

December 17, 1999

BY FACSIMILE AND FIRST-CLASS MAIL

Jane Kang Thorpe, Esq.

Brown & Wood LLP  
1666 K Street, NW  
Washington, DC 20006-1208

Re: Sections 5 and 5a - Singapore International Monetary  
Exchange Limited; Request for No-Action Relief from the  
Contract Market Designation Requirement

Dear Ms. Thorpe:

This is in response to your letter dated September 2, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") on behalf of your client, the Singapore International Monetary Exchange Limited ("SIMEX" or the "Exchange"). By your correspondence, you request that the Division grant no-action relief to permit SIMEX to make its electronic trading and order matching system, known as SIMEX ETS, available to SIMEX members,<sup>1</sup> and their respective affiliates in the United States<sup>2</sup> ("No-Action Request"). Specifically, SIMEX wishes to make SIMEX ETS available to: (i) SIMEX members who wish to trade for their proprietary accounts<sup>3</sup> through SIMEX ETS terminals in the United States; (ii) SIMEX members who are registered with the Commission as futures commission merchants ("FCMs") or who are exempt from such registration pursuant to Rule 30.10 ("Rule 30.10 Firms")<sup>4</sup> and who wish to submit orders from United States customers<sup>5</sup> for transmission to SIMEX ETS; and/or (iii) SIMEX members who are registered with the Commission as FCMs or who are Rule 30.10 Firms who wish to accept orders from United States customers through automated order routing systems ("AORSs")<sup>6</sup> for submission to SIMEX ETS. You request that the Division confirm that it will not recommend enforcement action to the Commission against SIMEX or its members if SIMEX does not seek designation as a contract market pursuant to Sections 5 and 5a of the Commodity Exchange Act ("CEA")<sup>7</sup> or comply with those Commission regulations that specifically relate to contract markets in connection with the installation and use in the United States of SIMEX ETS and/or AORSs that are used to submit orders to SIMEX ETS.

As you know, on March 24, 1999, the Commission published proposed rules that would have governed the circumstances under which foreign futures exchanges could be accessed from electronic trading devices in the United States.<sup>8</sup> On June 2, 1999, the Commission issued an order that withdrew those proposed rules and directed the Commission staff to begin considering requests from foreign exchanges

for interim no-action relief to allow them to place trading systems in the United States on a temporary basis until the Commission itself promulgates rules or guidelines in this area ("June 2 Order").<sup>9</sup> In accordance with this instruction, the Division has reviewed SIMEX's No-Action Request and the materials submitted in support thereof.

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

- General information regarding SIMEX (*e.g.*, a description of its location, organization, and activities in the United States);
- SIMEX's Memorandum and New Articles of Association;
- SIMEX's Rules, including SIMEX ETS trading procedures;
- The specifications of the contracts traded on SIMEX;
- SIMEX's membership application forms;
- A description of how SIMEX ETS operates;
- A description of the trade registration, settlement, and clearing systems applicable to SIMEX ETS;
- A description of the regulatory regime in Singapore applicable to SIMEX, SIMEX members, and SIMEX ETS;
- Singapore's Futures Trading Act, as amended, and regulations promulgated thereunder; and
- A summary of applicable information-sharing arrangements.

Representations made by SIMEX regarding the activities it conducts in the United States, its membership criteria, the SIMEX ETS system, the regulatory regime in Singapore, and the information-sharing arrangements applicable to SIMEX ETS are summarized below. For purposes of its response to the No-Action Request, the Division has relied upon SIMEX's representations and has not conducted an independent review to confirm their accuracy.<sup>10</sup>

## **I. SUMMARY OF REPRESENTATIONS**

### **A. Overview of SIMEX and its Products**

SIMEX is an approved futures exchange under Singapore's Futures Trading Act ("FTA")<sup>11</sup> that has been in operation since 1984. Its main business office is in Singapore. SIMEX offers the broadest range of futures and options contracts in the Asia-Pacific region, including contracts on interest rates, currencies, stock indices, energy, and gold. Originally, contracts could be traded on SIMEX only through an "open outcry" auction process. SIMEX members have been able to trade electronically since 1996. SIMEX's first electronic trading system was known as SIMEX ATS. Electronic trading on the Exchange now occurs through SIMEX ETS.

SIMEX currently offers the following contracts: Three-Month Eurodollar Futures and options thereon, Three-Month Euroyen TIBOR futures and options thereon, Three-Month Euroyen LIBOR futures and options thereon, Nikkei 225 Stock Index futures and options thereon, Nikkei 300 Stock Index Futures and options thereon, SIMEX MSCI Taiwan Stock Index futures and options thereon, SIMEX MSCI Hong Kong+ Stock Index futures, SIMEX MSCI Singapore Stock Index futures, SIMEX Dow Jones Thailand Stock Index futures, Brent Crude Oil futures, Japanese Government Bond futures and options thereon, and SIMEX 3-Month SGD Interest Rate futures. SIMEX has received no-action positions from Commission staff that permit the offer and sale in the United States of Nikkei 225 Stock Index futures and options thereon, Nikkei 300 Stock Index futures and options thereon, SIMEX MSCI Taiwan Stock Index futures and options thereon, and SIMEX MSCI Hong Kong+ Stock Index futures.<sup>12</sup> SIMEX also has requests pending for no-action positions on SIMEX MSCI Singapore Stock Index futures and SIMEX Dow Jones Thailand Stock Index futures. Additionally, SIMEX members may trade certain Chicago Mercantile Exchange ("CME") futures and options contracts through the Mutual Offset System ("MOS") Link between the CME and SIMEX.<sup>13</sup>

SIMEX has one United States subsidiary, SIMEX America Ltd. ("SIMEX America").<sup>14</sup> SIMEX America employs two persons. The activities undertaken by SIMEX America in the United States include: providing research and analysis of United States market activities to SIMEX; providing general information and education to United States persons concerning SIMEX; engaging in general marketing activities with respect to SIMEX products; providing technical services related to the operation of the MOS Link; and acting as a conduit between SIMEX, the CME, and their respective traders in relation to the MOS Link. SIMEX represents that SIMEX America does not provide investment advice, nor solicit, receive, or direct orders with respect to the products traded on SIMEX. SIMEX further represents that SIMEX America does not perform trade processing or clearing functions for SIMEX in the United States.

## **B. Exchange Membership and SIMEX ETS Trading Requirements**

A person may not trade directly on SIMEX, including on SIMEX ETS, unless the person is a member of SIMEX. Membership is open to persons that satisfy certain criteria set forth in the SIMEX Rules. SIMEX has four membership categories: (i) Corporate Clearing Members; (ii) Corporate Non-Clearing Members; (iii) Commercial Associate Members; and (iv) Individual Non-Clearing Members.<sup>15</sup> Before admitting a person to membership, SIMEX's Membership Committee must be satisfied generally that the

applicant: (i) has the requisite financial and business standing and repute; (ii) if trading other than for proprietary purposes, is properly licensed by the Monetary Authority of Singapore ("MAS")<sup>16</sup> to engage in regulated business on SIMEX; (iii) maintains a staff that is fit and proper and that possesses the qualifications and experience to implement and maintain adequate internal procedures and controls in relation to the person's intended business on SIMEX; and (iv) satisfies such other membership criteria as the Board of Directors of SIMEX may prescribe.

SIMEX members also are required to satisfy specific capital requirements. Those requirements are as follows: (i) Corporate Clearing Members must have minimum group net worth of US\$100,000,000; minimum paid-up capital, shareholder funds and adjusted net capital of SG\$8,000,000 (US\$4,773,200)<sup>17</sup> each; and a security deposit based upon the higher of US\$250,000 or 2.5% of the member's average monthly maintenance margins in cash or an irrevocable letter of credit; (ii) Corporate Non-Clearing Members doing customer business must have minimum paid-up capital, shareholder funds and adjusted net capital of SG\$5,000,000 (US\$2,983,250) each; and (iii) Commercial Associate Members doing customer business must maintain minimum paid-up capital and shareholder funds of SG\$1,000,000 (US\$596,650) each and minimum adjusted net capital of SG\$300,000 (US\$178,995). In addition, both Corporate Clearing Members and Corporate Non-Clearing Members are required to maintain the higher of their minimum adjusted net capital and the risk-based adjusted net capital computed based on 2% of excess customer funds plus 4% of the total maintenance margin of the Member. MAS may require Members to maintain capital in excess of the minimums prescribed by the Exchange.

Exchange members that wish to trade on SIMEX ETS are subject to additional requirements. Prior to using SIMEX ETS to effect a transaction, an Exchange member must become an Authorized Member. An Authorized Member must apply for a SIMEX ETS terminal through the Corporate Clearing Member that will qualify the Authorized Member's transactions on SIMEX ETS. Authorized Members are responsible for ensuring that only employees of Authorized Members that have been approved and registered as SIMEX Terminal Operators may access SIMEX ETS. Terminal Operators must successfully complete the Terminal Operator Course administered by SIMEX that tests the person's knowledge of SIMEX ETS. Terminal Operators must abide by all SIMEX Rules relating to floor brokers and floor traders.

Additionally, SIMEX members and their officers and employees who are permitted to engage in transactions for customers, are subject to FTA requirements that establish licensing standards and criteria for futures brokers, trading advisers, pool operators, and their representatives. For example, to become licensed as a futures broker, the applicant must, among other things, disclose controlling interests, provide a detailed description of its organization, prior licenses or license revocations, convictions, bankruptcies, and previous employment history of its principals. Also, employees, officers, and agents of futures brokers who act as sales representatives are required to become Registered Representatives of the futures broker. To become a Registered Representative, a person must pass a futures examination administered by the Singapore Institute of Banking and Finance. Applicants seeking to become Registered Representatives also must, among other things, disclose any information that reflects upon their fitness. MAS is authorized by the FTA either to refuse to grant or renew a license or

to grant or renew a license subject to conditions.

All SIMEX members are subject to disciplinary actions by SIMEX that may result in fines, suspension, and/or expulsion from membership for violation of any provision of SIMEX Rules.

## **C. Operation of SIMEX ETS**

At the outset, the Division notes that the description of SIMEX ETS set forth herein is based upon representations made by SIMEX or its representatives. The Division has not performed an independent assessment of the security or soundness of the system.

### **1. System Architecture**

#### **a. Introduction**

SIMEX ETS operates on the same system architecture as the Nouveau Systeme de Cotation ("NSC"), the electronic trading system developed by PARISBOURSE<sup>SBF</sup> SA ("PARISBOURSE").<sup>18</sup> It consists of three main components: (i) the Host; (ii) the Mid-Tier Server Processes ("Mid-Tiers"); and (iii) the Workstations. Although SIMEX contemplates eventually allowing members to use self-developed front-end interfaces (*e.g.*, Workstations or AORs) or front-end interfaces developed by independent software vendors ("ISVs"), all of the SIMEX ETS components currently are available from SIMEX.

#### **b. The Host**

The Host primarily provides the order matching service for SIMEX ETS. Among other things, it processes orders, modifications, and cancellations; builds the market order books; and sends confirmations to member firms. The Host also constructs related ticker, clearing, and market broadcast data messages (*e.g.*, new best bid/offer and order book changes) and sends these messages to SIMEX members. The Host further delivers market data, including order information, to the clearing interface. Finally, the Host allows SIMEX to add new firms and traders to SIMEX ETS, and to input product data.

#### **c. Mid-Tiers**

The Mid-Tiers manage member firm interfaces to the Host. The Mid-Tiers process directed traffic between the Host and the Workstations, maintain an individual member's proprietary book, enable Terminal Operator authorization, and perform credit controls. A SIMEX member can have multiple Mid-Tiers to process data for different Terminal Operators. Terminal Operators employed by the same firm and connected to the same Mid-Tier can view and share a SIMEX member's order book or portions thereof. SIMEX contemplates that, in the future, Exchange members and ISVs will be able to develop their own front-end interfaces (*i.e.*, Workstations and AORs) to communicate with the Mid-Tiers. The Mid-Tiers also distribute broadcast traffic from the Host to all attached Workstations. In addition to raw market information, the Mid-Tiers provide some value-added information and calculations (*e.g.*, top

performers in the market, a volume index, and real-time indicators). In addition, Mid-Tiers can respond to member queries. A single Mid-Tier can distribute data to multiple members.

#### **d. Workstations**

Workstations consist of two major application components that allow SIMEX members to view and act upon the market: (i) the market sheet window ("Market Sheet"), and (ii) the order management window ("Order Manager"). The Market Sheet is the primary Workstation application that provides SIMEX members with the market data that is supplied by the Mid-Tiers, including best bid/offer quantities and prices; market statistics (*e.g.*, volume, last trade, net change, and settlement prices); all orders within an instrument book at all price ranges; last trades; and a real-time ticker. The Market Sheet also permits Exchange members to enter orders from market display windows. The Order Manager permits SIMEX members to view both their personal and firm order books. It also permits Exchange members to trade or otherwise act upon the market (*e.g.*, to enter orders, modifications, or cancellations) and display directed messages (*e.g.*, entries and confirmations). In addition, it permits an authorized SIMEX member to view and act on the order books of related Terminal Operators or its own consolidated order book.

### **2. Failure Recovery System**

SIMEX ETS operates on a fault-tolerant platform that will continue to function in most failure scenarios, and SIMEX members also can protect against a system failure by configuring each client Workstation to access a primary and secondary Mid-Tier. If a fatal Mid-Tier database error occurs, a trader can activate an icon on his Workstation that will cause his Workstation to switch to the secondary Mid-Tier and recover from the error. SIMEX also is implementing an off-site disaster recovery center that likely will be operational by the end of 1999. All of the telecommunication lines involved in establishing communications between the Host, the Mid-Tiers, and the Workstations are backed up by dial-up ISDN lines. Thus, SIMEX ETS has been designed to avoid any single point of failure.

### **3. Access to SIMEX ETS**

SIMEX ETS uses a closed network for providing access to the trading system. Only Terminal Operators of Authorized Members may use SIMEX ETS, and only Terminal Operators of Authorized Members that hold the necessary trading subscription can access the Host. SIMEX ETS terminals located in the United States will be programmed to reject orders from United States customers to buy or sell futures or option contracts that are prohibited under United States law.<sup>19</sup> To access the Host, a Terminal Operator must enter his unique identifier and password. Once the Terminal Operator is logged on, the Host will connect the Terminal Operator to the Mid-Tiers. While access to the Host is restricted to the Terminal Operators of Authorized Members, it is possible for a non-member to transmit orders to an Authorized Member using an AORS. Any Authorized Member accepting orders from an AORS for the purpose of submitting orders to SIMEX ETS must comply with SIMEX Rules.<sup>20</sup>

#### **4. Order Processing and Limits**

SIMEX ETS allows SIMEX members to impose order and position limits on customer and house accounts. Additionally, SIMEX Rules require members to have comprehensive controls for risk management, that may include setting limits on their Terminal Operator and customer accounts.

Orders processed by the Host may be of two price types: (i) limit orders and (ii) market orders. Order volume criteria also may be specified. Complete volume orders are executed only if there is sufficient volume available for them to be executed fully. Minimum volume orders are cancelled if the minimum volume cannot be executed immediately. Hidden-size orders are limit orders for which the total number of contracts to be traded is not made public. For limit orders, cancellation criteria may be specified. All unfilled orders are cancelled at the end of the electronic trading session.<sup>21</sup> The volume or price of orders in the order book may be revised, and orders may be withdrawn from the order book at any time during trading. SIMEX ETS matches orders and executes all trades based upon a first-in, first-out, price/time priority algorithm. The price of incoming orders is compared to the price of orders already in the order book on the opposite side.

SIMEX represents that SIMEX ETS is designed to provide equitable order executions to all market participants, and there will be 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 Singapore to reach the Host.<sup>22</sup>

#### **5. Audit Trail**

SIMEX represents that transactions effected through SIMEX ETS produce a clear audit trail. SIMEX Rules require that all orders entered by Exchange members and their Terminal Operators, including orders of other members, must indicate the customer's designation. The customer designation must identify the account for which the order was given. Other order information retained by SIMEX ETS includes the order date, commodity, contract month, quantity, price and the opposite Corporate Clearing Member.<sup>23</sup> SIMEX ETS registers and time-stamps each order. Orders from customers must be dated and time-stamped when received, when altered, and when returned after execution or cancellation. Information regarding order execution, including time-stamped responses and copies of trade confirmations, must be retained by SIMEX Members for at least six years.

#### **6. Clearing**

The SIMEX Clearing House is substituted as a party to all cleared futures and option transactions on SIMEX and guarantees all cleared trades. Under SIMEX's clearing system, every Corporate Clearing Member is accountable for each trade it clears. Furthermore, all Corporate Clearing Members are jointly and severally liable for the obligations of the Clearing House. All SIMEX contracts are marked-to-market on a daily basis, and all open positions are margined on a gross, not net, basis. Moreover, SIMEX Clearing House margins Corporate Clearing Members separately for customer and house

positions. In the event of the failure of a Corporate Clearing Member, SIMEX has standardized procedures in place to protect the defaulting member's customers and to satisfy the defaulting member's obligations to the Clearing House.

## **7. Adherence to IOSCO Principles**

As noted above, SIMEX ETS operates on the same system architecture as the PARISBOURSE'S NSC system and the CME's GLOBEX®2 system. SIMEX notes that PARISBOURSE has represented to the Commission that it adhered to 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") during the design and building of the NSC system. Moreover, PARISBOURSE has represented to the Commission that it employed the expertise of industry specialists to ensure that the resulting system infrastructure follows best industry practices and quality standards. SIMEX also has evaluated the NSC system, and a third-party consultant found SIMEX's evaluation to be comprehensive. Moreover, SIMEX represents that it has adhered to and will continue to adhere to the IOSCO Principles in operating SIMEX ETS. MAS also has reviewed and accepted SIMEX ETS for operation. In its review of SIMEX ETS, MAS took into account the IOSCO Principles.<sup>24</sup>

## **8. SIMEX's Year 2000 Program**

SIMEX represents that SIMEX ETS and the NSC system upon which it is based were built to avoid any potential Year 2000 ("Y2K") computer problems and to be Y2K-compliant. Nonetheless, both SIMEX and MAS have comprehensive programs and contingency plans to address potential Y2K problems, such as maintaining a command center to manage the transition over the year. SIMEX also has been working with its Corporate Clearing Members to ensure that their systems are Y2K-compliant. SIMEX further notes that MAS has been monitoring the Exchange's progress in addressing the Y2K problem, and MAS has announced that Singapore's financial sector, including SIMEX and SIMEX ETS, is fully prepared for Y2K.

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

SIMEX Rules generally limit the Exchange's liability to those remedies expressly conferred by the FTA. The FTA gives aggrieved parties the right to sue SIMEX for damages if the Exchange, in bad faith, fails to enforce its Rules, the FTA, or any regulations made thereunder. SIMEX Rules require Exchange members to notify their customers of this limitation of liability and to satisfy themselves that the liability limitation is acceptable to the particular customer.

## **D. Regulatory Regimes Governing SIMEX, SIMEX Members, and SIMEX ETS**

### **1. Introduction**

SIMEX, its members, and SIMEX ETS are subject to a comprehensive regulatory regime. As noted above, SIMEX is subject to the FTA, which governs futures and options trading in Singapore and is administered by MAS. Exchange members also are subject to SIMEX Rules. MAS performs all the functions normally associated with a central bank except for the issuance of currency. In addition to formulating and executing monetary and exchange rate policies, MAS is responsible for fostering a sound financial services sector, which includes supervising and regulating the banking, insurance, securities, and futures industries.

The FTA and regulations promulgated thereunder include provisions which set forth, among other things: (i) standards for the licensing and fitness review of persons who solicit and accept customer orders; (ii) minimum financial requirements for persons who accept customer funds; (iii) procedures requiring the protection of customer funds, including a requirement that customer funds be segregated; (iv) recordkeeping and reporting requirements; (v) sales practice and conduct of business rules, including the disclosure of the risks of futures and options transactions; (vi) rules and procedures governing compliance; and (vii) provisions intended to ensure market integrity, including prohibitions on fraud, abuse, and market manipulation.

The Division notes that the Commission previously reviewed the regulatory regime administered and enforced by MAS applicable to transactions on Singapore exchanges in connection with relief it granted to SIMEX in 1989. On January 10, 1989, the Commission issued an order pursuant to Rule 30.10 that granted exemptive relief to SIMEX members that allowed them to solicit and accept orders from United States customers for otherwise permitted transactions on SIMEX ("January 10 Order").<sup>25</sup> In the January 10 Order, the Commission noted that the standards for relief set forth in Rule 30.10<sup>26</sup> generally had been satisfied by SIMEX and compliance by the Rule 30.10 Firms with applicable Singapore law and SIMEX Rules could be substituted for compliance with certain provisions of the CEA and the Commission's rules set forth in the January 10 Order.<sup>27</sup> Further, on September 16, 1999, the Commission issued an order pursuant to Rule 30.10 that granted exemptive relief to SIMEX members that allowed them to solicit and accept orders from United States customers for otherwise permitted transactions on Eurex Deutschland.<sup>28</sup>

Since the issuance of the January 10 Order, the FTA has been amended to strengthen the supervision of the futures markets by, among other things: (i) expressly prohibiting front-running and trading against customers' orders, and requiring that cross trading occur subject to SIMEX rules;<sup>29</sup> (ii) requiring that a licensee notify MAS when it becomes aware of its inability to comply with minimum financial requirements and granting MAS the power to suspend or take other actions as MAS deems appropriate; (iii) granting MAS the power to approve the listing and de-listing of any futures contract on an exchange; and (iv) requiring an exchange to maintain a fidelity fund for purposes of compensating retail customers who suffer loss due to fraud in connection with futures trading. The laws, rules, and regulations governing SIMEX, SIMEX members, and SIMEX ETS are summarized below.

## **2. Exchange Approval**

The FTA vests sole authority for the approval of financial futures exchanges in Singapore in MAS. Before MAS may approve any entity as a futures exchange, it must be satisfied, that, among other things, the futures exchange has rules which ensure that: (i) standards for membership are imposed, including procedures for the expulsion, suspension, or discipline of Exchange members for conduct inconsistent with just and equitable principles in connection with the transaction of business; (ii) all obligations arising out of futures contracts entered into on that exchange will be met; (iii) floor trading practices are fair and properly supervised; (iv) adequate measures have been taken to prevent manipulation and excessive speculation; (v) adequate provision has been made to record and publish details of trading; (vi) a compensation fund or other system acceptable to MAS has been established to compensate customers who suffer loss as a result of theft by persons entrusted with customer funds; and (vii) the exchange is capable of carrying on business with due regard to the interests and protection of the public. In addition, MAS must be satisfied that the interests of the public will be served by approving the exchange's application.

MAS also is authorized by the FTA to approve an entity as a clearing house. MAS may approve a clearing house only if it is satisfied that: (i) the rules of the clearing house have satisfactory provisions for the registration of and guaranteeing to its members of the performance of futures contracts made in a futures market; and (ii) the interests of the public will be served by approving the clearing house's application.

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

The FTA includes provisions designed to prevent fraud and market manipulation and requiring risk disclosure and the segregation of customer funds. The FTA also imposes trading standards for SIMEX members that include, among other things, the requirement that Exchange members not trade ahead of customers or trade opposite customer orders absent the customer's prior consent and in accordance with Exchange Rules. Violations of these provisions may result in fines or imprisonment. The FTA also prohibits fraudulent or deceptive practices in connection with any futures or option contract and prohibits any person from fraudulently inducing trading in futures or option contracts. The FTA further requires SIMEX members to provide customers with a risk disclosure statement prior to opening an account and to obtain a signed and dated acknowledgment that the customer has received and understood the nature and contents of the disclosure document.

The FTA authorizes MAS or an exchange (with the approval of MAS) to establish position and trading limits to diminish or prevent excessive speculation. MAS regulations provide that the position limits for futures contracts listed on SIMEX shall be the quantity determined by SIMEX and approved by MAS. In addition, SIMEX maintains a large trader reporting system. Consistent with the FTA, SIMEX Rules include provisions to prevent, among other things, fraud, bucketing, market manipulation, the withholding of orders, trading ahead of or opposite customer orders and prearranged trades. SIMEX monitors and enforces compliance with these Rules, including those Rules applicable to SIMEX ETS, through its Trading Floor and Operations Department, Compliance Department, and Audit and Review Department.

#### **4. Recordkeeping and Reporting**

The FTA and regulations promulgated thereunder require licensed futures brokers to keep books and records that accurately disclose all customer transactions and account for the flow of funds for at least six years. SIMEX members must, among other things: (i) immediately credit customer accounts unless otherwise authorized by the customer; (ii) maintain customer accounts in such a way that the outstanding balance can be readily identified; and (iii) record the date on which each transaction occurred. The FTA also requires Exchange members to keep books and records that show all transactions with respect to customer funds held, received, or paid in or through the customer account, and to distinguish money held, received, or paid with respect to each customer. Similarly, Exchange members must keep books and segregated account records for all securities and properties held or received by the Exchange member for or on behalf of a customer in connection with any futures contracts concluded or cleared on a futures exchange. To ensure the accuracy of customer accounts, each SIMEX member must compute the following each day: (i) the total amount of customer funds on deposit in segregated accounts on behalf of customers; (ii) the total amount of customer funds required to be on deposit in segregated accounts on behalf of such customers; and (iii) the amount of the SIMEX member's residual interest in such customer funds. Exchange members also must file annual and quarterly statements of financial condition, that include, among other things, a computation of the Exchange member's adjusted net capital and information concerning the location of segregated customer funds. Futures exchanges and clearing houses also must keep records necessary for the proper recording of each transaction. MAS is authorized by the FTA to obtain such records and reports.

The FTA and regulations issued thereunder also mandate reporting requirements. For example, SIMEX members are required to provide confirmation statements and monthly account statements to their customers. The confirmation statement must include: (i) the name under which the Exchange member operates; (ii) a statement that the Exchange member is dealing as a principal, if applicable; (iii) the name and address of the person to whom the Exchange member gives the confirmation; (iv) the date on which the transaction took place and the name of the market; (v) an itemized list of the quantity and types of futures contracts subject to the confirmation; (vi) the price per unit; and (vii) the rate and amount of the commission charged. The monthly account statement required must include: (i) the positions and the prices at which the positions were acquired; (ii) the net unrealized profits or losses in all positions marked-to-market; (iii) the amount of funds belonging to the customer which are carried with the SIMEX member (*e.g.*, margin and surplus funds); and (iv) a detailed accounting of all financial charges and credits to the customer's account during the month.

#### **5. Review, Surveillance, and Enforcement**

MAS and SIMEX employ review, surveillance, and enforcement mechanisms designed to achieve compliance with their laws, rules, and regulations. SIMEX's Compliance Department ("Compliance") and Trading Floor Operations Department have principal responsibility for ensuring the trading integrity of SIMEX. Compliance supervises and monitors activities on the SIMEX trading floor and SIMEX ETS, and polices compliance with Exchange Rules. Compliance also reviews exception reports on a daily

basis to assist in detecting possible SIMEX Rule violations. Where necessary, investigations are initiated.

SIMEX's Audit and Review Department ("Audit and Review") regularly checks and monitors SIMEX's membership to ensure that members are financially sound and professional in their practice and dealings with customers. Audit and Review conducts regular audits to ensure compliance with all rules and regulations and to ensure that comprehensive internal controls are in place, and regularly reviews the financial statements of member firms and price movements in the market for risk management purposes. Audit and Review also carries out special on-site audits to ensure that Exchange members have reported positions accurately to the SIMEX Clearing House.

The 12-member team at the SIMEX Control Centre ("Centre") provides a round-the-clock single contact point between SIMEX and Exchange members using SIMEX ETS. It serves as the centralized point through which information flows and takes action concerning error trades, access to the system, system failures, and emergencies. The Centre monitors for adverse on-line trading activities and is able to identify out-of-range price entries and alert users of probable price disparities. The Centre is required to assess and respond to any request to bust error trades in accordance with prescribed policies and procedures. The Centre also is responsible for ensuring the operational readiness of SIMEX's emergency trading facility.

Where it appears to MAS that an exchange is failing to comply with, or is contravening, any provision of the FTA, MAS is authorized to direct the Exchange, among other things, to comply with that provision or to cease contravention of that provision. Any person that fails, without excuse, to comply with MAS directions may, upon conviction, be fined and/or imprisoned. MAS is also authorized to revoke the approval of an exchange if it: (i) ceases to operate as a futures exchange; (ii) is being wound up; (iii) is operating in a manner detrimental to the public interest; or (iv) has provided any materially false or misleading information to MAS.

Finally, MAS is authorized to take such emergency actions as are necessary to maintain or restore an orderly market. These powers include: (i) terminating or suspending trading on an exchange or through a clearing house; (ii) confining trading to liquidation of futures contracts; (iii) ordering the liquidation of all positions, or a part thereof, or a reduction in such positions; (iv) limiting trading to a specific price range, (v) modifying trading days or hours; (vi) altering conditions of delivery; (vii) fixing the settlement price at which contracts are to be liquidated; (viii) requiring any person to act in a specified manner in relation to trading in futures contracts or any class of futures contracts; (ix) requiring additional margins for any futures contracts; and (x) modifying or suspending any of the business rules of any futures exchange.

#### **E. Information-Sharing Arrangements**

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 SIMEX ETS directly from SIMEX. SIMEX has confirmed that it will provide the Commission with information

regarding activities covered by this No-Action Request. Additional information about SIMEX ETS and SIMEX members will be available to the Commission and its staff through information-sharing arrangements to which the Commission and MAS are parties. Specifically, MAS has confirmed on several occasions that it will share with the Commission information relevant to transactions on SIMEX.<sup>30</sup> MAS has confirmed specifically that its information-sharing arrangement with the Commission will apply to matters or information concerning SIMEX ETS terminals located in the United States.<sup>31</sup> Furthermore, the Commission and MAS 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").

## II. CONCLUSION

Consistent with the Commission's June 2 Order,<sup>32</sup> the Division has reviewed and considered SIMEX's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by SIMEX indicate that SIMEX's subsidiary, SIMEX America, maintains an office in the United States, but the staff of that office does not provide investment advice or solicit, receive, or direct trading orders from that office; SIMEX does not maintain order matching or clearing facilities in the United States; SIMEX is an approved futures exchange under the laws of Singapore; SIMEX, its members, and SIMEX ETS are subject to oversight in Singapore by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime; SIMEX ETS adheres to the IOSCO Principles; and the Commission and MAS are parties to various information-sharing arrangements applicable to SIMEX, its members, and the activities of SIMEX ETS.<sup>33</sup>

Based specifically upon these and other representations made by SIMEX in support of its No-Action Request, the Division has determined that granting no-action relief to SIMEX and its members, 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 SIMEX or its members solely based upon SIMEX's failure to obtain contract market designation pursuant to Sections 5 and 5a of the CEA if: (i) SIMEX members trade for their proprietary accounts through SIMEX ETS terminals in the United States; (ii) SIMEX members who are registered with the Commission as FCMs or who are Rule 30.10 Firms submit orders from United States customers for transmission to SIMEX ETS; and/or (iii) SIMEX members who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders through AORSS from United States customers for submission to SIMEX ETS.

The Division's no-action position is applicable only to the contracts described below, and shall become effective with respect to such contracts as follows:

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

- Japanese Government Bond futures;
- Nikkei 225 Stock Index futures;
- Nikkei 300 Stock Index futures;
- SIMEX MSCI Taiwan Stock Index futures;
- Three-Month Euroyen LIBOR futures;
- Three-Month Euroyen TIBOR futures;

(ii) The relief will become effective with respect to the following contracts immediately upon such contracts becoming eligible for trading on SIMEX ETS:

- Brent Crude Oil futures;
- Japanese Government Bond options;
- SIMEX MSCI Hong Kong+ Stock Index futures;
- Options on SIMEX MSCI Taiwan Stock Index futures;
- SIMEX Three-Month SGD Interest Rate futures.
- Options on Nikkei 225 Stock Index futures;
- Options on Nikkei 300 Stock Index futures;
- Three-Month Eurodollar futures;
- Three-Month Eurodollar options;
- Three-Month Euroyen LIBOR options;
- Three-Month Euroyen TIBOR options;

(iii) The relief will become effective with respect to the following contracts when SIMEX receives a no-action position from Commission staff that would permit the offer and sale of futures contracts on such foreign stock indices in the United States:

- SIMEX Dow Jones Thailand Stock Index Futures; and
- SIMEX MSCI Singapore Stock Index Futures.

If additional contracts or products become available for trading through SIMEX ETS and SIMEX wishes to make such contracts or products available in the United States through SIMEX ETS, SIMEX must request in writing and receive supplementary no-action relief prior to offering such contracts or products. In the event that SIMEX makes a supplemental request for relief, SIMEX 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 SIMEX or SIMEX ETS 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 SIMEX 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 SIMEX ETS to which SIMEX wishes 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 SIMEX 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 SIMEX ETS 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 NFA rules, and does not excuse SIMEX 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 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.<sup>34</sup> If 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.<sup>35</sup>

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 SIMEX ETS 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 SIMEX ETS 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 an AORS to transmit orders to SIMEX ETS will 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:

- SIMEX will continue to satisfy the criteria for approval as a futures exchange under the applicable laws of Singapore with respect to transactions effected through SIMEX ETS.
- The laws, systems, rules, and compliance mechanisms of Singapore applicable to SIMEX will continue to require SIMEX to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of MAS.
- SIMEX and SIMEX ETS will continue to adhere to the IOSCO Principles as updated, revised, or otherwise amended.
- Only SIMEX members will have direct access (*i.e.*, not through an AORS) to SIMEX ETS, and SIMEX will not provide, and will take reasonable steps to prevent, third parties from providing such access to SIMEX ETS to persons other than members.<sup>36</sup>
- All orders that are transmitted through SIMEX ETS by any member that is operating pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for "proprietary accounts," as defined herein, of such member.
- All orders for United States customers accepted through an AORS and/or transmitted by members through SIMEX ETS will be intermediated by a member that is either registered with the Commission as an FCM or is a Rule 30.10 Firm.
- SIMEX will require each current and future Exchange member that is not registered with

the Commission as an FCM to file with SIMEX a written representation, executed by a person with the authority to bind the member, stating that as long as the SIMEX member operates pursuant to the no-action relief provided herein, the member agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the no-action relief. SIMEX will obtain the foregoing representation before it permits the relevant member to operate pursuant to the no-action relief and will maintain the representation as long as the member is operating pursuant to that relief. SIMEX will make such representations available to the Commission upon the request of a Commission representative.

- SIMEX will require each current and future Exchange member that is not registered with the Commission as an FCM to file with SIMEX a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of "communications"<sup>37</sup> that are issued by or on behalf of the Commission. SIMEX will obtain the foregoing appointment before it permits the relevant member to operate pursuant to the no-action relief and will maintain the appointment as long as the relevant member is operating pursuant to that relief. SIMEX will make such appointments available to the Commission upon the request of a Commission representative.

- SIMEX will require each current and future Exchange member that is not registered with the Commission as an FCM to file with SIMEX a written representation, executed by a person with the authority to bind the member, stating that as long as the SIMEX member operates pursuant to the no-action relief provided herein, the SIMEX member 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 SIMEX ETS is installed or used in the United States. SIMEX will obtain the foregoing representation before it permits the relevant member to operate pursuant to the no-action relief and will maintain the representation as long as the relevant member is operating pursuant to that relief. SIMEX will make such appointments available to the Commission upon the request of a Commission representative.

- SIMEX will file with the Division 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 by or on behalf of the Commission. SIMEX will file the foregoing representation before it operates pursuant to the no-action relief and will maintain the representation as long as SIMEX or SIMEX ETS operate pursuant to that relief.

- SIMEX 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 SIMEX ETS, the total trade volume originating from SIMEX ETS terminals assigned to each of SIMEX's members in the United States<sup>38</sup> (including volume originating from AORSs that route orders to SIMEX ETS) compared with the total worldwide trade volume for such products traded through SIMEX ETS and the total worldwide trade volume for such products traded on SIMEX generally.
- A listing of the names, NFA ID numbers (if applicable) and main business addresses in the United States of all members that have access to SIMEX ETS in the United States.
  - SIMEX will promptly provide the Division with written notice of the following:
    - Any material change in the information provided in its No-Action Request, including any information contained in the documents submitted in support thereof.<sup>39</sup>
    - Any material change in SIMEX's Rules or the laws, rules, and regulations in Singapore relevant to futures and options.
    - Any matter known to SIMEX or its representatives that, in SIMEX's judgment, may affect SIMEX's financial or operational viability, including, but not limited to, any significant system failure or interruption.
    - Any default, insolvency, or bankruptcy of any SIMEX member known to SIMEX or its representatives that may have a material, adverse impact upon the condition of SIMEX, SIMEX's clearing system, or upon any United States customer or firm.
    - Any known violation by SIMEX or any SIMEX member of the terms or conditions of the no-action relief provided herein.
    - Any disciplinary action taken by SIMEX against any of its members 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 SIMEX ETS or an AORS to submit orders to SIMEX ETS.
    - Satisfactory information-sharing arrangements between the Commission and MAS will remain in effect.
    - The Commission will be able to obtain sufficient information regarding SIMEX, SIMEX ETS, and SIMEX members operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of SIMEX or its members for the relief, to enforce compliance with the terms and

conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.

- SIMEX will provide directly to the Commission information necessary to evaluate the continued eligibility of SIMEX and its members for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations.
- SIMEX employs reasonable procedures, to be determined by SIMEX, 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 SIMEX'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 SIMEX's activities in the United States to ascertain whether SIMEX's presence in the United States has increased to a level that might warrant reconsideration of the no-action relief.

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

If you have any questions regarding this correspondence, please contact me or Gregory Collett at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

GSC/gc

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

## National Futures Association

Henry J. Matecki, T&M, Chicago

1 For purposes of your No-Action Request and the relief provided herein, references to SIMEX members shall include "affiliates" of such members to the extent that such affiliates are granted access by the member to SIMEX ETS. An "affiliate" of a member shall mean any person that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; or (iii) is owned by a third person that also owns 50% or more of the member. SIMEX represents that, as a condition of access to SIMEX ETS trading terminals, affiliates will be required to comply with all relevant SIMEX Rules, and members will be responsible to SIMEX for ensuring such compliance. For purposes of this letter and the no-action relief provided herein, the term "SIMEX Rules" shall include SIMEX's Rules; Memorandum and New Articles of Association; any circulars, notices, or similar instructions issued by SIMEX; and any other documents governing SIMEX or its members.

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 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).

4 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).

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). 17 C.F.R. §30.1(c) (1999).

6 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.

7 7 U.S.C. §§ 1 *et seq.* (1994).

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

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

10 As stated below, the no-action relief provided herein is contingent upon the accuracy of the representations made by SIMEX 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.

11 The FTA governs Singapore's futures industry. Among other things, it outlines the requirements for becoming an approved futures exchange.

12 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 SIMEX ETS to persons located outside of the United States.

13 Specifically, the Three-Month Eurodollar, Three-Month Euroyen TIBOR, Three-Month Euroyen LIBOR, and Japanese Government Bond futures contracts are available for trading by SIMEX members through the MOS Link. The Division notes that the relief provided by this no-action letter does not permit Rule 30.10 Firms to effect transactions in CME contracts for United States customers through the MOS Link.

14 SIMEX conducts all of its United States activities through SIMEX America.

15 Only Corporate Clearing Members are shareholders of SIMEX; each Corporate Clearing Member must own at least one share in SIMEX. SIMEX demutualized and merged with the Stock Exchange of Singapore Ltd. and the Securities Clearing and Computer Services (Pte) Ltd. on December 1, 1999. Although this event changed the structure and organization of SIMEX, SIMEX represents that the demutualization and merger did not alter any of the regulatory safeguards or protections described in the representations made to the Division in connection with this No-Action Request. SIMEX further represents that it will provide the Commission with information on the demutualization and merger process as soon as it becomes available.

16 As discussed further in Section I.D., MAS is SIMEX's primary regulator in Singapore.

For informational purposes only, the Division has indicated the United States dollar equivalent of any sum of Singapore dollars referenced herein, based upon the exchange rate of December 15, 1999 (US\$1 = SG\$1.676). The Division notes, however, that the financial resource requirements for SIMEX membership are not limited in any way to the United States dollar equivalents that have been provided in this letter.

18 PARISBOURSE and the CME use the NSC system, although the CME uses it under the name GLOBEX®2.

19 Where approval for any particular futures contract, option thereon, or security has not been obtained from a specific jurisdiction's regulator, SIMEX will block the Exchange members' Terminal Operators in that jurisdiction from trading that contract. Further, although SIMEX ETS terminals located in a foreign jurisdiction will not be programmed to reject orders from United States customers for contracts prohibited under United States law, SIMEX members may not lawfully offer or sell such contracts to United States customers.

For example, a foreign futures contract (and option thereon) based upon a foreign stock index may not be offered or sold to persons in the United States unless the 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 contracts based upon single equities may not be offered or sold to persons within the United States.

20 The rules governing SIMEX ETS trading procedures are discussed further in Section I.D.

21 SIMEX contemplates eventually permitting good-until-cancelled ("GTC") orders, immediate-and-cancel orders, and fill-or-kill orders. GTC orders, rather than being cancelled automatically at the end of the trading session, are held until a specified date (unless withdrawn by the trader) or until the contract month they relate to expires. Immediate-and-cancel orders are executed against any existing orders, and any unfilled portion of the order is immediately cancelled. Fill-or-kill orders must be filled in their entirety against any existing orders; otherwise, the order is cancelled.

22 Although SIMEX currently operates no SIMEX ETS terminals outside of Singapore, SIMEX represents that it will monitor for any timing differences, and it will have procedures in place to take corrective action if timing differences become material. In addition, the system has been designed to avoid slowdowns and any single point of failure. For example, each member is provided a bandwidth allocation. In the case of a slowdown, the member experiencing the slowdown automatically is provided with additional bandwidth.

23 Although no option contracts currently are traded on SIMEX ETS, SIMEX contemplates eventually listing options for trading on the system. In the case of options, retained order information will include the class of the option and the strike price.

24 The IOSCO Principles were developed by Working Party 7 ("Working Party"), the mandate of which 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 (1990). On March 12, 1991, MAS endorsed the November 1990 Resolution of IOSCO's President's Committee adopting the IOSCO Principles.

25 See *Foreign Futures and Option Transactions*, 54 Fed. Reg. 806 (1989).

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).

27 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.

28 See *Foreign Futures and Options Transactions*, 64 Fed. Reg. 50248 (Sept.16, 1999).

29 SIMEX represents that cross trade orders will be executed in a manner similar to the way in which they are executed on Globex.

30 See, e.g., Letter from Koh Beng Seng, Deputy Managing Director, MAS, to Andrea M. Corcoran,

Director, Division of Trading and Markets, CFTC (Jan. 22, 1994); Letter from Tharman Shanmugaratnam, Deputy Managing Director, MAS, to Laurie Plessala Duperier, Special Counsel, Division of Trading and Markets, CFTC (Mar. 5, 1999).

31 Letter from Yeo Lian Sim, Assistant Managing Director, Capital Markets, MAS, to I. Michael Greenberger, Director, Division of Trading and Markets, CFTC (Oct. 4, 1999).

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

33 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 SIMEX 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.

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

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

36 As stated above, "members" includes those persons identified in footnote 1 for purposes of this no-action letter and the conditions imposed upon the relief provided herein.

37 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.

38 SIMEX represents that SIMEX ETS is capable of identifying trades that have originated from a terminal located in the United States and will report such trades as "United States trades." However, orders that have been routed from a customer that is located outside the United States through a United States-located terminal also will be reported as "United States trades." Conversely, all trades that originate from a SIMEX ETS terminal that is located outside of the United States will be reported as "non-United States trades," although such trades may actually have originated from a customer using an AORS located in the United States.

39 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: SIMEX's membership criteria; the location of SIMEX's management, personnel, or operations (particularly changes that may suggest an increased nexus between SIMEX's activities and the United States); the basic structure, nature, or operation of SIMEX ETS; or the regulatory or self-regulatory structure applicable to SIMEX, SIMEX Members, or SIMEX ETS.