers and securities registers, estate agencies, debt collection agencies, external accountants and auditors. To achieve its goals Kredittilsynet engages in a wide range of oversight activities, complying with internationally recognized standards and methods of supervision, including both on- and off-site inspections and supervision.

The supervision of NP Clearing by Kredittilsynet is authorized in the STA 2007 and the supervision of NP by Kredittilsynet is manifested in the Exchange Act 2007.<sup>64</sup> Both NP Clearing

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<sup>63</sup> Kredittilsynet was established in 1986 as the first integrated supervisory authority for the financial markets in the western world.

<sup>64</sup> NP is subject to the same rules and regulatory regime as the Oslo Stock Exchange, and thus is on the list of Norwegian-regulated markets reported to the European Commission in accordance with MiFID.

and NP are at all times obligated to furnish Kredittilsynet with such information as the NFSA may require about matters related to their respective business and activities. In particular, Kredittilsynet monitors the capital levels of both institutions and NP and NP Clearing are required to report key figures in semi-annual and annual reports. NP and NP Clearing are required to conduct and report to Kredittilsynet annual risk evaluations and audits. Kredittilsynet also approves NP rules and rule changes prior to implementation and may also, on its own initiative and without notification, undertake on-site inspections.

Kredittilsynet periodically performs reviews of NP and NP Clearing to ensure that they meet the legal requirements under their licenses and applicable laws. These reviews typically begin with written questions and document requests, followed by on-site meetings where Kredittilsynet may present additional questions. The reviews are documented in a formal report that the supervised institution is allowed to comment on before the conclusions are made public. This process of review is, to a large extent, standardized for all regulated entities (banks, insurance companies, investment firms, exchanges, clearinghouses etc.) and carried out by specialized teams at Kredittilsynet.

#### **D. Regulatory Regime Governing Intermediaries**

Section 3-9 of the STA 2007, which prohibits unfair business methods in trading in financial instruments and is applicable to all Norwegian market participants including non-licensed intermediaries/brokers handling client orders, regulates trade practice matters with respect to trades in financial instruments including exchange trades and OTC trades in NP's listed products. Provisions of the STA 2007 applicable to investment firms require that such firms implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders relative to other client orders or orders for the firm's own account. Client orders are to be executed in the order received, without undue delay, and according to fair criteria where clients and proprietary orders are not treated differently without proper cause. Investment firms are required to make and retain voice recordings in connection with their provision of investment and ancillary services and to retain other types of documentation related to such services. Further, investment firms in Norway are required to report to Kredittilsynet as quickly as possible, and no later than the close of the following working day, details of transactions in any financial instruments traded on a regulated market. The reports must include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution and the transaction prices and the identity of the investment firms concerned. Section 9-11(3) of the STA 2007, which applies to NP clearing members that are authorized investment firms, expressly requires that the customer accounts and proprietary accounts of such investment firms be segregated.

In addition, the Norwegian Securities Trading Regulations 2007 (STR 2007) imposes, among other things, strict recordkeeping requirements with respect to reception and execution of client orders. Investment firms carrying out client orders are required to, among other things: (a) promptly and accurately record and allocate client orders; (b) execute otherwise comparable client orders promptly and sequentially unless the characteristics of the order or prevailing market conditions make it impracticable to do so, or the interests of the client require otherwise;

(c) inform the client about any material difficulty relevant to the proper execution of the order promptly upon becoming aware of the difficulty; (d) where responsible for overseeing the settlement of an executed order, take reasonable steps to ensure that any client funds received in the settlement are promptly and correctly delivered to the appropriate client's account; and (e) not misuse, and take reasonable steps to prevent the misuse of, information relating to pending client orders. In compliance with the STR 2007, most Norwegian investment firms maintain electronic records of all customer orders and trades.

Norwegian law strictly prohibits intermediaries (as well as others) from engaging in insider trading practices. The generally applicable provisions of the STA 2007, for instance, require persons possessing inside information to handle such information with due care, to not disclose the information to unauthorized persons, and to not give advice about trading in financial instruments to which the information relates. In addition, persons possessing such information may neither directly nor indirectly, for their own or a third party account, purchase or sell financial instruments or incite others to do so. The general prohibition on insider trading prohibits any intermediary or a client with prior knowledge of an order placed by another client to trade in advance of the order's execution, provided the initial client order is likely to have an effect on the market.<sup>65</sup> All regulatory insider trading provisions are enforced by NSFA and NP. The STA 2007 also contains a general prohibition on market manipulation, as well as attempts to manipulate, applicable to all persons, including both licensed and unlicensed intermediaries.<sup>66</sup> This provision is also enforced by NSFA and NP.<sup>67</sup>

Finally, as previously noted, under the Norwegian law and consistent with general European practice, a market place or exchange is not responsible for the supervision of handling of client orders by intermediaries. Rather, the federal regulator responsible for licensing and supervision of the investment firms (NSFA) conducts all relevant surveillance and enforcement.<sup>68</sup> Thus, for example, although the STA 2007 and STR 2007 include strict

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<sup>65</sup> A prohibition on insider trading at NP is set forth in NP's Market Conduct Rules.

<sup>66</sup> Although the STA 2007 does not expressly address the concept of "wash sales", it does contain a broad general prohibition on market manipulation practices and prohibits any "transactions or orders to trade which give, or are likely to give, false, incorrect or misleading signals as to the supply of, demand for or price of financial instruments, or which secure the price of one or several financial instruments at an abnormal or artificial level" as well as "any transactions entered into or orders to trade given in relation to any form of misleading conduct." You represent that the broad scope of this prohibition should effectively encompass a prohibition on any "wash trading", as defined under the CEA.

<sup>67</sup> NP has also promulgated a general prohibition on market manipulation activities in the NP Market Conduct Rules, including a prohibition on any practices which "give, or are likely to give, false or misleading signals as to the supply of, demand for or price of a [financial instrument]," "conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a [financial instrument] which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions," or "the buying or selling of a [financial instrument] at the close of the market with the effect of misleading investors acting on the basis of closing prices." NP's Ethical Guidelines prohibit NP market participants, including any Exchange member, clearing member and clearing client, from engaging in any "fictive transactions and mock agreements" or giving "false or misleading expressions of their intentions with trades or bids and offers in the markets."

<sup>68</sup> See Article 47 (1) letter a) of the MiFID Implementation Directive (Commission Directive 2006/73/EC) and the STR 2007 adopted under the STA 2007 where MiFID is implemented. The STR 2007 and STA 2007 contain

requirements with respect to the handling of client orders (executed in the order received, without undue delay), NP's internal regulations do not expressly require an intermediary to enter customer orders into ETS immediately upon receipt.<sup>69</sup> You represent that generally, the number of brokers or intermediaries that are members of NP is very limited and procedures for handling orders by these intermediaries have not presented a significant concern to the Exchange.

## **VI. NP AND NP CLEARING INTERNAL REGULATIONS**

### **A. Market and Trade Surveillance**

In addition to the provisions of Norwegian statutory law, the NP and NP Clearing have adopted internal rules that further regulate the obligations and rights of the market participants in trading and clearing and settlement processes and assure compliance with the external government regulations. The Market Conduct Rules govern reporting of non-exchange trades, disclosure of relevant price information, misuse of insider information and prohibition of market manipulation.

With respect to market and trade surveillance, the Exchange Act 2007 requires all exchanges to establish an internal market surveillance function and the Ministry of Finance has issued regulations setting forth market surveillance guidelines. Market surveillance of both the financial and physical markets, which requires continuously monitoring the market conduct of trading participants and investigating possible breaches of the NP trading rules or applicable laws, is conducted jointly by NP and NP Spot AS, its affiliate in the Nord Pool Group that operates the spot exchange for the Nordic electricity market, the underlying physical market. As discussed below, NP relies upon a team of four professionals with significant market and legal experience to identify and follow-up on suspicious market activity in both the physical and financial markets. Market surveillance includes the undertaking to formally report suspected breaches of laws and regulations to the Norwegian supervisory authorities according to the requirements in the licenses. Furthermore, with regulatory approval, there is informal information sharing among NFSA and various other Norwegian government agencies, including antitrust, energy and financial authorities. NP's market surveillance department regularly

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specific rules for the handling of client orders, including a requirement that client orders must be entered into the trading systems immediately upon receipt and prioritized according to the time of receipt unless the type of order or market circumstances warrant otherwise. In addition, the STA 2007 and STR 2007 require the exchanges to adopt pre-approved guidelines for the timing and execution of client orders. These new rules will, however, only apply to brokers/intermediaries that are licensed as investment firms which, as a general rule, does not include NP brokers or client representatives. Where a particular trade involves a client representative not licensed as an investment firm, abuses of the client orders of such client representative may be subject to specific sanctions imposed by NP pursuant to its Market Conduct Rules. In addition, abusive conduct of client representatives not subject to NFSA regulations may be deemed a violation under different sections of the STA 2007 and, as such, may be sanctioned by vindication of profits or other penalties.

<sup>69</sup> As previously stated, NP's Ethical Guidelines provide that an Exchange or clearing member acting on behalf of clients as intermediary or agent shall endeavor to protect the interest of the client in all cases where there are possible conflicts between the members' own interests and their client's best interests, and shall ensure that clients are treated equally and in a fair and non-discriminatory manner.

publishes reports covering the previous review period, and these reports can be found on the NP's web site. Any sanctions imposed are published after taking effect.

NP's surveillance program focuses on four major areas. First, all market participants must report to NP all transactions in exchange-listed products matched outside the Exchange which the participants request to be cleared by NP Clearing. To ensure complete market transparency, reporting must take place within 15 minutes of trade execution and must contain correct trade data. Second, pursuant to the disclosure rules set forth in the Market Conduct Rules and the rulebook for physical trading, all market participants must immediately disclose to NP as an Urgent Market Message all inside information that is of a precise nature and not publicly known and likely to impact prices in any of the markets. This includes relevant information about production, consumption or transmission plant maintenance plans or limitations and outages or other failures.

Third, market participants are prohibited from trading when possessing insider information. The STA 2007 defines inside information concerning commodity derivatives as any information of a precise nature which is not publicly available or commonly known and which directly or indirectly concerns one or several commodity derivatives and which the participants in the market where the commodity derivatives are traded would expect to receive in accordance with the NFSA's view on accepted market practice on the market in question.<sup>70</sup> Fourth, market participants are prohibited from engaging in market manipulation as defined in applicable Norwegian law and the NP rulebook. This definition of market manipulation stems from the definition contained in the EU Market Abuse Directive,<sup>71</sup> which sets forth a common framework for handling insider dealing and market manipulation in the EU and the proper disclosure of information to the market. The NP regulation on market surveillance and the license given to NP Spot regulate tasks that the market surveillance department performs. The main task of the market surveillance team (MS) is to monitor the market participants' orders, trades and reporting of non-exchange trades in the financial market, as well as bidding in the physical market. If there is suspicion of any breach of the NP trading rules, MS gathers information and investigates the possible breach as described below.

## **B. Investigation and Enforcement**

The financial market at NP and the spot market at NP Spot AS are continuously monitored by MS, a team of four individuals with significant market experience as well as legal training who are overseen by NP's General Counsel. MS uses surveillance tools incorporated in the trading applications, as well as in-house developed surveillance applications for the

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<sup>70</sup> "Information which participants would expect to receive" means information which is normally made available to market participants or information the publication of which is required by statute, regulations or other regulatory regime, including private law regulation and practices on the commodity derivatives market concerned or the underlying commodity derivatives market. NP's Market Conduct Rules define inside information to mean any information of a precise nature which has not been made public relating to the relevant markets (including the financial electricity market) and which, if made public, would be likely to have a significant impact on the prices in one or more listed products.

<sup>71</sup> EU Market Abuse Directive 2003/6/EC.

generation of alarms related to breaches of the Market Conduct Rules. If MS discovers conduct that appears to be in breach of the Market Conduct Rules, it must conduct an investigation. If the matter is not resolved after initial investigation, a case will be opened. MS will continue to investigate, requesting information from the relevant market participants and, if relevant, from other parties or authorities, such as Transmission System Operators (TSO).<sup>72</sup> Market participants are, upon written request by NP, under an obligation to provide NP, as soon as possible, with all information NP considers relevant with respect to its role in surveillance pursuant to the Market Conduct Rules and other applicable laws and regulations. If the market participant does not comply with the duty to provide information, NP may impose a daily fine until the information is provided.

If NP's surveillance department suspects a breach of the Market Conduct Rules that is supported by its investigation, it may recommend disciplinary sanctions against the market participant or Exchange trader to the Disciplinary Committee, which is comprised of three or five members appointed by the Board to advise it in disciplinary matters.<sup>73</sup> The Disciplinary Committee may (a) request that the surveillance department conduct further investigation, (b) invite the investigated parties to present their views to the Disciplinary Committee, or (c) in special circumstances, conduct its own investigation (subject to a veto by the Board). The Disciplinary Committee then presents its recommendations to the Board within four weeks of receiving the investigation report, at which time the Board has full discretion to decide if and what disciplinary sanctions will be applied.

NP may impose the following sanctions on a market participant found, in the course of an investigation, to have violated the applicable rules: (a) an oral warning; (b) a written warning; or (c) a monetary penalty of up to NOK 2,500,000 (\$500,000) for violations committed in the financial market, and of up to 10 times the annual fee for violations committed in the spot market.<sup>74</sup> If NP suspects that the breach of the Market Conduct Rules continues after the internal sanctions have been imposed on the market participant, it will send a report to the relevant supervisory authority for further investigation, which may result in additional sanctions and/or reporting to the public prosecution authority.<sup>75</sup>

### **C. Price Developments Monitoring**

NP represents that the product listing mechanism adopted by the Exchange allows for early detection of manipulative practices without heavy reliance on computerized surveillance processes. For each listed contract there are a number of different series listed (series with

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<sup>72</sup> TSOs are utilities operators that own and operate national systems of electrical power transmission.

<sup>73</sup> NP's surveillance department may issue oral warnings without filing with the Disciplinary Committee.

<sup>74</sup> NP may impose the following sanctions on an Exchange trader found to have violated the applicable rules: (a) an oral warning; (b) a written warning; or (c) withdrawal of the approval of the Exchange Trader.

<sup>75</sup> Kredittilsynet has a separate unit generally responsible for investigating insider trading violations and instances of market manipulation (this unit is separate from the unit responsible for surveillance and regulation of the exchanges, investment firms and other regulated institutions) that is staffed accordingly.

different delivery periods). The pricing in the different products series in each main product is typically coherent and interrelated, allowing for detection of manipulative conduct or abnormal development in any particular series by both NP and market participants at an early stage. All trading and price developments are carefully monitored by qualified NP personnel. Historically, any significant price developments have been effectively and promptly identified by NP following internal investigations and analysis. Traders and market participants also play an important role in identifying significant price developments that are not warranted by changed circumstances or availability of new information on the market and provide leads for further investigation by NP's staff.

## **VII. INFORMATION-SHARING**

As described more fully below, the Commission and its staff will be entitled to receive sufficient information regarding NP, the trading system and NP's market participants directly from NP pursuant to the terms and conditions of the no-action relief granted herein. Moreover, NP, in its no-action request, undertakes to provide the Commission, on an as needed basis, information necessary to evaluate the continued eligibility of NP and its members for the no-action relief; or to enable the Commission to carry out its duties under the Act and CFTC regulations. NP is a signatory to the Exchange *International Information Sharing Memorandum of Understanding and Agreement* dated March 15, 1996, a framework for over 60 futures exchanges and clearing organizations worldwide to share information relevant to managing global market emergencies

With respect to government to government information sharing, additional information relevant to NP and NP's market participants will be available to the Commission and its staff under the terms of the information-sharing arrangement to which both the CFTC and the NFSA are parties, the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU)* dated May, 2002. By letter dated November 15, 2007, the Kredittilsynet confirmed that the NFSA will, upon request from the Commission or any division thereof, provide the Commission with information, as provided by the MMOU, in connection with the placement in the U.S. of electronic facilities providing access to a regulated market supervised by NFSA.<sup>76</sup>

## **VIII. CONCLUSION**

Consistent with the Commission's Policy Statement and the June 2 Order, the Division has reviewed and considered NP's no-action request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by NP indicate that NP and its members are subject to oversight in Norway by a regulatory regime that is based upon regulatory objectives that generally are equivalent to those in the U.S.; that the regulatory regime provides basic protections for customers trading on NP's market and for the

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<sup>76</sup> Letter from Eirik Bunaes, Deputy Director General and Eystem Kleven, Head of Section, Kredittilsynet, to Richard Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (November 15, 2007).

integrity of the market itself; that NP and its regulatory authority employ surveillance, compliance and enforcement mechanisms designed to ensure compliance with statutes and NP's and the regulatory authority's rules and regulations; that NP adheres to the IOSCO Principles; and that adequate information-sharing arrangements applicable to the activities of NP are in place.<sup>77</sup>

Based specifically upon these and other representations made by NP in support of its no-action request, the Division has determined that granting no-action relief to NP and its members 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 NP or its members if NP does not seek designation as a DCM or registration as a DTEF pursuant to Sections 5 or 5a, respectively, of the Act or comply with any other section of the Act or Commission regulations relating specifically to DCMs or DTEFs if: (1) NP members that qualify as Professional Clients or as ECPs trade for their proprietary accounts through ETS and MTS in the U.S.; (2) NP members who are registered with the CFTC as FCMs submit orders to the trading system for execution from or on behalf of U.S. customers that qualify as Professional Clients or ECPs; (3) NP members who are registered with the CFTC as CPOs or CTAs, or who are exempt from such CPO or CTA registration pursuant to Commission Regulation 4.13 or 4.14, submit orders on behalf of U.S. pools they operate that qualify as Professional Clients or ECPs or accounts of U.S. customers that qualify as Professional Clients or ECPs, for which they have discretionary authority, respectively, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees without limitation all such trades of the CPO or CTA effected through submission of orders on the trading system; and (4) NP members who are registered with the CFTC as FCMs or who are Rule 30.10 Firms accept orders transmitted via AORS for submission to the trading system from or on behalf of U.S. customers that qualify as Professional Clients or ECPs.

The Division's no-action position shall become effective immediately with respect to the following NP contracts:<sup>78</sup>

#### Futures Contracts

- Nordic Electricity Base Load Contract<sup>79</sup>
- Nordic Electricity Peak Load Contract<sup>80</sup>
- EEX Phelix Index<sup>81</sup> German Electricity Base Load Contract<sup>82</sup>

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<sup>77</sup> The Division notes that the foregoing is not intended to be an exhaustive list of the factors relevant to its decision to grant the no-action relief requested by NP 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.

<sup>78</sup> The Division recognizes that certain of the listed contracts would not be considered to be futures or option contracts subject to Commission oversight under the Act and, as such, could be traded by direct access from the U.S. without the no-action relief provided herein. Those contracts are included here because NP identifies them as futures contracts and because NP requested they be included in the no-action relief.

<sup>79</sup> Available for daily and weekly delivery.

<sup>80</sup> Available for weekly delivery.

- EEX Phelix Index German Electricity Peak Load Contract<sup>83</sup>
- APX<sup>84</sup> Dutch Electricity Base Load Contract<sup>85</sup>

#### Forward Contracts

- Nordic Electricity Base Load Contract<sup>86</sup>
- Nordic Electricity Peak Load Contract<sup>87</sup>
- APX Dutch Electricity Base Load Contract<sup>88</sup>
- EEX Phelix Index German Electricity Base Load Contract<sup>89</sup>
- EEX Phelix Index German Electricity Peak Load Contract<sup>90</sup>
- European Union Allowances Contract<sup>91</sup>
- European Certified Emission Reduction Contract<sup>92</sup>

#### Contracts for Difference (CFD)<sup>93</sup>

- Area price Århus - Nordic System Price Contract
- Area price Helsinki - Nordic System Price Contract
- Area price Oslo - Nordic System Price Contract
- Area price Stockholm - Nordic System Price Contract
- Area price Copenhagen - Nordic System Price Contract
- EEX Germany Phelix Base - Nord Pool Nordic System Price Contract

#### Option Contracts

- Nordic Electricity Base Load Contract<sup>94</sup>

#### Spot Contracts

- European Allowances Contract<sup>95</sup>

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<sup>81</sup> European Energy Exchange Physical Electricity Index.

<sup>82</sup> Available for weekly delivery.

<sup>83</sup> Available for weekly delivery.

<sup>84</sup> Amsterdam Power Exchange.

<sup>85</sup> Available for weekly delivery.

<sup>86</sup> Available for monthly, quarterly and yearly delivery.

<sup>87</sup> Available for monthly, quarterly and yearly delivery.

<sup>88</sup> Available for monthly, quarterly and yearly delivery.

<sup>89</sup> Available for monthly, quarterly and yearly delivery.

<sup>90</sup> Available for monthly, quarterly and yearly delivery.

<sup>91</sup> Available for delivery at any time up to seven years from the trading day.

<sup>92</sup> Available for delivery at any time up to seven years from the trading day.

<sup>93</sup> Available for quarterly and yearly delivery.

<sup>94</sup> Available for monthly, quarterly and yearly delivery.

If additional futures and option contracts become available for trading through the trading system, NP may make such futures and option contracts available for trading by direct access from the U.S. 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.<sup>96</sup>

The scope of the Division's no-action position is restricted to providing relief from the requirement that NP obtain DCM designation or DTEF registration pursuant to Sections 5 and 5a, respectively, of the CEA and regulatory requirements that flow specifically from the DCM designation and DTEF registration requirements if the above-referenced contracts are made available in the U.S. for trading through ETS in the manner set forth herein. The Division's no-action position does not extend to any other provision of the Act, any other Commission regulations or orders, or to any registered futures association rules and does not excuse NP or its members from compliance with any applicable requirements thereunder. Nor does the no-action position alter, restrict, or expand the coverage of existing Commission exemptions for particular products.

The Division specifically notes that its no-action position does not alter the general requirement that a firm operating pursuant to the no-action relief provided herein must be appropriately registered or exempt from such registration to engage in the offer or sale of a foreign futures contract or a foreign option transaction for or on behalf of a U.S. 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 U.S. persons (including where the U.S. 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.<sup>97</sup> However, if a foreign firm solely carries accounts on behalf of U.S. customers that are the foreign firm's or any registered FCM's proprietary accounts (as defined in Rule 1.3(y)) or the foreign firm is either a member of the

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<sup>95</sup> Available for daily delivery.

<sup>96</sup> 71 Fed. Reg. 19877 (April 18, 2006); corrected at 71 Fed. Reg. 21003 (April 24, 2006). The Notice of Revision does not apply to broad-based stock index futures and option contracts that are covered by Section 2(a)(1)(C) of the Act. Foreign boards of trade are required to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling such contracts through U.S.-located trading systems. Additionally, should the Exchange propose to make available pursuant to the no-action relief granted in this letter a contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a CFTC-regulated DCM or DTEF, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract, the Division will impose additional conditions that must be met for the no-action relief to continue in effect for those contracts.

<sup>97</sup> At this time, the Commission has not issued a Rule 30.10 order to NP permitting its members to conduct brokerage activities on behalf of U.S. persons without having to register as an FCM. However, NP members otherwise may qualify as a Rule 30.10 firm pursuant to other orders issued by the Commission pursuant to Rule 30.10. See, e.g., 67 FR 30785 (May 8, 2002) (permitting firms authorized by Eurex Deutschland to solicit and accept orders from U.S. persons for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized to conduct business on behalf of customers pursuant to German law).

relevant foreign board of trade or is a foreign affiliate of a registered FCM and its sole contact with a U.S. 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 CPOs, CTAs, 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 U.S. Thus, Rule 30.10 Firms cannot provide direct access to ETS in the U.S. (although they would be permitted to accept orders overseas from customers located in the U.S. that submit such orders by telephone or through an AORS located in the U.S.). FCMs or Rule 30.10 Firms who solicit or accept orders from U.S. customers for trading on ETS 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 ETS 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. NP will continue to satisfy the criteria for a regulated market supervised by NFSA as an exchange or regulated market according to the Exchange Act 2007 with respect to transactions effected through the trading system.
2. The laws, systems, rules, and compliance mechanisms of Norway applicable to NP will continue to require NP to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.
3. NP will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Norwegian law.
4. Only members of NP will have direct access to the trading system from the United States and NP will not provide, and will take reasonable steps to prevent third parties from providing, such access to NP to persons other than NP members.<sup>98</sup>
5. All orders that are transmitted through ETS by a member of NP that is operating pursuant to the no-action relief provided herein will be solely for the member's own account unless (i) such member is registered with the CFTC as an FCM or is a Rule 30.10 Firm, or (ii) such

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<sup>98</sup> For purposes of these conditions, "member" includes those affiliates identified in footnote 2.

member is registered with the CFTC as a CPO or CTA, or is exempt from such registration pursuant to Commission Regulation 4.13 or 4.14, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees without limitation all such trades of the CPO or CTA effected through submission of orders on the trading system.

6. All orders for U.S. customers accepted through an AORS and transmitted by NP members through ETS pursuant to the relief granted herein will be intermediated by a NP member that is either registered with the CFTC as an FCM or is a Rule 30.10 Firm.

7. NP will require that each current and prospective member that operates pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM, a CTA or a CPO execute and file with NP a written representation, executed by a person with the authority to bind the member, stating that as long as the relevant NP member operates pursuant to the no-action relief provided herein, the member agrees to and submits to the jurisdiction of the CFTC with respect to activities conducted pursuant to the no-action relief. NP will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief and shall make such representation available to the Commission upon the request of a CFTC representative.

8. NP will require that each current and prospective member that operates pursuant to the no-action relief provided herein and that is not registered with the CFTC as an FCM, a CTA or a CPO execute and file with NP a valid and binding appointment of a U.S. agent for service of process in the U.S. pursuant to which the agent is authorized to accept delivery and service of “communications” issued by or on behalf of the Commission.<sup>99</sup> NP 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 CFTC upon the request of a Commission representative.

9. NP will require that each current and prospective member that operates pursuant to the no-action relief provided herein and that is not registered with the CFTC as an FCM, a CTA or a CPO file with NP a written representation, executed by a person with the authority to bind the member, stating that as long as the relevant NP member operates pursuant to the no-action relief provided herein, the member will provide, upon the request of the Commission, the U.S. Department of Justice and, if appropriate, the National Futures Association (NFA), prompt access to original books and records maintained at their U.S. offices as well as to the premises where ETS is installed or used in the U.S. NP will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief. NP will make such representations available to the CFTC upon the request of a Commission representative.

10. Prior to operating pursuant to the no-action relief provided herein, NP will file with the Division, and maintain thereafter as long as NP operates pursuant to the no-action relief, a valid and binding appointment of a U.S. agent for service of process in the U.S., pursuant to which the

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<sup>99</sup> For purposes of these conditions, “communications” is defined to include any summons, complaint, order, subpoena, request for information, or notice or any other written or electronic documentation or correspondence issued by or on behalf of the Commission.

agent is authorized to accept delivery or service of “communications”, as defined above, that are issued by or on behalf of the CFTC.

11. NP will maintain the following updated information and submit such information to the Division on at least a quarterly basis, not later than 30 days following the end of the quarter, and at any time promptly upon the request of a Commission representative, in the format reflected in the attachment to this letter:

a. For each contract available to be traded through ETS, (i) the total trade volume originating from electronic trading devices providing direct access to ETS in the U.S., (ii) the total trade volume for such products traded through ETS worldwide, and (iii) the total trade volume for such products traded on NP generally; and

b. A listing of the names, NFA ID numbers (if applicable), and main business addresses in the U.S. of all NP members that have access to ETS in the U.S.

12. NP will request that the NFSA provide to the Division not later than July 1<sup>st</sup> of each year a letter or email confirming that NP retains its authorization as a regulated market supervised as an exchange under the Exchange Act 2007 or other exchange licensing methodology used in Norway.

13. NP 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;<sup>100</sup>

b. Any material change in NP’s Rules or the laws, rules, and regulations in Norway relevant to futures and options;

c. Any matter known to NP or its representatives that, in NP’s judgment, may affect the financial or operational viability of NP, including, but not limited to, any significant system failure or interruption;

d. Any default, insolvency, or bankruptcy of any NP member known to NP or its representatives that may have a material, adverse impact upon the condition of NP, NP Clearing, or upon any United States customer or firm;

e. Any known violation by NP or any NP member of the terms or conditions of the no-action relief provided herein; and

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<sup>100</sup> The Division notes that “material” changes in the information provided to it in support of the no-action request would include, without limitation, a modification of: NP’s membership criteria; the location of NP’s management, personnel or operations (particularly changes that may suggest an increased nexus between NP’s activities and the U.S.); the basic structure, nature, or operation of the trading and/or clearing system; or the regulatory or self-regulatory structure applicable to NP and its members.

f. Any disciplinary action taken by NP against any NP member operating pursuant to the no-action relief provided herein that involves any market manipulation, fraud, deceit, conversion or that results in suspension or expulsion and that involves the use of ETS or an AORS to submit orders to NP and either (i) the NP member against whom the disciplinary action is taken is located or based in the U.S. or (ii) the disciplinary action results, in whole or in part, from conduct that: (1) involves the use of a terminal or an AORS that is located in the U.S. to accept or submit an order for trading through ETS; (2) involves a U.S. customer or firm or registered FCM; or (3) might have a material, adverse impact upon any U.S. customer or firm.

14. Information-sharing arrangements satisfactory to the Commission will be in effect between the Commission and NFSA.

15. The Commission will be able to obtain sufficient information regarding NP and its members operating pursuant to the no-action relief provided herein. NP will provide directly to the Commission information necessary to evaluate the continued eligibility of NP or its members for the relief, to enforce compliance with the terms and conditions of the 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 or U.S. DCMs and DTEFs.

16. NP will employ reasonable procedures, to be determined by NP, 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 NP'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 NP's activities in the U.S. to ascertain whether NP's presence in the U.S. has increased to a level that might warrant reconsideration of the no-action relief. Finally, 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.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, Senior Special Counsel, at [dandresen@cftc.gov](mailto:dandresen@cftc.gov) or by phone at (202) 418-5492.

Very truly yours,

Richard A. Shilts  
Director

David Yeres, Esq.  
Page 39

cc:

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

Attachment

Attachment

**Quarterly Trading Volume Report for Foreign Boards of Trade Granted No-Action Relief (Computed based upon separating buy sides and sell sides).**

1	2	3	4	5	6	7
Product <sup>1</sup>	Volume from All Terminals <sup>2</sup>	Total Buy/Sell Side Volume (COLUMN 2 X 2) <sup>3</sup>	Volume from U.S. Terminals			Percentage from U.S. Terminals <sup>7</sup>
			Buy Side <sup>4</sup>	Sell Side <sup>5</sup>	Total (4) + (5) <sup>6</sup>	
Contract 1						
Contract 2						
Contract 3						
Contract 4						
Totals						

<sup>1</sup> List each contract that is eligible to be traded by direct access from the U.S., including those contracts for which there was no trading volume during the reporting period.

<sup>2</sup> Include the total volume worldwide on the electronic trading system for each listed contract and, in the bottom row, enter the total of such volume worldwide for all listed contracts.

<sup>3</sup> Multiply Column 2 X 2 (this should represent the total electronic buy side plus the total sell side volume worldwide for each listed contract).

<sup>4</sup> Include the total electronic buy side volume for each contract originating by direct access in the U.S.

<sup>5</sup> Include the total electronic sell side volume for each contract originating by direct access in the U.S.

<sup>6</sup> Add Columns 4 + 5 to represent the total electronic buy side and sell side volume for each contract originating by direct access in the U.S.

<sup>7</sup> Divide Column 6 by Column 3 and multiply the result by 100 to determine the percentage of the total buy/sell side volume originating from the U.S.