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COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

October 12, 1994

Re: Sydney Futures Exchange Equity Futures Contracts

Dear:

As discussed, the Division of Trading and Markets (Division) has consulted with staff of the Securities and Exchange Commission (SEC) concerning the relief requested on behalf of [FCM], which is registered with the Commodity Futures Trading Commission (Commission or CFTC) as a futures commission merchant (FCM). [FCM] had requested relief to permit [FCM] to clear certain futures contracts on individual equities to be traded on the Sydney Futures Exchange (SFE) for [X], a non-CFTC registered floor member of the [Exchange] which does no U.S. customer business.

Specifically, as of 1994 the SFE began trading cash-settled equity futures contracts based on Australia's three largest companies. ^{1/} [FCM] has a branch office in Australia and is a clearing member of the SFE. [FCM] clears on an omnibus basis for [X], which is an Australian broker in good standing with the Australian Securities Commission (ASC).

[FCM] clears all of [X's] trades in Australia and its inability to clear certain trades may cause [X] to establish clearing accounts at another firm solely to trade the new contracts. Moreover, [FCM] believes that clients prefer to deal with just one clearing firm.

[FCM] notes that the Commission's 1992 order permitting FCMs to solicit and accept orders from customers located outside the United States for, among other things, foreign exchange-traded futures contracts based on a foreign stock-index which has not been the subject of a Commission staff no-action letter, is not

^{1/} Three individual share futures contracts will be listed on based on the shares of Broken Hill Proprietary, National Australia Bank and News Corporation. All positions are cash settled. The Division understands that the securities trade in the United States through American Depositary Receipts (ADRs) on the New York Stock Exchange.

applicable to futures on individual equity securities. ^{2/} However, [FCM] contends that there are no U.S. customer protection interests advanced by prohibiting a U.S. FCM from clearing the desired transactions on behalf of customers licensed as brokers, and located, outside the United States.

Based on consultations with SEC (SEC) staff, the Division confirms that staff of the SEC would not object to limited relief for [FCM]. ^{3/}

Accordingly, the Division hereby confirms that it will not recommend that the Commission take enforcement action against [FCM] for violations of section 2(a)(1)(B)(v) of the Commodity Exchange Act based solely upon the fact that [FCM] clears on an omnibus basis for [X's] trades on the [Exchange] involving the three, cash-settled SFE futures on individual equity securities as described above. ^{4/}

Notwithstanding this no-action position, [FCM], as a registered FCM, otherwise remains subject to all applicable provisions of the Commodity Exchange Act and the Commission's regulations thereunder.

This position is based on your representation that [X] will not solicit or accept any U.S. customer business and that no trades in SFE futures on individual equity securities will be executed or cleared for, or on behalf of, U.S. customers. ^{5/} This position

^{2/} See 57 FR 36369 (August 13, 1992). Section 2(a)(1)(B)(v) of the Commodity Exchange Act states that "no person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security"

^{3/} Notwithstanding that the securities underlying the futures contracts trade in the United States through ADRs, the SEC position is premised in part on its understanding that the primary trading market of the securities underlying the futures contracts at issue is located outside the United States.

^{4/} See n.1 above.

^{5/} This no-action letter therefore applies only to "customers located outside the United States," which for purposes of this letter has the same meaning referred to in the Commission's order authorizing the offer and sale of otherwise unauthorized products to persons located outside the U.S. See 57 FR 36369, 36370 n.4 (August 13, 1992). This no-action may not be used by U.S. residents to engage indirectly in transactions which they would be prohibited from participating in while in the United States.

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further is premised on the Division's understanding that the primary trading market of the securities underlying the SFE futures contracts described above is located outside the United States.

This letter is based upon the representations that have been made to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that there are any changes in the facts as represented to us. Further, the position taken in this letter represents the position of the Division of Trading and Markets only and does not necessarily represent the position of the Commission or any other office or division of the Commission.

Very truly yours,

Andrea M. Corcoran
Director