

August 10, 1999

Philip McBride Johnson, Esq.

Skadden, Arps, Slate, Meagher & Flom

1440 New York Avenue, N.W.

Washington, DC 20005-2111

Re: Sections 5 and 5a - Sydney Futures Exchange Limited
and New Zealand Futures and Options Exchange Limited;
Request for No-Action Relief from Contract Market
Designation Requirement

Dear Mr. Johnson:

This is in response to your letter dated April 30, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") on behalf of your clients, the Sydney Futures Exchange Limited ("SFE") and the New Zealand Futures and Options Exchange Limited ("NZFOE") (collectively "Petitioners"). By your correspondence, you request that the Division grant no-action relief to permit Petitioners to make their electronic trading and order matching system, known as SYCOM[®], available to SFE Members, NZFOE Dealers (collectively Petitioners' "Participants"),¹ and their respective affiliates in the United States² ("No-Action Request").³ Specifically, Petitioners wish to make SYCOM[®] available to: (i) Participants who wish to use SYCOM[®] terminals located in the United State to trade for their proprietary accounts⁴ through SYCOM[®]; (ii) Participants who are registered with the Commission as futures commission merchants ("FCMs") and who wish to use SYCOM[®] terminals located in the United States to submit orders from United States customers for transmission to SYCOM[®];⁵ and (iii) Participants who are registered with the Commission as FCMs or who are exempt from such registration pursuant to Rule 30.10 ("Rule 30.10 Firms")⁶ who wish to accept orders through United States automated order routing systems ("AORSs")⁷ from United States customers for submission to SYCOM[®]. You request that the Division confirm that it will not recommend enforcement action to the Commission against Petitioners or their Participants if Petitioners do not seek designation

as a contract market pursuant to Sections 5 and 5a of the Commodity Exchange Act ("CEA")⁸ or comply with those Commission regulations that specifically relate to contract markets in connection with the installation and use in the United States of SYCOM[®] and/or AORSs that are used to submit orders to SYCOM[®].

As you know, on March 24, 1999, the Commission published proposed rules that would have governed the circumstances under which foreign futures exchanges could be accessed from electronic trading devices in the United States.⁹ On June 2, 1999, the Commission issued an order that withdrew those proposed rules and directed the Commission staff to begin considering requests from foreign exchanges for interim no-action relief to allow them to place trading systems in the United States on a temporary basis until the Commission itself promulgates rules or guidelines in this area ("June 2 Order").¹⁰ In accordance with this instruction, the Division has reviewed Petitioners' No-Action Request and the materials submitted in support thereof.¹¹

Among other things, Petitioners forwarded the following information to the Division:

- an overview of the SFE and NZFOE, and a description of their products;¹²
- a description of how the SYCOM[®] system operates;
- information regarding the regulatory regimes governing the SFE, NZFOE, their Participants, and SYCOM[®]; and
- a summary of information-sharing arrangements between the Exchanges, the Commission, the Australian Securities and Investments Commission ("ASIC"), and the New Zealand Securities Commission ("NZSC").

Representations made by the Petitioners regarding their respective activities conducted in the United States, their respective membership criteria, the SYCOM[®] system, the regulatory regimes in Australia and New Zealand, and the information-sharing arrangements applicable to SYCOM[®] are summarized below. For purposes of its response to the No-Action Request, the Division has relied upon Petitioners' representations and has not conducted an independent review to confirm their accuracy.¹³

I. SUMMARY OF REPRESENTATIONS

A. Overview of the SFE, NZFOE, and their Products

The SFE is an Australian-approved futures exchange and futures association that was

organized in 1960.¹⁴ Its main business office is in Sydney, Australia. It is currently the largest futures and options exchange (based on contract volume) in the Asia-Pacific region. Although the SFE has been operating as both a traditional open-outcry exchange and an electronic exchange, the SFE anticipates that it will be closing its trading floor and operating only as an electronic exchange based on the SYCOM[®] system by the end of this year. The SFE has received approval from authorities in the United Kingdom, New Zealand, Hong Kong, and Japan to place SYCOM[®] terminals in those countries.

The NZFOE, organized in 1984, is New Zealand's only authorized futures market.¹⁵ Its main business office is in Auckland, New Zealand. The NZFOE operates solely as an electronic exchange based on SYCOM[®].

In 1993, the NZFOE became a wholly-owned subsidiary of the SFE and agreed generally to abide by the CLA as if it were an Australian-approved futures exchange.¹⁶ The NZFOE has appointed the SFE as its agent for purposes of assuring its compliance with the CLA. The SFE's board of directors acts as the NZFOE's governing board, and all transactions on the NZFOE are cleared by the SFE's clearing house, the Sydney Futures Exchange Clearing House Pty Ltd. ("SFECH"). The NZFOE is authorized by the ASIC to list its contracts for trading by SFE members on SYCOM[®] terminals in Australia. Neither the SFE nor the NZFOE maintains any office, place of business, order matching, or clearing facilities in the United States.

The SFE currently offers the following contracts: Ten Year Commonwealth Government Treasury Bond futures and options thereon; Three Year Commonwealth Government Treasury Bond futures and options thereon; 90 Day Bank Accepted Bills of Exchange futures and options thereon; All Ordinaries Share Price Index futures and options thereon; Wheat futures and options thereon; Greasy Wool futures and options thereon; Broad Wool futures; Fine Wool futures; New South Wales Electricity futures; New South Wales Peak-Period Electricity futures; Victorian Electricity futures; Victorian Peak-Period Electricity futures; ASX Individual Share futures; and ASX Deliverable Individual Share futures. The SFE has received no-action positions from Commission staff that permit the offer and sale of futures contracts on the All Ordinaries Share Price Index and options thereon in the United States.¹⁷ Additionally, SFE Members may trade certain NYMEX futures and options contracts through the NYMEX ACCESSsm system.¹⁸

The NZFOE currently offers the following contracts: 90 Day Bank Bill futures and options thereon; Three Year New Zealand Government Stock futures and options thereon; Ten Year New Zealand Government Stock futures and options thereon; NZSE-10 Share Index futures and options thereon; New Zealand Securities Exchange Individual Equity options; and New Zealand Electricity - North Island futures.¹⁹

B. How SYCOM® Operates²⁰

1. System Architecture and Failure Recovery Systems

a. Architecture

SYCOM® is an electronic trading system that has been operated by the SFE since 1989 and by the NZFOE since 1995. SYCOM® is capable of effecting trades in futures contracts and options thereon listed on the SFE and on the NZFOE. Additionally, SYCOM® operates on the same system architecture as NYMEX ACCESSsm. The SFE and NZFOE represent that, in developing and operating SYCOM®, they have adhered to and will continue to adhere to the "Principles for the Oversight of Screen-Based Trading Systems for Derivative Products" developed by the International Organization of Securities Commissions ("IOSCO Principles").²¹

SYCOM® is comprised of three main components: the Administrative Workstation ("AWS"), the Trader Workstation ("TWS"), and the Host. Generally, the AWS enables a firm to authorize and shape its overall trading profile; the TWS provides individual traders access to the market within predefined trading parameters; and the Host matches orders.²²

The Host, which is located in Sydney, Australia, matches orders, generates execution reports, disseminates market data, and allows the SFE Surveillance/Compliance Department ("SFE Surveillance")²³ to view and generate reports on all information entered into the Host, a TWS, or an AWS. Aside from communicating with AWSs and TWSs, the Host also provides market data to quote vendors, and information on trades to the SFE's allocation and clearing systems.

Every firm using SYCOM® has one AWS and as many TWSs as the size of its trading operation demands. The AWS lets a firm's AWS Manager set the firm's account trading limits by commodity for each account, monitor the current session's trading, analyze past trading sessions, and print reports.

The TWS is the trader's access to the market. To prevent unauthorized access, a TWS operator must enter a password to log on to the TWS; then the operator must enter a second password to log on at the Host level. The system requires a valid TWS to log-on to the Host. The TWS allows traders to enter, modify, and cancel orders. For each contract traded on SYCOM®, TWS traders have real-time access to the best bid and offer price; the available quantity at each such price; session high and low prices; the last-traded price and volume; and the identity of the firm that is displaying the best bid and best offer. Additionally, the TWS permits a firm's TWS Managers to define a trading profile for each

trader that indicates the trader's primary trading account, the accounts the trader may trade on, and the trader's trade volume and quantity limits by commodity for each account.

b. Failure Recovery

All SYCOM[®] terminals are connected to the Host by both private leased lines and the public switched telephone network ("PSTN"). If a fault occurs with the TWS's primary link, a backup connection is made over the PSTN. Encryption and compression routines are used to prevent data and communications protocols from being compromised, and the network has the ability to detect tampering of any kind.

To provide full disaster recovery capability, the Host is replicated at another site located outside the Sydney business district. In the event of a network failure, automatic switching of data traffic will take place. The shadowing of the primary computer activities allows for almost instantaneous recovery with no loss of functionality or data if a mishap strikes the primary computer. Additionally, all Host information is regularly backed up on magnetic tape.

2. Order Processing and Limits

SYCOM[®] allows Petitioners' Participants to impose order and position limits on customer and house accounts. Specifically, Participants can set: (i) the maximum volume per order; (ii) the maximum price change allowable in a contract prior to execution of the order; (iii) an aggregate loss limit; and (iv) an aggregate net position limit for a session. Additionally, Participants are required by Petitioners' Rules to manage risk by setting reasonable limits on their traders' and customers' accounts. Furthermore, before terminals are placed in the United States, SYCOM[®] can and will be programmed to reject orders from United States customers to buy or sell futures or options contracts that are prohibited under United States law.²⁴

For all orders entered into SYCOM[®] for a particular contract, the Host matches orders first based on price and then, where multiple orders at the same price are in the system, by time of entry. Therefore, the first bid or offer lodged at a certain price will have the first right of execution as that price is reached in the market. Order receipt time is recorded to 1/100th of a second.

Each TWS operator that enters an order resulting in an execution receives trade details in a trade execution message that is generated by the Host. SYCOM[®] is designed to ensure that each TWS operator receives a trade confirmation within two seconds of input. Matched trades are also written to a file and transmitted to the SFE's back office systems. All unmatched bids and offers are deemed to lapse at the SYCOM[®] close and are purged

from the system. Reports of purged bids and offers are issued by SYCOM®.

Petitioners represent that SYCOM® is designed to provide equitable order executions to all market participants, and there is no material difference in the time that it takes a trade originating in the United States to reach the Host and the time it takes a trade originating in Sydney, Australia to reach the Host.²⁵

3. Audit Trail

Transactions effected through SYCOM® produce a clear audit trail. The basic source of information regarding the SYCOM® audit trail is the trade register. On the business day following the end of each SYCOM® session, SFE Surveillance is provided with a trade register reflecting all trading activity for that SYCOM® trading session. The trade register contains complete information about each order entered into a SYCOM® TWS, including whether orders were modified or cancelled. Order entry and execution times are captured, sequenced, and identified to the nearest second, and the source of each order, including the relevant TWS identification number, is noted. All other information received by the Host, or entered into an AWS or TWS (including records of matched trades, assignment, allocation, order modification, and the log-on process) will be time-stamped electronically by the system and will be retained by the SFE and used for audit trail purposes.

A log of all SYCOM® trades is kept by SFE Surveillance for a period of three months. These logs are also kept by SFE Operations staff for a period of seven years. The archived data is stored and is retrievable upon request, ensuring full access to audit trail information by the SFE for up to seven years. On a daily basis, SFE Surveillance staff run a number of reports specific to SYCOM® trades, including: (i) time exception reports; (ii) cross trades reports; (iii) irregular price reports; (iv) low volume reports; (v) high volume reports; and (vi) wash trades reports. SFE Surveillance also investigates any breaches of the SYCOM® Trading Etiquette and By-Laws. In addition, SYCOM® staff monitor and conduct market surveillance during real-time trading, and SYCOM® supervisors are in attendance 24 hours a day. As described in more detail in Section I.C., Participants also are subject to regulatory and self-regulatory recordkeeping and reporting requirements that aid in the maintenance of a clear audit trail.

4. Clearing

All futures and option contracts traded on SYCOM® are cleared by the SFECH. The SFECH reconciles and matches trades, marks to market clearing members' obligations each day, and guarantees clearing members' financial obligations to each other in the event of a default by one or more of them through a system of mutualized risk sharing. The SFECH assumes the market obligations of its clearing members through novation (*i.*

e., for each futures or option contract traded on the SFE or NZFOE, an identical contract is created between the SFECH and the submitting clearing member).

The SFECH has only one class of clearing member. Each clearing member must meet certain financial standards and make a monetary commitment in support of SFECH. The current total monetary commitment (the "First Level" commitment) of all clearing members is A\$60,000,000 (\$39,000,000).²⁶ The SFECH may request an additional A\$30,000,000 (\$20,000,000) from members (the "Second Level" commitment) if circumstances require. The SFECH also has access to an additional A\$10,000,000 (\$7,000,000) commitment by the SFE and A\$80,000,000 (\$52,000,000) of insurance. To reduce the risk of default, the SFECH requires clearing members to have and maintain net tangible assets of at least A\$5,000,000 (\$3,000,000) and may prescribe substantially higher requirements based upon such factors as the size of a clearing member's open positions with the SFECH or the risk and volatility of the positions held. The SFECH also requires notice of any material deterioration in a clearing member's financial condition.

In the event of a clearing member's default on obligations, the SFECH will access the following funds in the order indicated: (i) all money, securities, collateral, or property held by the SFECH in any defaulting clearing member's account (other than client funds); (ii) the defaulting clearing member's monetary commitment to the SFECH; (iii) any SFECH assets designated for this purpose; (iv) a pro rata application of non-defaulting clearing members' First Level commitments; (v) a pro rata application of non-defaulting clearing members' Second Level commitments; (vi) proceeds of any insurance or other financial backing maintained by the SFECH; (vii) any remaining First Level commitment of non-defaulting clearing members; (viii) any other financial backing agreed by clearing members; and (ix) any other funds or assets available to the SFECH.

5. Adherence to IOSCO Principles

As noted above, Petitioners represent that SYCOM[®] adheres to, and will continue to adhere to, the IOSCO Principles.²⁷ Petitioners further represent that the ASIC applies the IOSCO Principles in its review of electronic trading systems and has done so in its review of SYCOM[®], which the ASIC has allowed to be opened for trading. The IOSCO Principles, as adopted by the Commission, are as follows:

1. The system sponsor should be able to demonstrate to the relevant regulatory authorities that the system meets and continues to meet applicable legal standards, regulatory policies, and/or market custom or practice where relevant.
2. The system should be designed to ensure the equitable availability of accurate and timely trade and quotation information to all system participants and the system sponsor should be able to describe to the relevant regulatory authorities the processing,

prioritization, and display of quotations within the system.

3. The system sponsor should be able to describe to the relevant regulatory authorities the order execution algorithm used by the system (*i.e.*, the set of rules governing the processing, including prioritization, and execution of orders).

4. From a technical perspective, the system should be designed to operate in a manner which is equitable to all market participants and any differences in treatment among classes of participants should be identified.

5. Before implementation, and on a periodic basis thereafter, the system and system interfaces should be subject to an objective risk assessment to identify vulnerabilities (*e.g.*, the risk of unauthorized access, internal failures, human errors, attacks, and natural catastrophes) which may exist to the system design, development, or implementation.

6. Procedures should be established to ensure the competence, integrity, and authority of system users, to ensure that system users are adequately supervised, and that access to the system is not arbitrarily or discriminatorily denied.

7. The relevant regulatory authorities and the system sponsor should consider any additional risk management exposures pertinent to the system, including those arising from interaction with related financial systems.

8. Mechanisms should be in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the system sponsor and the relevant regulatory authorities on a timely basis.

9. The relevant regulatory authorities and/or the system sponsor should ensure that system users and system customers are adequately informed of the significant risks particular to trading through the system. The liability of the system sponsor, and/or the system providers to system users and system customers should be described, especially any agreements that seek to vary the allocation of losses that otherwise would result by operation of law.

10. Procedures should be developed to ensure that the system sponsor, system providers, and system users are aware of and will be responsive to the directives and concerns of relevant regulatory authorities.

6. Petitioners' Year 2000 Program

In 1996, Petitioners established a project to address potential Year 2000 ("Y2K")

computer problems.²⁸ The project is designed to ensure that Petitioners' systems, including SYCOM[®], are ready for the new millennium. Progress on the Y2K project is reported to the SFE and the NZFOE monthly.

Petitioners' automated market systems continue to undergo testing. Y2K compliance testing for SYCOM[®] IV (the version of SYCOM[®] scheduled to be fully implemented later this year) is in progress, and no Y2K related problems have been identified to date. SYCOM[®] III has completed Y2K compliance testing and there are no outstanding issues.

7. Demarcation of Responsibilities and Liability

Petitioners' Rules state that Petitioners cannot contractually alter their statutory obligations under Australian and New Zealand law with respect to any warranty for the supply of goods and services. However, Petitioners Rules also provide that Petitioners do not accept or bear any liability with respect to the operation of the SYCOM system or otherwise, including where there is any act or omission, damage to property, indirect or direct losses (including loss of profits, loss of operation time, or loss of equipment or process). Participants are informed of these liability provisions in the standard agreement for software and equipment between a Participant, the SFE, the developer of the SYCOM[®] system, and the Australian Futures Exchange Information Services Pty Limited. When SYCOM[®] is able to interface with AOEIs, Petitioners' Participants also will be subject to rules specifically governing AORSs. For instance, the SYCOM[®] Trading Etiquette indicates that Participants will be responsible for orders entered by their clients through an AOEI. Additionally, Participants will be responsible for imposing position and order limits on clients. Moreover, Petitioners may discipline a Participant that fails to demonstrate prudent risk management procedures.

C. Regulatory Regimes Governing the SFE, NZFOE, and their Participants

Petitioners, their Participants, and SYCOM[®] are subject to a comprehensive regulatory regime. The SFE is subject to the CLA, which is administered by the ASIC, and the NZFOE is subject to New Zealand laws governing the futures industry as administered by the NZSC. In addition, the NZFOE has agreed generally to abide by the CLA as if it were an Australian-approved futures exchange. Participants also are governed by the Rules²⁹ of the SFE and NZFOE.³⁰

The Division also notes that the Commission previously reviewed the regulatory regime administered and enforced by the ASIC and NZSC applicable to transactions on Australian and New Zealand exchanges in connection with relief it granted to the SFE and the NZFOE. On November 7, 1988, the Commission issued an order pursuant to Rule 30.10 that granted exemptive relief to SFE Members permitting them to solicit and accept

orders from United States customers for otherwise permitted transactions on non-United States exchanges.³¹ On December 10, 1996, the Commission issued a similar order granting exemptive relief to NZFOE Dealers.³² In each of these orders, the Commission noted that the standards for relief set forth in Rule 30.10³³ generally had been satisfied by each of the petitioning regulatory authorities and compliance by the Rule 30.10 Firms with applicable Australian and New Zealand laws and the rules of respective petitioning authorities could be substituted for compliance with certain provisions of the CEA and the Commission's rules set forth in the Commission's orders.³⁴

The above-mentioned laws, rules, and regulations address, among other things: financial and other fitness criteria for industry participants; reporting and recordkeeping requirements; procedures governing the treatment of customer funds and property; sales practice and other conduct of business standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse, and market manipulation. These laws, rules, and regulations are summarized below.

1. Exchange Approval

As mentioned above, the SFE is an approved futures exchange under the laws of Australia,³⁵ and the NZFOE is an authorized futures exchange under the laws of New Zealand. To become an Australian-approved futures exchange, a board of trade applies to the ASIC, whereupon the Minister for Financial Services and Regulation ("Minister") must be satisfied that the exchange's rules make satisfactory provision for, among other things: (i) membership qualifications, including standards of training and experience; (ii) business conduct standards that ensure efficiency, honesty and fair practice in relation to dealing in futures contracts; (iii) excluding persons not of good character and high business integrity; (iv) expelling, suspending, or disciplining a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the exchange's rules or the CLA; (v) inspection and audit of financial records required to be kept pursuant to the CLA; (vi) the classes of futures contracts that may be dealt in by members, and the conditions under which members may deal in futures contracts; (vii) prohibiting a member from accepting or executing, other than in accordance with the exchange's rules, instructions from another person to deal in futures contracts; (viii) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person; (ix) the equitable and expeditious settlement of claims and grievances between members; and (x) appropriate mechanisms for the conciliation and settlement of disputes between members and their clients. Additionally, the Minister may approve a futures exchange only if the public interest will be served by granting the exchange's application.

As an authorized futures exchange under New Zealand law, the NZFOE has represented to the NZSC that, among other things, the NZFOE will: (i) seek the NZSC's approval to any change in the NZFOE's Articles of Association or the Rules of the NZFOE (other than contract specifications); (ii) maintain a program to regulate the conduct of all futures dealers in New Zealand who are admitted as Dealers, and their respective directors and staff, with regard to dealing in futures contracts, whether on the market operated by the NZFOE or any other market, and whether in New Zealand or elsewhere; (iii) report to the NZSC any information that the NZSC requests, including, among other things, information on NZFOE membership, disciplinary actions, finances, and operations; (iv) seek to ensure that all Trading Permit Holders of the NZFOE based outside of New Zealand will be NZFOE Dealers and subject to the NZFOE's rules and disciplinary authority; and (v) enter into a memorandum of understanding with the SFE to facilitate the exchange of information between the two exchanges.

2. Exchange Membership and SYCOM[®] Trading Requirements

Participants operating on SYCOM[®] are subject to fitness and financial standards. Pursuant to the CLA, the ASIC may license, may refuse to license, may condition a license, and may revoke the license of a futures broker based upon such factors as: (i) the broker's education and experience; (ii) the broker's reputation and character; and (iii) whether the ASIC believes that the applicant will perform its duties efficiently, honestly, and fairly. The ASIC is required by the CLA to consider any conviction of the applicant for, among other things, serious fraud during the ten years prior to the application. The CLA also requires a licensed futures broker to be a member of an approved futures organization.

The SFE similarly has rules governing membership. The SFE Articles provide for three main classes of members: (i) Floor Members, (ii) Associate Members, and (iii) Local Members. All Members must, among other things, sign a form acknowledging acceptance of the SFE Articles and the SFE By-Laws and agreeing to be bound thereby and by any amendments thereto made in accordance with the SFE Articles. Additionally, no applicant may be admitted where, within five years prior to the application for membership, the applicant has been declared bankrupt or has been convicted of certain offenses, including serious fraud or offenses under Australian law in connection with the promotion, formation, or management of a body corporate or corporation.

The SFE's rules further specify which members may trade through SYCOM[®] and under what circumstances. The rules currently provide that only Floor Members, their affiliates, and Local Members may have access to SYCOM[®] terminals. SFE Floor Members must have at all times at least A\$1,000,000 (\$653,000) in net tangible assets. A Floor Member must apply to the SFE's Screen Dealing Committee for approval of its traders to trade on SYCOM[®]. A Local Member is nominated for approval by a Floor Member, and the Local

Member, if approved by the Screen Dealing Committee, is entitled to access the SYCOM[®] terminals of the nominating Floor Member. The Screen Dealing Committee may grant its approval on such conditions as it sees fit, including conditions relating to supervision and trading limits. Additionally, no approved SYCOM[®] trader may access SYCOM[®] terminals until he or she passes a SYCOM[®] Trading Etiquette Examination.

The NZFOE has three classes of Dealers: (i) Public Brokers, (ii) Introducing Brokers, and (iii) Principal Traders. Of these, only Public Brokers and Principal Traders may be Trading Permit Holders. All NZFOE Dealers must, among other things, acknowledge in writing that they accept the Rules of the NZFOE and agree to be bound by them, as amended from time to time. The NZFOE also screens Dealer applications based on such factors as the Dealer's business integrity, financial probity, and character.

On the NZFOE, only Trading Permit Holders may trade contracts, and SYCOM[®] terminals may be located only in the offices of NZFOE Trading Permit Holders. The NZFOE will approve a person as a trading system operator where the NZFOE is satisfied that: (i) the person is of good character and high business integrity; (ii) the person is a director or employee of, or partner in, the Trading Permit Holder that is seeking the approval; and (iii) the person satisfies any other requirements specified by the NZFOE. A trading system operator also must pass an examination on utilizing SYCOM[®] before he or she is approved.

3. Fraud, Market Manipulation, Customer Protection, and Order Limits

Petitioners and their Participants trading on SYCOM[®] are subject to prohibitions against fraud and market manipulation. They also are subject to rules designed to guard against customer abuse in connection with the handling of customer funds and the execution of orders. For example, the CLA prohibits market manipulation and rigging, false or misleading statements, and fraud in connection with the futures markets. Also, the SYCOM[®] Trading Etiquette deems any act which could cause the disruption of fair and orderly trading on SYCOM[®] to be a major offense. Similarly, the NZFOE's Rules provide that the NZFOE may take corrective action in the event of an "Undesirable Situation," which is defined to include, among other things, market manipulation and attempted manipulation.

The CLA also sets forth detailed requirements regarding the segregation of customer funds. The SFE's Rules both require futures brokers to comply with the CLA and augment the CLA with additional segregation requirements. The SFECH also requires clearing members to segregate their house and client positions.

Participants further are required to adhere to certain standards governing trading. The CLA, among other things, sets forth rules on the sequence in which futures brokers must

transmit, execute, and allocate customer orders. The SFE's By-Laws and NZFOE's Rules similarly address the execution, allocation, confirmation, and designation of trades, and prohibit self-dealing by futures brokers.

The SYCOM[®] Trading Etiquette also requires that Participants place appropriate pre-determined order and/or position limits on client accounts based upon the Participant's analysis of the client's financial resources and other relevant factors.³⁶ The Participant and its clients must agree to these limits in writing. The limits determined by the Participant must be input into the SYCOM[®] system and will be associated with accounts. Additionally, a Participant must establish limits that demonstrate prudent risk management. Failure to do so is considered a breach of Petitioners' Rules, and the offending Participant may be disciplined for such breach.

4. Recordkeeping and Reporting

The SFE, NZFOE, and Participants trading on SYCOM[®] also are subject to recordkeeping and reporting requirements. The CLA requires, among other things, that futures brokers must maintain all financial records on their dealings in futures contracts for seven years. Brokers generally must keep all documents that record and explain transactions in which they have engaged, and all documents necessary to prepare and audit profit and loss statements and balance sheets. The CLA further lists particular records that brokers must keep, including records showing: the details of all futures contracts made by the broker, the charges and credits arising from such contracts, and the name of the person on whose behalf each transaction was effected.

Petitioners' Rules similarly impose recordkeeping and reporting requirements on Participants. For example, pursuant to SFE rules, SFE Members are required to maintain internal records of instructions received from clients and trades executed for clients showing: the time and date of transmission of instructions; the time and date of execution of instructions; and the time and date of return of instructions; or, in the case of a flashed transaction, when confirmed or cancelled, for a period of not less than seven years from the date of the trade. SFE Members also are required to maintain separate internal records of their own orders and trading showing the same information as required for client orders for seven years.

Market participants further must report daily all reportable positions.³⁷ As discussed in more detail below, SFE Surveillance or Screen Dealing staff each day review open positions and reportable positions to identify large traders, to detect any major changes in positions, and to compare positions held in one contract with those held in another. Large positions also are tested daily against various stress scenarios.

Additionally, Participants have a general duty to respond to information requests from both exchanges. At the SFE, for instance, it is an offense under the SYCOM[®] Trading Etiquette for any member to fail to respond to a request for information from the Screen Dealing Committee. At the NZFOE, Dealers are required to cooperate with the Business Conduct Committee. As mentioned below, Petitioners also have confirmed that they will cooperate with the Commission regarding the exchange of information with respect to the activities covered by their No-Action Request.

5. Review, Surveillance, and Enforcement

Petitioners and their government regulators also employ review, surveillance, and enforcement mechanisms designed to achieve compliance with their laws, rules, and regulations. The SFE, for instance, must notify the ASIC of any amendments or additions to its rules. ASIC forwards such notifications to the Minister for review and possible disapproval of the rules. All of the NZFOE's Rules and amendments thereto must be approved by the NZSC. The NZFOE further is required to file quarterly reports with the NZSC on the state of the market and must consult with the NZSC whenever problems arise.

SFE Surveillance³⁸ investigates any breaches of the SYCOM[®] Trading Etiquette and By-Laws reported by a SYCOM[®] manager or supervisor and any complaints made by a member or client. SYCOM[®] staff also monitors and conducts market surveillance during real-time trading. SYCOM[®] supervisors are in attendance 24 hours a day. Additionally, members are required to produce a copy of the log file in their SYCOM[®] terminals at least weekly to ensure that a complete audit trail is maintained at each trading member's site.

To safeguard the integrity of the market, SFE Surveillance regularly monitors the market. For example, on the business day following the end of each SYCOM[®] session, SFE Surveillance receives a trade register reflecting all trading activity for that SYCOM[®] trading session. The trade register contains complete information about each order entered into a SYCOM[®] terminal, including whether orders were modified or canceled. A log of all SYCOM[®] trades is kept by SFE Surveillance for a period of three months, and the SFE otherwise keeps such information for seven years as prescribed by the CLA. In addition, SFE Surveillance runs a risk management program on a daily basis. Futures and option positions from the previous day are sent from each clearing member and include both SYCOM[®] and floor trades. This information is made available to SFE Surveillance at the client level. An assessment is made of the build-up of positions on a client basis to determine the potential risk of default. SFE staff acts upon any potential problems.

The CLA also provides that, upon the application of the ASIC, a futures exchange, a

clearing house, or a futures association, a court may impose penalties for, among other things, any violation of: (i) the CLA; (ii) any other Australian law relating to dealing in futures contracts; (iii) the conditions of a license; or (iv) the business rules of a futures exchange, clearing house, or futures association. A court may make such orders as it sees fit for these violations, including, among other things: (i) in the case of continuing violations, an order restraining a person from carrying on the business of dealing in futures contracts; (ii) an order restraining a person from acquiring, disposing of, or otherwise dealing in any class of futures contracts that is specified in the order; (iii) an order appointing a receiver of property of a futures broker or of property that is held by a futures broker for or on behalf of another person; (iv) an order declaring a futures contract to be void or voidable; or (v) for the purpose of securing compliance with any other lawfully issued order, an order directing a person to do or refrain from doing a specified act.

D. Information-Sharing Arrangements between Petitioners, the ASIC, the NZSC, and the Commission

As set forth more fully below, pursuant to the terms and conditions of the no-action relief provided herein, the Division will be entitled to receive certain specified information regarding SYCOM[®] directly from the SFE and NZFOE. Additional information relevant to SYCOM[®] and SYCOM[®] Participants will be available to the Commission and its staff through information-sharing arrangements to which the Commission, ASIC, and NZSC are parties. Specifically, on October 19, 1994, the Commission and the ASIC entered into a Memorandum of Understanding on Cooperation and Information Sharing in Enforcement Matters ("MOU").³⁹ On September 16, 1996, the Commission and the NZSC also entered into an MOU.⁴⁰ Additionally, an information-sharing arrangement has existed between the NZSC and the ASIC since August 1, 1994. Furthermore, all three regulatory authorities are parties to the *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations, as amended, March 1998* (commonly known as the "Boca Declaration"), and the *Tokyo Communiqué on Supervision of Commodity Futures Markets, October 31, 1997*.

Petitioners also have confirmed that they will cooperate with the Commission regarding the exchange of information with respect to the activities covered by their No-Action Request.

II. CONCLUSION

Consistent with the Commission's June 2 Order,⁴¹ the Division has reviewed and considered Petitioners' No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished

by Petitioners indicate that the SFE and NZFOE maintain no offices or places of business in the United States; Petitioners do not maintain order matching or clearing facilities in the United States; the SFE is an approved futures exchange under the laws of Australia; the NZFOE is an authorized futures exchange under the laws of New Zealand, and the NZFOE has agreed to abide generally by the laws of Australia as if it were an approved futures exchange; Petitioners, Petitioners' Participants, and SYCOM[®] are subject to oversight in Australia and New Zealand by legitimate regulatory authorities that are responsible for ensuring their compliance with an extensive regulatory regime; SYCOM[®] adheres to the IOSCO Principles; and the Commission, ASIC, and the NZSC are parties to various information-sharing arrangements applicable to the activities of SYCOM[®].⁴²

Based specifically upon these and other representations made by the SFE and NZFOE in support of their No-Action Request, the Division has determined that granting no-action relief to the Petitioners and their Participants, pending the adoption by the Commission of rules or guidelines regarding access to foreign boards of trade from electronic trading devices in the United States, would not be contrary to the public interest. Accordingly, subject to compliance with the terms and conditions stated herein, the Division will not recommend that the Commission institute enforcement action against Petitioners or their Participants solely based upon Petitioners' failure to obtain contract market designation pursuant to Sections 5 and 5a of the CEA if: (i) Participants use SYCOM[®] terminals located in the United States to trade for their proprietary accounts through SYCOM[®]; (ii) Participants who are registered with the Commission as FCMs use SYCOM[®] terminals located in the United States to submit orders from United States customers for transmission to SYCOM[®]; and/or (iii) Participants who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders through United States AORSs from United States customers for submission to SYCOM[®].

The Division's no-action position is applicable only to the contracts described below:

(1) The relief is effective immediately with respect to the following SFE contracts:

- Ten Year Commonwealth Government Treasury Bond futures and options,
- Three Year Commonwealth Government Treasury Bond futures and options,
- 90 Day Bank Accepted Bills of Exchange futures and options,

- All Ordinaries Share Price Index futures and options,
- Wheat futures and options,
- Greasy Wool futures and options,
- Broad Wool futures,
- Fine Wool futures,
- New South Wales Electricity futures,
- New South Wales Peak-Period Electricity futures,
- Victorian Electricity futures, and
- Victorian Peak-Period Electricity futures.

(2) The relief is effective immediately with respect to the following NZFOE contracts:

- 90 Day Bank Bill futures and options,
- Three Year New Zealand Government Stock futures and options,
- Ten Year New Zealand Government Stock futures and options, and
- New Zealand Electricity - North Island futures.

If additional contracts or products become available for trading through SYCOM[®] and Petitioners wish to make such contracts or products available in the United States through the system, Petitioners must request in writing and receive supplementary no-action relief prior to offering such contracts or products. In the event that a supplemental request for relief is made by Petitioners, Petitioners will not be required to submit materials already received by the Division in connection with the No-Action Request addressed herein, unless there has been a material change in the structure, operation, or regulation of the

SFE, NZFOE, or SYCOM[®] such that the information that already has been provided to the Division no longer remains accurate. Any supplemental request for expanded no-action relief to cover different SFE or NZFOE products need only be accompanied by a certification to the effect that material information previously submitted to the Division remains accurate and by a description of the contracts or products available for trading on SYCOM[®] to which Petitioners wish to extend the Division's no-action relief.

The scope of the Division's no-action position is restricted to providing relief from the requirement that the SFE and NZFOE obtain contract market designation pursuant to Sections 5 and 5a of the CEA and regulatory requirements that flow specifically from the contract market designation requirement if the above-referenced contracts are made available in the United States through SYCOM[®] in the manner set forth herein. The Division's no-action position does not extend to any other provision of the CEA, any other Commission regulations, or any NFA rules, and does not excuse Petitioners or their Participants 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 requirement that a firm operating pursuant to the no-action relief provided herein must be a registered FCM or be operating pursuant to Rule 30.10 relief to engage in the offer or sale of a foreign futures contract or a foreign options transaction for or on behalf of a United States foreign futures or foreign options customer. For example, nothing in this letter is intended to alter current Commission rules and staff interpretations that require generally that any foreign firm that clears trades on a fully-disclosed basis on behalf of United States persons (including where the United States person is a non-clearing member of a foreign board of trade trading solely for its proprietary account) be a registered FCM or a Rule 30.10 Firm unless the foreign firm solely carries accounts on behalf of United States customers that are its proprietary accounts (as defined in Rule 1.3(y)) of the foreign firm.⁴³ If a the foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM in the United States and its sole contact with a United States customer is that it carries the FCM's omnibus account, it need not register under Rule 30.4.⁴⁴

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the United States. Thus, Rule 30.10 Firms cannot maintain electronic terminals providing direct access to SYCOM[®] in the United States (although they would be permitted to accept orders overseas from customers located in the United States that submit such orders by telephone or through an AORS located in the United States). FCMs or Rule 30.10 Firms who solicit or accept orders from United States customers for trading through SYCOM[®] remain responsible for, among other things, complying with the regulatory requirements governing risk disclosure, the handling and

allocation 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 SYCOM[®] shall be subject to all existing Commission rules and regulations and to any future rules or guidance propounded 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, and other applicable federal securities laws or rules promulgated thereunder.

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

- The SFE will continue to satisfy the criteria for designation as an approved futures exchange under the CLA with respect to transactions effected through SYCOM[®], and the NZFOE will continue to: (i) satisfy the criteria for designation as an authorized futures exchange under the laws of New Zealand, and (ii) abide generally by the CLA as if it were an approved futures exchange under the CLA.
- The laws, systems, rules, and compliance mechanisms of Australia and New Zealand applicable to SYCOM[®] will continue to require the SFE and NZFOE to maintain fair and orderly markets; prohibit fraud, abusive practices, and market manipulation; and provide that such requirements are subject to the oversight of the appropriate regulatory authorities.
- The SFE, NZFOE, and SYCOM[®] will continue to adhere to IOSCO principles as updated, revised, or otherwise amended, to the extent consistent with United States, Australian, and New Zealand law.
- Only Participants will have direct access (*i.e.*, not through an AORS) to SYCOM[®], and Petitioners will not provide, and will take reasonable steps to prevent, third parties from providing such access to SYCOM[®] to persons other than Participants.⁴⁵
- All orders that are transmitted through SYCOM[®] by any Participant that is operating pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for "proprietary accounts," as defined herein, of such Participant.
- All orders for United States customers accepted through an AORS and/or transmitted by Participants through SYCOM[®] will be intermediated by a Participant that is either registered with the Commission as an FCM or is a Rule 30.10 Firm, to the extent required under Commission regulations.
- Prior to their operating pursuant to the no-action relief provided herein, Petitioners will require current and future Participants who are not registered with the Commission as FCMs to file with the SFE or NZFOE, as appropriate, a written representation, executed by a person with the authority to bind the Participant, stating that as long as the Participant operates pursuant to the no-action relief provided herein, the Participant agrees to and submits to the jurisdiction of the Commission with respect to

- activities conducted pursuant to the no-action relief. Petitioners will maintain the foregoing representations as long as the relevant Participant is operating pursuant to the no-action relief and shall make such representations available to the Commission upon the request of a Commission representative.
- Prior to their operating pursuant to the no-action relief provided herein, Petitioners will require current and future Participants who are not registered with the Commission as FCMs to file with the SFE or NZFOE, as appropriate, a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of "communications"⁴⁶ that are issued by or on behalf of the Commission. Petitioners will maintain the foregoing appointments as long as the relevant Participant is operating pursuant to the no-action relief and shall make such appointments available to the Commission upon the request of a Commission representative.
 - Prior to their operating pursuant to the no-action relief provided herein, Petitioners will require current and future Participants who are not registered with the Commission as FCMs to file with the SFE or NZFOE, as appropriate, a written representation, executed by a person with the authority to bind the Participant, stating that as long as the Participant operates pursuant to the no-action relief provided herein, the Participant will provide, upon the request of the Commission, the United States Department of Justice, and, if appropriate, the NFA, prompt access to original books and records maintained at their United States offices as well as to the premises where SYCOM[®] is installed or used in the United States. Petitioners will maintain the foregoing representation as long as the relevant Participant is operating pursuant to the no-action relief.
 - Prior to operating pursuant to the no-action relief provided herein, Petitioners will file with the Division, and maintain thereafter as long as Petitioners, Petitioners' Participants, or SYCOM[®] operate pursuant to the no-action relief, a valid and binding appointment of a United States agent for service of process in the United States, pursuant to which the agent is authorized to accept delivery and service of "communications," as defined above, that are issued to the Petitioners by or on behalf of the Commission.
 - Petitioners will maintain the following updated information and submit such information to the Division on at least a quarterly basis, and at any time promptly upon the request of a Commission representative:
 - For each contract available to be traded through SYCOM[®], the total trade volume originating from SYCOM[®] terminals in the United States⁴⁷ (including volume originating from AORSs that route orders to SYCOM[®]) compared with the total worldwide trade volume for such products traded through SYCOM[®] and the total worldwide trade volume for such products traded on the SFE and NZFOE generally.
 - A listing of the names, NFA ID numbers (if applicable) and main business addresses in the United

States of all Participants that have access to SYCOM[®] in the United States.

- Petitioners will promptly provide the Division with written notice of the following:
- Any material change in the information provided in their No-Action Request, including any information contained in the documents submitted in support thereof.⁴⁸
- Any material change in Petitioners' Rules or the laws, rules, and regulations in Australia or New Zealand relevant to futures and options.
- Any matter known to Petitioners or their representatives that, in Petitioners' judgment, may affect Petitioners' financial or operational viability, including, but not limited to, any significant system failure or interruption.
- Any default, insolvency, or bankruptcy of any of Petitioners' Participants known to Petitioners or their representatives that may have a material, adverse impact upon the condition of Petitioners, Petitioners' clearing system, or upon any United States customer or firm.
- Any known violation by Petitioners or any of Petitioners' Participants of the terms or conditions of the no-action relief provided herein.
- Any disciplinary action taken by Petitioners against any of their Participants 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 SYCOM[®] or an AORS to submit orders to SYCOM[®].
- Satisfactory information-sharing arrangements between the Commission and the relevant regulatory authorities will remain in effect.
- The Commission will be able to obtain sufficient information regarding Petitioners, SYCOM[®], and Participants operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of Petitioners or their Participants for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.
- Petitioners will provide directly to the Commission information necessary to evaluate the continued eligibility of Petitioners and their Participants for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.
- Petitioners employ reasonable procedures, to be determined by Petitioners, 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 the SFE's and NZFOE'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 trade volume information submitted as a condition to the no-action relief provided herein as well as any changes in the nature or extent of Petitioners' activities in the United States to ascertain whether Petitioners' presence in the United States has increased to a level that might warrant reconsideration of the no-action relief.

As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion. Finally, the Division wishes to emphasize that the no-action position set forth herein is intended to provide immediate, interim relief to Petitioners and their Participants, pending any adoption of rules or guidelines by the Commission regarding the use and placement in the United States of automated trading systems or automated order routing systems that provide access to the products of foreign boards of trade. Thus, this letter will cease to be effective in the event that the Commission or its staff adopts generally applicable rules or general guidelines regarding the issues addressed herein, and Petitioners will be subject to those rules or guidelines in that event.

If you have any questions regarding this correspondence, please contact me; David Battan, Chief Counsel; or Gregory Collett, an attorney on my staff, at (202) 418-5450.

Sincerely,

I. Michael Greenberger

Director

GSC/gc

cc: Daniel A. Driscoll, Vice-President-Compliance

National Futures Association

Henry J. Matecki, T&M, Chicago

¹ SFE Members and NZFOE Dealers are members of their respective boards of trade.

² For purposes of the relief provided herein, the term "United States" shall include the United States, its territories and possessions.

³ For purposes of your No-Action Request and the relief provided herein, references to Petitioners' Participants shall include "affiliates" of such Participants to the extent that such affiliates are granted access by the Participant to SYCOM[®]. An "affiliate" of a Participant shall mean any person that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; (iii) is owned by a third person that also owns 50% or more of the member. Pursuant to their governing rules and Petitioners' representations, SFE Members and NZFOE Dealers are subject to discipline by their respective boards of trade for the misconduct of their affiliates. Such discipline includes the right to suspend or expel SFE Members, or to suspend or revoke trading privileges of NZFOE Dealers, in which case any United States affiliate would cease to be eligible for SYCOM[®] terminals.

⁴ For purposes of the No-Action Request and the relief provided herein, the term "proprietary account" shall have the meaning set forth in Rule 1.3(y). 17 C.F.R. § 1.3(y) (1999). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

⁵ For purposes of the No-Action Request and the relief provided herein, the term "United States customers" shall have the same meaning as the term "foreign futures and foreign options customers" as it is defined in Rule 30.1(c).

⁶ Rule 30.10 permits a person affected by any of the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. 17 C.F.R. § 30.10 (1999). 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 CEA, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. *Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules*, 17 C.F.R. pt. 30, Appendix A (1999).

⁷ For purposes of the no-action relief provided herein, the term "AORS" shall mean any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place.

⁸ 7 U.S.C. §§ 1 *et seq.* (1994).

⁹ *Access to Automated Boards of Trade*, 64 Fed. Reg. 14159 (proposed March 24, 1999), *withdrawn*, June 2, 1999.

¹⁰ *Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade*, Release No. 4274-99 (June 2, 1999).

¹¹ Petitioners originally requested no-action relief by letter dated March 21, 1997. Consideration of that request was deferred pending the Commission's rulemaking proceeding.

¹² Petitioners provided the Commission with contract specifications contained in the SFE's By-Laws and the Rules of the NZFOE.

¹³ As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by Petitioners in support of their 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.

¹⁴ The Minister for Financial Services and Regulation, who oversees the ASIC, is charged with evaluating applications to become an Australian-approved futures exchange. The Corporations Law of Australia ("CLA"), which governs the Australian futures industry, outlines the requirements for becoming an "approved futures exchange." The approval process and criteria for approval are discussed further in Section I.C.

¹⁵ The NZSC evaluates applications to become an authorized futures exchange in New Zealand. The approval process and criteria for approval are discussed further in Section I.C.

¹⁶ The NZFOE is an exempt futures market under the CLA. Pursuant to the terms and conditions of the exemption issued by the Commonwealth of Australia to the NZFOE, the NZFOE generally must comply with the CLA as if it were an Australian-approved futures exchange. However, the exemption provides for certain limited exceptions to this requirement. For example, in deference to the NZFOE's status as an exchange regulated under the laws of New Zealand, the exemption provides that, if the NZFOE is required under New Zealand law to seek the approval of the NZSC to any change in its business rules, the NZFOE need not notify the ASIC of amendments to its business rules as required by the CLA.

¹⁷ Receipt of a no-action position from Commission staff is a necessary prerequisite to the offer and sale of foreign futures and option contracts on foreign stock indices within the United States. However, such contracts may be offered and sold to persons located outside of the United States absent a no-action position and, in fact, these contracts are currently available on SYCOM[®] to persons located outside of the United States.

¹⁸ However, the relief provided by this no-action letter does not permit Rule 30.10 Firms to effect transactions in NYMEX contracts through SYCOM[®].

¹⁹ Petitioners acknowledge that the CEA prohibits the offer of futures contracts on individual stocks to United States customers. However, futures contracts on individual stocks may be offered to non-United States customers, and these contracts are currently available to non-United States customers on SYCOM[®]. Petitioners have asked Commission staff to confirm that United States-located SYCOM[®] terminals may be utilized to effect transactions in such stock futures for customers located outside the United States. Commission staff will address this issue separately at a later date. Petitioners have confirmed that, to the extent that either of them offers any instrument falling within the jurisdiction of the United States Securities and Exchange Commission via SYCOM[®], such activity will be conducted in conformity with all applicable requirements under the federal securities laws.

²⁰ As stated above, the description of the SYCOM[®] system included herein is based upon representations made by Petitioners or their representatives. The Division has neither conducted an independent examination of the SYCOM[®] system to determine the truthfulness of such statements nor has it performed an independent assessment of the security or soundness of the system.

²¹ This is discussed further in Section I.B.5.

²² In addition to the Host-AWS-TWS network, a new version of SYCOM[®] scheduled to be introduced later this year will allow users to access the system through the Automated Order Entry Interface ("AOEI") operating on users' proprietary systems, rather than through SYCOM[®] workstations. The AOEI will allow Petitioners' Participants to provide their customers with direct access to SYCOM[®]. The AOEI is an AORS as defined herein.

²³ SFE Surveillance has assumed primary surveillance responsibility at the NZFOE and monitors daily activity on the NZFOE. The NZFOE maintains one full-time officer who works with SFE staff in connection with compliance and surveillance matters relating to the NZFOE.

²⁴ Where approval for any particular futures contract or security has not been obtained from a specific jurisdiction's regulator, Petitioners can block Participants' traders from trading and/or viewing a particular contract. Thus, SYCOM[®] will not allow customers to gain access to products that are not authorized for trading in their jurisdictions.

For example, a foreign futures contract (and the option thereon) based upon a foreign stock index may not be offered or sold to persons within the United States unless the futures contract has been the subject of a no-action letter issued by Commission staff. A futures contract based on foreign government debt (and option thereon) may not be offered or sold to persons within the United States unless the foreign government debt product has been designated as an "exempted security" by the United States Securities and Exchange Commission ("SEC") under SEC rule 3a12-8. Finally, futures based on single equities may not be offered or sold to persons within the United States.

²⁵ Specifically, Petitioners estimate that, on average, a trade originating in the United States will arrive

at the Host 0.1 seconds later than a trade originating in Sydney, Australia. Moreover, Petitioners represent that they monitor and control such timing differences, and they have procedures in place to take corrective action if timing differences become excessive.

²⁶ For information purposes only, the Division has noted the United States dollar equivalent of any sum of Australian dollars referenced herein, based upon the exchange rate on August 9, 1999 (A\$1.00 = \$0.65). The Division notes, however, that the financial resource requirements for SFE, NZFOE, and SFECH members are not linked in any way to the United States dollar equivalents provided.

²⁷ Australia was one of eight jurisdictions that participated in Working Party 7 of IOSCO ("Working Party") whose mandate included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns for screen-based trading systems, the Working Party identified and addressed the following issues: transparency, order execution algorithms, operational issues, security and system vulnerability, access, financial integrity, disclosure, and the role of system providers. The Working Party considered these issues and articulated for each a broad principle to assist regulatory authorities in overseeing screen-based trading systems. The IOSCO Principles were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products on November 21, 1990. *Policy Statement Concerning the Oversight of Screen-Based Trading Systems*, 55 Fed. Reg. 48670 (Nov. 21, 1990).

²⁸ Petitioners have adopted the British Standards Institute definition of Year 2000 Conformity - DISC PD 2000-1.

²⁹ For purposes of this letter and the no-action relief provided herein, Petitioners' "Rules" are defined to include, collectively, Petitioners' rules and other documents issued in accordance therewith, including: (i) the SFE's Articles of Association ("SFE Articles"); (ii) Petitioners' By-Laws; (iii) the Rules of the NZFOE; (iv) the SYCOM Trading Etiquette; (v) agreements entered into by Petitioners and their Participants (*e.g.*, the NZFOE's agreement to abide by the CLA as if it were an approved Australian futures exchange); and (vi) other instructions from Petitioners (*e.g.*, Bulletins from the Screen Dealing Committee).

³⁰ Petitioners represent that the NZFOE's rules currently are not materially different from those of the SFE. Further, the NZFOE's Board of Directors recently approved a revision to the NZFOE's rules that will make the NZFOE's rules similar in both substance and form to those of the SFE. The revised NZFOE rules are modeled on the SFE's rules, and (except where the laws of Australia and New Zealand provide differently or the administrative powers of Petitioners' respective Boards of Directors are different) the two sets of rules will share the same text. Final approval of the revised NZFOE rules by the NZSC is pending, and Petitioners expect the NZSC to approve the rules shortly.

³¹ See 53 Fed. Reg. 44856 (Nov. 7, 1988).

³² See 61 Fed. Reg. 46985 (Dec. 10, 1996).

³³ 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. pt. 30, Appendix A (1999).

³⁴ As stated below, the Division notes that nothing in the no-action relief provided herein abrogates or otherwise alters the obligations of FCMs or Rule 30.10 Firms under the CEA, Commission rules, or relevant Part 30 orders.

³⁵ Further, although the NZFOE is an exempt futures market under Australian law, Petitioners represent that the NZFOE satisfies the criteria for approval as an Australian-approved futures exchange.

³⁶ Participants must place similar limits on their house accounts.

³⁷ The Board of the SFE has set the "reportable level" at one contract. Accordingly, even the smallest accounts are deemed to be reportable.

³⁸ As noted above, SFE Surveillance has assumed primary responsibility for surveillance at the NZFOE.

³⁹ The ASIC has confirmed specifically that the MOU with the Commission will apply to matters or information concerning SYCOM[®] terminals located in the United States. Petitioners also represent that the SFE will provide the ASIC with information concerning NZFOE-related trading that the ASIC requests.

⁴⁰ The NZSC has confirmed specifically that the MOU with the Commission will apply to matters or information concerning SYCOM[®] terminals located in the United States.

⁴¹ *Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade*, Release No. 4274-99 (June 2, 1999).

⁴² The Division notes that the foregoing is not intended to be an exhaustive list of either the factors relevant to its decision to grant the no-action relief requested by the SFE and NZFOE or 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.

⁴³ See CFTC Interpretative Letter No. 88-15, Comm. Fut. L. Rep. (CCH) ¶24,296 (Aug. 10, 1988).

⁴⁴ See CFTC Interpretative Letter No. 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (Nov. 17, 1987).

⁴⁵ As stated above, "Participants" includes those persons identified in footnote 3 for purposes of this no-action letter and the conditions imposed upon the relief provided herein.

⁴⁶ For purposes of these conditions, "communications" is defined to include any summons, complaint, order, subpoena, request for information, or notice or any other written or electronic documentation or correspondence issued on behalf of the Commission.

⁴⁷ Petitioners represent that, based on a user's identification number, SYCOM[®] is capable of identifying trades originating in the United States. Further, SYCOM[®] will generate reports to identify business originating from outside of Australia.

⁴⁸ The Division notes that "material" changes in the information provided to it in support of this No-Action Request would include, without limitation, a modification of: Petitioners' membership criteria; the location of Petitioners' management, personnel, or operations (particularly changes that may suggest an increased nexus between Petitioners' activities and the United States); the basic structure, nature, or operation of the SYCOM[®] system; or the regulatory or self-regulatory structure applicable to Petitioners, their Participants, or SYCOM[®].