



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 10-20
No-Action
May 11, 2010
Division of Market Oversight

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One Bishops Square
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Re: International Maritime Exchange ASA, Request for No-Action Relief from
Contract Market Designation and Derivatives Transaction Execution Facility Registration
Requirements

Dear Ms. Jackson:

This is in response to your letter dated September 30, 2009 to the Division of Market Oversight (Division) of the Commodity Futures Trading Commission (CFTC or Commission).¹ By this correspondence, you request, on behalf of the International Maritime Exchange ASA (Imarex or the Exchange) that the Division confirm that it will not recommend that the Commission take enforcement action against Imarex or its members² if Imarex does not seek designation as a contract market (DCM) pursuant to Section 5 of the Commodity Exchange Act (CEA or Act) or registration as a derivative transaction execution facility (DTEF) pursuant to Section 5a of the Act, or Commission rules thereunder, in connection with the installation and use by trading members in the United States³ of Imarex's electronic trading and order matching

¹ Letter from Carolyn H. Jackson, Esq., Allen & Overy LLP, to Steven Schoenfeld, Director, Division of Market Oversight, Commodity Futures Trading Commission (September 30, 2009).

² For purposes of this letter and the relief provided herein, references to a member of Imarex shall include any affiliate of any Imarex member that has been granted access by the Imarex member to the trading system. An affiliate of an Imarex member shall mean any person, as that term is defined in section 1a(28) of the Commodity Exchange Act, that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; or (iii) is owned 50% or more by a third person that also owns 50% or more of the member. Imarex represents that, as a condition of access to the trading system, such affiliates would be required to comply with the Imarex Rulebook and that Imarex members remain responsible to Imarex for ensuring their affiliates' compliance.

³ For purposes of this letter and the relief provided herein, the term "United States" or "U.S." shall include the United States, its territories and possessions.

system (Trayport) and application program interface (API) (collectively, the trading system). (no-action request).

Specifically, Imarex wishes to make its trading system available through direct access⁴ from the United States to trading members that:

1. trade in the U.S. for their proprietary accounts, as defined in Commission Regulation 1.3(y), on Trayport and Market Place Services (MPS)⁵ and that qualify as “eligible contract participants” as defined in Section 1a(12) of the Act (ECP);⁶
2. are registered with the Commission as futures commission merchants (FCM) or are exempt from such registration pursuant to Commission Rule 30.10 (Rule 30.10 Firms)⁷ and that submit orders for U.S. customers⁸ that qualify as ECPs to the trading system for execution;
3. are registered with the Commission as commodity pool operators (CPO) or commodity trading advisors (CTA), or are exempt from such registration pursuant to Commission Rules 4.13 or 4.14, and that submit orders for execution on behalf of U.S. pools they operate that qualify as

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

⁵ MPS is Imarex’s telephone-based service for trading. The Division recognizes that MPS, as described below, is not direct access, but is describing MPS in this relief letter based upon its inclusion in the request for no-action relief.

⁶ As further discussed below, because Imarex currently operates as an Exempt Commercial Market (ECM) pursuant to Section 2(h)(3) of the Act, Imarex members currently must qualify as “eligible commercial entities” as defined in Section 1a(11) of the Act (ECE). Imarex represents that it intends, subsequent to the issuance of this no-action relief letter, to modify its membership criteria for both U.S. and non-U.S. trading members.

⁷ Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (SRO) can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the Act, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act.

Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief to a foreign regulatory or self-regulatory authority are the authority's: (i) requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States. Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules, 17 C.F.R. Part 30, Appendix A (2009).

⁸ For purposes of this letter and the relief provided herein, the term “United States customers” shall have the same meaning as the term “foreign futures or foreign options customers” as it is defined in Rule 30.1(c).

ECPs or accounts of U.S. customers that qualify as ECPs, for which they have discretionary authority, respectively, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees, without limitation, all such trades of the CPO or CTA effected through submission of orders on the trading system; and

4. are registered with the Commission as FCMs or are Rule 30.10 Firms that accept orders through automated order routing systems (AORS)⁹ from U.S. customers that qualify as ECPs for transmission to the trading system.¹⁰

As you know, the Commission, on October 27, 2006, issued a policy statement that affirmed the use of the no-action process to permit foreign boards of trade to provide direct access to their electronic trading systems from the U.S. (Policy Statement).¹¹ The Division has reviewed Imarex's no-action request and the materials submitted in support thereof in accordance with the Policy Statement and the June 2, 1999, Commission Order (June 2 Order) which first directed the Commission staff to consider requests from foreign exchanges for interim no-action relief to allow them to provide direct access to their trading systems from the U.S.¹²

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

- General information about Imarex and the Imarex Group, including its history, location and organization;
- Information about membership criteria;

⁹ For purposes of this letter, the term "AORS" means any system of computers, software or other devices that allows entry of orders through another party (an intermediary) for transmission to an Imarex computer, the Imarex API, or other automated device where, without substantial human intervention, trade matching or execution takes place.

¹⁰ Imarex has requested a no-action position to provide immediate, interim relief for it and its members pending any adoption of rules or guidelines by the Commission regarding foreign boards of trade that wish to permit direct access to their electronic trading systems from the United States. Imarex has accordingly requested that this letter and the relief provided herein be automatically modified in the event that the Commission or its staff adopts generally applicable rules or guidelines regarding the issues addressed herein, and agrees that Imarex would be subject to those rules or guidelines in such an event. Imarex has additionally acknowledged that, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of any no-action relief.

¹¹ Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 Fed. Reg. 64443 (November 2, 2006).

¹² Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade, 64 FR 32829, 32830 (June 18, 1999).

- Information about various aspects of Imarex's trading system (including the order-matching system, the audit trail, response time, reliability, security, and adherence to the IOSCO Principles) and information about settlement and clearing;
- Information about Imarex's home country regulatory regime and information regarding Imarex's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance);
- A description of current information-sharing agreements to which Imarex and its regulator are parties;
- Imarex and NOS Clearing ASA (NOS Clearing or NOS) Rulebooks;
- Imarex's Articles of Association
- The Norwegian Act on Regulated Markets of June 29, 2007 (Stock Exchange Act);
- The Stock Exchange Regulations;
- The Norwegian Securities Trading Act of June 29, 2007 (STA 2007);
- Regulations to the Securities Trading Act (Securities Trading Regulations);
- Commission Order dated January 11, 2002 re NOS: Recognition of Multilateral Clearing Organization;
- Certification of an authorized representative of Imarex as to the truth and completeness of the material facts set forth in the request for no-action relief; and
- An undertaking of authorized representatives of Imarex to notify the Commission staff if, prior to the issuance of no-action relief requested, any material representation made in such request ceases to be true and complete.

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

Representations made by Imarex regarding the structure of Imarex, Imarex's activities in the U.S., Imarex's membership criteria, Imarex's electronic trading and order matching system, the regulatory regime in Norway, and the information-sharing arrangements applicable to Imarex and its regulator are summarized in Sections I - VII below. For purposes of this response to the no-action request, the Division has relied upon Imarex's representations and information

provided by Imarex and has not conducted an independent review to confirm their accuracy.¹³ Commission staff, however, did conduct a due diligence on-site visit at Imarex and NOS Clearing on January 12, 2010, to meet Exchange and clearing staff and discuss issues relevant to the request for no-action relief with respect to Imarex's activities. Separately, Commission staff met with representatives of Imarex's regulatory authority on January 13, 2010, and discussed, among other things, the Norwegian regulatory approach to the licensing of regulated markets, such as Imarex, and ongoing oversight thereof.

I. GENERAL INFORMATION REGARDING IMAREX

A. Imarex and the Imarex Group

Imarex is a Norwegian public limited company authorized by the Norwegian Ministry of Finance as a "regulated market" under the Norwegian Act on Regulated Markets of June 29, 2007 (the Stock Exchange Act).¹⁴ Imarex is regulated by Finanstilsynet, the Norwegian Financial Supervisory Authority. Imarex lists cash-settled derivatives contracts related to prices quoted for freight and bunker fuel, and acts as a central market for trading in the listed products. Imarex, established on the initiative of the former Chief Executive Officer (CEO) of the Imarex Group, a former freight broker, with the support of several major Norwegian shipping companies, was incorporated as a public limited liability company under the laws of Norway on February 25, 2000. Imarex was licensed by the Ministry of Finance upon recommendation by the NFSA pursuant to the Exchange Act of 2001 and became operational as a regulated market in March 2002.¹⁵ Initially tanker derivatives were traded, but eventually dry cargo and bunker fuel derivatives were added.

Imarex is wholly owned by Imarex ASA (the Imarex Group), a Norwegian public limited liability company whose shares are listed on the Oslo Stock Exchange and which includes, in addition to Imarex, the main wholly-owned subsidiaries NOS Clearing, Nena AS¹⁶ and Spectron Group Limited (Spectron).¹⁷ Imarex currently employs approximately 40 people and is managed

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

¹⁴ The Stock Exchange Act superseded the Norwegian Stock Exchange Act of 2001 (the Exchange Act 2001) under which Imarex first became subject to regulation as a "regulated market." Imarex, as a public limited liability company, is regulated by the Act on Public Limited Liability Companies 1997 No 45. Its operation as a regulated market, however, is regulated by the Stock Exchange Act.

¹⁵ Prior to its licensing, Imarex operated as an unregulated trading facility.

¹⁶ Nena AS is an independent European energy analysis entity that provides price prognoses and fundamental market analyses to major utilities and trading entities throughout Europe.

¹⁷ In 2008 Imarex ASA acquired the London-based Spectron, which operates one of the world's largest marketplaces for energy, thereby substantially increasing the footprint of the Imarex Group in the commodity

by a Managing Director (MD), who has held the position since January 2008 and has over 25 years of experience in the financial derivatives markets in London and Oslo, working primarily with financial derivatives in the oil and energy sector.

Imarex is governed by a five-member Board of Directors (Board), the minimum number mandated by the Stock Exchange Act, which also requires that all directors have relevant qualifications and professional experience, have no criminal record, and have not behaved in such a way as to suggest an inability to act properly as a director.¹⁸ All members of the Board have been evaluated and have been found to be fit and proper for their positions by Finanstilsynet. The directors are elected at the annual general shareholders meeting of Imarex by Imarex Group, the 100% owner of Imarex. The Imarex Group Board has eight members, of which three are elected by and among the employees of Imarex Group and the remaining five are elected by majority vote at the general shareholders meeting of Imarex Group.¹⁹ The Imarex Group Board complies with customary corporate governance requirements for listed companies.

Since Imarex was founded, the Imarex Group has grown from a small Norwegian-based freight derivatives market place to a large diversified group providing an electronic trading platform and clearing for physical and derivative commodity transactions worth over \$200 billion per year and is one of the fastest growing commodity markets in the world. In 2008, the Imarex Group reported revenues of Norwegian Kroner (NOK) 660 million (approximately \$116 million) and earnings before interest, taxes, depreciation and amortization of NOK 114 million (approximately \$20 million). Of this, Imarex's revenue was NOK 132 million (approximately \$23 million) and its profit before tax was NOK 23 million (approximately \$4 million).

The trading and clearing customers of the Imarex Group include all the relevant commodity trading houses as well as the world's largest ship owners, oil refiners, banks and financial investment institutions. The Imarex Group is headquartered in Oslo, and has subsidiaries in England, Singapore, Germany, Switzerland, Italy, Norway, and the U.S. In addition to the Imarex-operated regulated marketplace for freight derivatives, the Imarex Group includes a multilateral trading facility for energy derivatives operated by Spectron Energy Services AS, regulated by the UK Financial Services Authority. The Imarex Group currently has approximately 270 employees in the combined companies located in 12 cities around the world.

markets. Spectron's marketplace permits trading in both the cash market and in financially- and physically-settled futures contracts.

¹⁸ Section 6-11a of the Act on Public Limited Liability Companies 1997 No 45 also requires that a board of directors reflect each gender and, in the case of a board of directors with five members, there must be at least two members of each gender. There are no additional requirements with respect to representation of shareholders or the public.

¹⁹ Imarex ASA has approximately 525 shareholders.

B. Products

Imarex proposes to make available for trading by direct access from the U.S. the products admitted to trading in Trayport (the listed products), all of which are cash-settled. Imarex represents that all listed products would be futures contracts pursuant to the CEA and rules promulgated thereunder. Imarex has two categories of listed products:

1. futures contracts related to prices quoted for shipping freight worldwide, published by the Baltic Exchange and Platts; and
2. futures contracts related to bunker fuel price references published by Platts.

The listed products qualify as financial instruments under the STA 2007, implementing the Markets in Financial Instruments Directive (MiFID)²⁰. Imarex's license to list financial instruments, issued by the Ministry of Finance based upon the recommendation of the NFSA, is limited to certain types of commodity derivatives and derivatives relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics. Imarex cannot therefore list shares or bonds or derivatives contracts with shares or bonds as the underlying. The terms of these contracts generally have no nexus to the United States, nor do they, at this time, raise any particular U.S. regulatory interest or need for enhanced information-sharing or market surveillance.²¹

C. Presence in the United States

Imarex filed notice with the Commission as an ECM on June 15, 2001 and received an acknowledgment of its notice by letter from the Division on September 14, 2001. It is currently operating as an ECM. In addition, NOS Clearing was recognized by the Commission on November 11, 2002 as a Multilateral Clearing Organization (MCO) pursuant to the Federal Deposit Insurance Corporation Improvement Act, Section 409 of which provides that an MCO for over-the-counter derivatives, which includes those that are exempt from regulation pursuant to Section 2(h) of the CEA, may operate in the U.S. if the MCO is supervised by a foreign financial regulator that the Commission, or one of several other U.S. financial regulators, has determined satisfies appropriate standards. The Commission issued its order regarding NOS on January 11, 2002 and it was published in the *Federal Register* on January 17, 2002.²²

²⁰ MiFID, which became effective on November 1, 2007, is a European Union (EU) directive which provides a harmonized regulatory regime for investment services across the 30 member states of the European Economic Area (the 27 member states of the EU plus Iceland, Norway and Liechtenstein) (EEA). The main objectives of MiFID are to increase competition and consumer protection in investment services.

²¹ However, the Division notes that the New York Mercantile Exchange (NYMEX), a CFTC-regulated DCM, offers several of the same contracts. Although there is no direct linkage between them, both the NYMEX and the Imarex contracts settle based upon the same indices published by the Baltic Exchange or Platts. See note 69.

²² 67 Fed. Reg. 2419 (January 17, 2002).

To properly serve its trading members located in the U.S., Imarex has maintained an office in Houston, Texas since 2006 operating as Imarex, Inc. (the Houston Office), a wholly-owned subsidiary of Imarex. The Houston Office currently employs two individuals whose function is identical to the MPS function at the Exchange in Norway. Thus, U.S.-based trading members currently can place orders by telephone to the Houston Office, subsequent to which the Imarex employee places the order into the trading system for the trading member.

Pursuant to a grant of direct access no-action relief, Imarex and NOS intend to permit non-natural persons resident in the U.S. to act as trading members with Imarex and as clearing members with NOS with direct access to the trading and clearing systems of Imarex and NOS, respectively. All such non-natural persons will be required to be ECPs. Imarex does not intend to permit any individuals, *i.e.*, natural persons resident in the U.S., regardless of whether or not they are ECPs, to act as trading members. Entities located in the U.S. will have access to Imarex's trading systems, either directly through Trayport or via telephone through MPS, and will have access to NOS's clearing system, either directly as (direct) clearing members (DCM) or general clearing members (GCM) or indirectly as clients of a GCM, for clearing of electronic transactions and MPS-brokered transactions in the listed products. Imarex's English language website is located at: <http://www.exchange.imarex.com>.²³

II. MEMBERSHIP

A. Introduction

Direct access to the Imarex markets is limited to trading members, who may trade for their own accounts or for the accounts of clients. Trading members, as well as their clients for whom they act, will be required to be ECPs if resident in the U.S. In addition, trading on Trayport may not commence until NOS Clearing has approved the trading member and opened a clearing account for registering the trading member's trades.

B. Trading (Exchange) Members

Trading members are entities that have entered into a Trading Membership Agreement with Imarex and have satisfied Imarex's membership requirements. No individuals, *i.e.*, natural persons, whether U.S. resident or not, are permitted to be trading members. In executing the Trading Membership Agreement the member submits to and agrees to be bound by the Imarex Exchange Trading Rulebook (Imarex Rulebook).

The basic criteria that members of regulated markets must meet are set out in Section 26(3) of the Stock Exchange Act, which implements the MiFID. A regulated market may admit investment firms and credit institutions as members. A member must have a prudent level of

²³ Imarex's website includes general information relating to the Exchange, its corporate organization, the contracts traded thereon, and the operation of the trading system and of the market. In addition, Imarex's website provides the public with access to various market data and a link to the Imarex ASA website which includes a link to the Imarex Rulebook.

funds, an appropriate organization, sufficient technical systems and otherwise be deemed fit to participate in trading with respect to the obligations that membership represents.²⁴ Imarex's trading membership criteria are stricter and go further than those stipulated in the Stock Exchange Act in that Imarex, which operates as an ECM, currently requires that all trading members, whether U.S. resident or not, be ECEs.²⁵ Imarex represents that all trading members of Imarex are experienced professionals in the derivatives markets and fit for membership under the above criteria.

The Imarex Rulebook requires entities admitted to trading membership to demonstrate to Imarex that they are fit and proper for trading pursuant to MiFID requirements. A trading member that is not an EEA investment firm or credit institution must at all times have a registered place of business in the jurisdiction in which the trading and clearing activities of the trading member will be conducted. A trading member must at all times be appropriately authorized, or sufficiently regulated with respect to capital adequacy, fitness, and probity. Imarex considers a person to be appropriately authorized or sufficiently regulated for this purpose if it is an EEA investment firm or credit institution which has appropriately exercised a right under a single market directive applicable in the EEA to establish a branch or provide services in Norway; or a person other than an EEA investment firm or credit institution which has such licenses, registrations, authorizations, and approvals required in order for it to trade on the markets.

An entity seeking trading membership must submit a written application and represent that it: (i) has the necessary power and authority and legal right to enter into the Trading Membership Agreement, to effect trading in accordance with the Imarex Rulebook, and to perform its obligations with respect to Exchange trading; (ii) has taken all necessary actions to authorize the execution, delivery, and performance of the Trading Membership Agreement and the related contracts entered into; and (iii) holds any public licenses needed to conduct its affairs under the Imarex Trading Rules.

Imarex represents that it intends, subsequent to the issuance of this no-action relief letter, to modify its membership criteria for both U.S. and non-U.S. trading members as specified in its Rulebook. All U.S. trading members and any client on whose behalf the U.S. trading member is trading will be required to be ECPs. Imarex further represents that it will require that all non-U.S. trading members trading for their own accounts qualify as either an ECP or as a "professional client" as defined in STA 2007 implementing MiFID. According to STA 2007, professional clients are either "eligible counterparties" (banks, investment firms, etc.) or companies satisfying at least two of the following three criteria: (i) balance sheet of no less than

²⁴ A regulated market may also admit other legal and physical persons as members, subject to such person: (a) being deemed a fit person; (b) having sufficient expertise with respect to trading and transactions; (c) having, where appropriate, sufficient organizational arrangements in place; and (d) having sufficient financial resources with respect to the position the person intends to assume in the market.

²⁵ As further discussed below, Imarex's membership criteria will be modified once this no-action relief is granted and the Exchange ceases to operate as an ECM. Until then, Imarex will require both U.S. and non-U.S. trading members to be ECEs as required under the current Rulebook and in compliance with Imarex's status as an ECM.

EUR 20 million (approximately \$ 29 million); (ii) annual revenues (turnover) of no less than EUR 40 million (approximately \$ 58 million) and equity of no less than EUR 2 million (approximately \$ 2.9 million); or (3) other institutional investors specialised in investing in financial instruments.²⁶ In addition, all non-U.S. trading members acting on behalf of clients will remain subject to the current requirement that they be licensed as investment firms and as such be “eligible counterparties” as defined in STA 2007.²⁷

C. Clearing Members

To trade listed products directly on the Trayport trading platform, a trading member must also be a clearing member of NOS, meeting the requirements for clearing with respect to the relevant contracts. NOS offers two categories of clearing membership: DCMs and GCMs. DCMs are approved to clear trades for their own account. GCMs are approved to clear trades for their own account and for the accounts of clients.²⁸ Clearing members will either also be trading members of Imarex or meet the requirements for clearing members set out in the NOS Rulebook, which includes the requirement that the GCM be licensed by and subject to supervision from a relevant public or similar independent authority.

Pursuant to the NOS Rulebook, a clearing member must, among other things, (i) have one or more traders/trading representatives (defined below); (ii) have employees or contracted advisers who are experienced in trading and clearing of derivative products cleared by the clearing member; (iii) have all licenses, registrations, authorizations and approvals necessary or desirable (in the opinion of NOS) in order to participate in the markets; (iv) have existed for at least one year; (v) be able to pay its debts as they fall due; (vi) have a minimum net capital equivalent to EUR one million (approximately \$ 1.4million); (vii) establish at least one clearing account with NOS (a GCM must establish at least one client clearing account and may also establish one or more proprietary clearing accounts); (viii) establish at least one margining account, collateral account and settlement account; (ix) provide base collateral in accordance with the NOS Rulebook; and (x) not be in default of the terms of a contract or other obligation to NOS. NOS may, in its sole discretion, waive or impose such additional clearing membership requirements with respect to an applicant for clearing membership or existing clearing member as it sees fit.

²⁶ Imarex represents that it believes that non-U.S. entities should be able to make the representations with respect to professional client status even though, in certain instances, the criteria are more stringent than qualifying as an ECP.

²⁷ Imarex represents that it will file a notice to the Commission to withdraw as an ECM no later than five business days following receipt of this no-action relief letter. Imarex further represents that it will update its Rulebook to incorporate the new membership criteria and post such updated Rulebook on its website by no later than three business days following acknowledgement from the Division of its withdrawal as an ECM.

²⁸ Such client trades are registered in “omnibus” client accounts or individual client accounts established in the name of the GCM. Thus, a contractual relationship exists between that GCM and NOS, and not among the individual clients and NOS.

As part of the membership process, the applicant must submit proper documentation, including its annual report. NOS evaluates the applicant's financial soundness based mainly on the applicant's annual report and audited financial statements, in addition to any available quarterly or semi-annual accounts or reports.²⁹ The financial evaluation is used to decide the size of the initial call for collateral which must be posted by the applicant before trading and clearing may commence (base collateral). The base collateral is a fixed amount set to cover overnight risk, *i.e.*, risk in excess of daily variation margin and mark-to-market settlements. Pursuant to the NOS Rulebook, the minimum base collateral is set at EUR 100,000 (approximately \$ 140,000). If the applicant is unable to post the base collateral that NOS requires, NOS will reject the application. NOS continuously monitors the member's financial situation; if NOS, in its sole discretion, determines that a member fails to maintain appropriate financial soundness, and/or its equity ratio is low, NOS will increase the base collateral to a level which it finds is sufficient for clearing the participant's level of trading activity. All active members are subject to an annual review and must, at a minimum, provide their annual reports.

A clearing member must have all licenses, registrations, authorizations and approvals necessary in order to participate in the markets. Each clearing member must appoint at least one trader or trading representative. A trader must be an officer or employee of the clearing member making the appointment. A trading representative is a third party agent of the appointing clearing member. A clearing member may not trade on the market except through a validly appointed trader or trading representative. Each clearing member is responsible for all acts and omissions of a trader or trading representative appointed by it with respect to trading and clearing.

All contracts traded at Trayport (electronic transactions) are cleared by a process of novation through which NOS replaces the buyer of the contract as counterparty to the seller and replaces the seller of the contract as counterparty to the buyer. In addition, trading members may trade via the MPS. A contract traded through the MPS has the same characteristics/product specification as contracts traded electronically and is legally regarded as listed/admitted to trading. Most transactions entered through MPS are cleared with NOS, although some are also cleared with other clearing houses such as the London Clearing House and NYMEX.

D. Trading Representatives

The Imarex and NOS Rulebooks stipulate that all trading and clearing members must appoint either a trader or a trading representative who is identified to both Imarex and NOS as permitted to trade on the behalf of the member. While, as previously stated, a trader is an employee of a member who is approved to trade for the account of such member, a trading representative is a third party agent of the member who also has full authority to act for the account of the member. The system thus permits a member to grant a third party a power of attorney to trade on its behalf.

²⁹ You represent that NOS's stated objective is not to have any uncovered risk in relation to any members.

For example, a GCM, typically an investment bank, may appoint a person employed by one of its clients as a trading representative. Within the limits agreed upon between the client and the GCM (limits not visible to Imarex or NOS), the client may then trade cleared contracts in the name of and based on the financial strength of the GCM. For the purposes of NOS and Imarex, the GCM remains fully and legally responsible for all such contracts entered into by its client trading representative. Thus, the appointment of a trading representative does not impact the risk of NOS or the original counterparty to the contract.³⁰

III. OVERVIEW OF THE IMAREX TRADING SYSTEM

At the outset, the Division notes that the description of Imarex's trading system as set forth herein is based upon representations made by Imarex or its representatives. The Division has not performed an independent assessment of the security or soundness of the trading system in connection with this request. Nonetheless, Commission staff did observe trading system and MPS operations during a demonstration conducted during the staff's onsite visit. Imarex operates a fully automated electronic trading system called Trayport that is supplied by Trayport Ltd.³¹

A. Introduction

Access to Trayport is granted to trading members through fixed lines or internet connections. Alternatively, trading members may also place orders to buy and sell listed products through MPS, Imarex's telephone-based system for Exchange trading.³² Imarex's trading hours for trading on Trayport, as published in Imarex's Rulebook, are 24 hours per day, every day, except for eight holidays.

B. Trayport

Trading members may place (register) orders electronically in Trayport. An order is a binding offer to buy or sell a certain number of contracts that is subject to automatic matching without any further acceptance from the trading member. Trading members may place either limit orders, in which the trading member offers to buy or sell at a specific price or range of prices, or conditional orders, in which the trading member may impose certain requirements that must be met before the order can be matched. Trading members may also enter iceberg orders,

³⁰ You represent that Imarex will amend its Rulebook to ensure that a trading member/clearing member (including a GCM) must be an FCM or Rule 30.10 Firm in order to appoint U.S. resident persons as trading representatives or act as intermediaries for such clients.

³¹ You represent that the Trayport trading platform is the industry standard for the energy and freight markets, with approximately 12,000 screens connected in various markets. Trayport, a supplier of multi-asset class electronic trading systems, provides market infrastructure to, in addition to Imarex, BlueNext, OMIP (the MIBEL Derivatives Exchange), the New Zealand Stock Exchange and Sibex. Access to Imarex is provided through approximately 1,500 of these screens worldwide.

³² With MPS, discussed further below, Imarex employees subsequently register the orders in Trayport.

in which the trading member enters multiple limit or conditional orders simultaneously, but only the first of the orders is visible to other trading members. Once the first such order is filled, the next order in the sequence becomes visible. An order entered into Trayport is either automatically matched with one or more orders previously entered in the order book or inserted into the order book.

To register an order in Trayport, the trading member must enter the following information: (i) the listed product designated by ticker; (ii) whether the order is to buy or sell; (iii) the volume limit (number of lots); (iv) the price limit; (v) an expiration date (or that the order is valid until cancelled); and (vi) if it is a conditional order, the conditions for the order. An order is deemed registered and becomes binding when the trading member placing the order has received an electronic confirmation of the registration through Trayport. A confirmed order is valid for the day on which it is recorded, unless the order specifies another expiration day or specifies that the order is valid until cancelled. A valid order remains in the order book and is subject to matching until the specified expiration day arrives or the order is cancelled by the trading member and the cancellation has been electronically confirmed.

Orders are automatically ranked in Trayport: the order with the best price always has priority and order book orders at the same price are ranked by time of registration (first registered, first matched) unless the first registered order is a conditional order. A contract is automatically entered into for the account of the trading member when that member enters a registered order that is matched to an order in the order book. A matching order is an opposite order for the same product series at the same price as a previously registered order, or with a lower price limit when the first order is a buy order, or with a higher price limit if it is a sell order. In the event that a new sell order is registered with a price that is lower than the best buy price then registered in Trayport, the order will be matched at the buy price. In the event that a new registered buy order price is higher than the best sell order price then registered in Trayport, the order will be matched at the sell order price.

Each trading member provides written authorization/power of attorney for the individuals it will permit to have access to Trayport. Based upon such authorization, Imarex provides each such individual with a unique user name and password. Each trading member is responsible for all orders registered from any log-on identification designated for its traders or trading representatives, and for all contracts based on such orders. Imarex reserves the right to cancel orders if it appears that a member has entered or traded at an off-market price. Transactions in Trayport are anonymous, *i.e.*, while Imarex informs members of orders registered and contracts entered into in Trayport by displaying such orders and contracts, it does not display the identity of a trading member in connection with any order made or contract entered into by such trading member through Trayport.

C. MPS

Trading on the MPS, Imarex's telephone-based service for trading both listed and non-listed products, occurs when trading members call in orders for listed products or interest orders (orders that are non-binding indications of interest) for non-listed products by telephone to

Imarex employees at the MPS. The MPS, which seeks to facilitate trading in listed products and actively seeks to narrow the spread of prices on an anonymous basis, is available to all trading members and is provided by Imarex employees assisted by Trayport. An order placed with the MPS is a binding offer to buy or sell a specified number of lots in a listed product. The MPS prioritizes orders before interest orders and prioritizes them by time, based on the time when the MPS receives each order. The matching of orders in listed products placed with the MPS follows the procedures described above for orders entered into Trayport.³³

Orders and interest orders posted to the MPS are treated anonymously; disclosure of participants occurs only with respect to bilateral contracts in non-listed products. All conversations with MPS personnel are taped and stored for later reference in the event of possible disputes about orders or trades.³⁴ Imarex is registered with the Norwegian Data Inspectorate, a government agency, and maintains the stored data in accordance with applicable legislation and regulation.

D. Trade Confirmations and Trading Errors

Pursuant to the relevant provisions set forth in the Imarex Rulebook, trading members with a link to Trayport are sent electronic confirmations through Trayport as soon as order matching has taken place. Order matching at the MPS is confirmed by the MPS over the telephone.

Imarex may cancel or alter an erroneous contract registration by the end of the following day if the contract is the result of an erroneous order registration by the trading member or Imarex personnel that is considered to be significantly deviated from prevailing market levels. A trading member who believes that a contract is erroneous or that an electronically confirmed

³³ The MPS also facilitates bilateral trading in non-listed products. An interest order reflects an indication of interest in non-listed products and, unless otherwise agreed, is posted by the MPS on the Imarex Bulletin Board, which is published to Exchange members. Such orders are matched through communication between trading members and the MPS, *i.e.*, when all concerned trading members approve, the MPS matches the order and confirms the contract. The confirmed order is legally binding between the trading members when matched, unless the confirmed order is expressly made subject to the fulfillment of a condition. The settlement of uncleared contracts in non-listed products takes place directly between the parties. To be cleared, matched orders in both listed and non-listed products must be preapproved by the relevant clearing house. The MPS also facilitates the clearing of contracts made outside Trayport that substantially comply with the terms of listed products, subject to the approval of the relevant clearing house.

Imarex represents that it will, subsequent to the issuance of this no-action relief letter, modify its Rulebook to replace all references to listed and non-listed products with the term contracts. Under the modified Rulebook, contract will be defined as either a cleared or uncleared contract which is listed by Imarex, the terms of which are specified in a product specification included in Appendix 5 of the Rulebook. Contracts will continue to be transacted either on Trayport or through the MPS, with subsequent registration in Trayport. The terms listed and non-listed products are being eliminated because all products are considered listed on Imarex, whether the contract is executed through Trayport or MPS and whether it is cleared or not.

³⁴ The taped conversations are retained in storage for seven years.

contract is not legally binding upon the trading member must make a written complaint to Imarex immediately, but not later than the close of trading on the next trading day. Failure to make a timely complaint is deemed to be acceptance of a contract. Complaints regarding subsequent actions by Imarex with respect to matched orders or the cancellation of contracts must be reported to Imarex within three hours from the time of matching or cancellation on trading days and no later than one hour after the daily close of Imarex.

E. Trade Registration/Audit Trail/Market Data Distribution

Every match that takes place on the Trayport platform is immediately disclosed in the Trayport system. These trades are also registered in real-time and are automatically registered with NOS for clearing.³⁵ A trade that takes place on the Trayport platform or through the MPS is immediately logged in Imarex's back-office system, the New Back Office System (NBOS). NBOS is a post-execution trade confirmation and invoicing platform built in-house by Spectron Services Limited (a subsidiary of Spectron) for the real time processing of energy and freight trades. Following the acquisition of Spectron by Imarex ASA in March 2008, NBOS has been enhanced to accommodate the specific business needs of Imarex, in particular with regard to the complexities of freight forward agreements.

[REDACTED]

As required by the Norwegian Bookkeeping Act, all invoices and trade information (accounting materials) are stored safely for no less than 10 years. As part of the audit of Imarex's annual accounts, Imarex's auditor reviews the records and books and other relevant information stored by Imarex. The Trayport trading platform and NBOS record the details of each order entered into the system from original entry of the order until the contract is sent for clearing, including any changes to the order made during that time and all trade matching information. Every keystroke made while using Trayport is recorded. The records are kept for at least five years.

Information about trades is saved for later reference. Real-time and historical data are available through Imarex Market Services. The information stored by Imarex includes data

³⁵ You represent that the system has historically had exceptionally low downtime, well within Imarex's requirement of less than 30 minutes downtime per calendar month.

about all contracts entered into by each individual participant, including the time of the trade, historical price information, volume, contract origin, type of contract, and accumulated financial information. Accordingly, for every participant it is possible to identify all tax and financial information for each contract. Imarex sells trade data in its listed products to commercial information providers including Bloomberg and Reuters, which subsequently make the data available to their subscribers. However, because the spot markets for freight and bunker fuel oil (*i.e.*, the cash markets the indices reflect) exist outside of exchanges or regulated markets (as opposed to, for instance, the Nordic electricity markets), public access to information from these markets can be limited.³⁶

F. Anonymity of Trading

All Imarex trading is anonymous, except when the MPS facilitates bilateral trades in MPS-brokered contracts. The Imarex order book is an anonymous order book that does not disclose the identity of the traders. NOS enters into an electronic trade as central counterparty as soon as matching is reported to NOS, and consequently anonymity is maintained for cleared trades. Only NOS and the Imarex market surveillance function, both of which are subject to a duty of confidentiality, know the identities of the parties to each contract. All contracts cleared by NOS, including MPS-brokered contracts, are anonymous. However, should any party to an MPS-brokered contract require the contract to be cleared at a clearing house other than NOS, the parties to the contract themselves may agree to waive anonymity.

G. Provisions for Disaster Recovery

Imarex has taken steps to anticipate and control crisis situations that may arise. To ensure the continuity of Imarex's business system, Imarex has a geographically separate disaster recovery site that is capable of being fully operational if required. The separate overall disaster recovery programs for Imarex and NOS address a series of disaster scenarios, including an overall disaster plan, an operational disaster plan, and a detailed resource and operational plan due to a disaster. The last plan provides for the Imarex marketplace to be fully functioning immediately following any disruption to the market.

All Imarex and NOS systems, gateways and web servers are replicated in disaster sites located in London and Oslo, respectively, and the installation is a "hot back up" of the main system. The program also covers the physical availability of the systems. Imarex and NOS regularly perform complete disaster site tests. All discrepancies from plans and performance requirements are reported and corrective action is taken. Imarex and NOS also perform an annual evaluation of the requirements of the disaster plan, and propose remedies when necessary. According to the plans, these evaluations and tests are documented and approved.

³⁶ The contracts traded on Imarex use well-established indices as their underlying commodity. These indices are constructed based on non-public information provided by brokers in the spot market. Since the information provided by such brokers is not available to the public elsewhere, the indices themselves likely are the most reliable public indicator for the price development in the spot markets. All relevant spot indices are available to anyone wishing to subscribe to this information from the index providers.

H. Adherence to IOSCO Principles

You represent that Imarex adheres 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) and adopted by the Commission on November 21, 1990.³⁷ Further, you represent that European and Norwegian law set very high standards with respect to the functioning of regulated markets and that the IOSCO Principles are reflected in the legislation applying to Norwegian regulated markets (the Stock Exchange Act and regulations thereunder) as well as in Finanstilsynet's supervisory policy with respect to such markets. Clearing operations are governed by the NOS Rulebook. Finanstilsynet, Imarex's regulatory authority, is an IOSCO member and supports the IOSCO Principles.³⁸

IV. SETTLEMENT AND CLEARING

A. Introduction

NOS Clearing is a Norwegian licensed clearing house providing clearing services for exchange trades and non-exchange trades in listed products. NOS is currently licensed in accordance with the STA 2007 which, together with the Stock Exchange Act, implemented MiFID. MiFID, which became effective on November 1, 2007, is an EU directive which provides a harmonized regulatory regime for investment services across the 30 member states of the EEA (the 27 member states of the EU plus Iceland, Norway and Liechtenstein). The main objectives of MiFID are to increase competition and consumer protection in investment services.

As previously stated, clearing operations are governed by the NOS Rulebook. The NOS Rulebook, the information technology structure, and operational routines are in compliance with all national regulations and meet or exceed the IOSCO recommendations for clearing systems. NOS commenced operations as a licensed clearing house in 1990 under the Securities Trading Act 1985. Under its current license, NOS may carry out clearing of commodity derivatives and other derivatives products. NOS currently has 250 Clearing Members from 31 countries. As previously noted, on January 11, 2002, NOS was recognized by the Commission as a Multilateral Clearing Organization (MCO) pursuant to the Federal Deposit Insurance Corporation Improvement Act, Section 409.

³⁷ The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products. "Policy Statement Concerning the Oversight of Screen-Based Trading Systems," 55 Fed. Reg. 48670 (Nov. 21, 1990). Imarex represents that it routinely conducts self-assessments to evaluate compliance with the IOSCO Principles.

³⁸ Letter from Eirik Bunaes, Deputy Director General and Britt Hjellegjerde, Head of Section, Finanstilsynet, to Duane C. Andresen, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission (January 15, 2010). In its letter, the NFSA also represents that the IOSCO Principles are implemented in the legislation applying to Norwegian regulated markets and in Finanstilsynet's supervisory policy with respect to such markets.

B. The NOS Clearing System

The clearing services of NOS include central counterparty clearing services through which NOS enters into the trades as counterparty to guarantee settlement. All trade settlements with respect to Imarex listed contracts are made in cash (USD). Cash settlement and collateralization is conducted through a settlement bank. Consequently, NOS does not itself receive any deposits of cash, as all cash deposits and cash settlements occur through sub-accounts opened by NOS with the settlement bank.

All contracts entered into by a clearing member are recorded in a clearing account in the name of the clearing member. The clearing account records the clearing member's contracts and forms the basis for NOS's assessment of the combined risk of the clearing member's contract portfolio, which in turn forms the basis for the calculation of that clearing member's margin requirements. Where the clearing member is also a trading member and trades for its own account and for the accounts of others, NOS will open a client clearing account, a sub-account to the clearing account of a GCM, in which the contracts of each client of the GCM are recorded separately from the contracts of other clients of such GCM and from the contracts entered into by the GCM on its own book. The client clearing accounts are all opened in the name of the GCM, which is the sole responsible counterparty to NOS for the contracts registered therein. No contractual relationship exists between NOS and the clients of the GCM.

The clearing operations of NOS utilize a clearing system facilitated by NOS. Central counterparty clearing is achieved by novation of trades to NOS. All trades registered in Trayport are automatically reported to NOS by Imarex and constitute electronic transactions. Electronic transactions reported to NOS within clearing hours as defined by NOS will automatically be subject to clearing with NOS, whereas an electronic transaction reported to NOS outside clearing hours requires approval by NOS before being confirmed as a cleared contract. Confirmation of clearing of such electronic transactions is made available by NOS once the transaction is approved and recorded at NOS. An OTC Transaction may be reported to NOS by any Market as defined in the NOS Rulebook (Imarex is such a Market) and is subject to approval by NOS before being confirmed as a cleared contract. Confirmation of clearing will be provided by NOS to each clearing member.

For each clearing account, NOS calculates the margin requirements and the daily settlement amounts. Each clearing member must have a Collateral and Settlement Account with an approved settlement bank and must deposit the collateral requirements with that bank. The collateral requirements may be satisfied either by cash deposited in this account or by Letters of Credit/Guarantees. Imarex has stated that if the applicant cannot provide enough cash as collateral or, for example, there is doubt as to whether the cash pledge will be valid and/or upheld in bankruptcy under the laws of the home state of the applicant, NOS will require the member to provide Letters of Credit/Guarantees.³⁹

³⁹ For margining purposes, Letters of Credit on the terms required by NOS and issued by banks with a Standard & Poor rating of A- or better are given equal value as cash. For settlement of the contracts, all of which are cash-settled, only cash is accepted.

In order to become a settlement bank, a qualifying bank must enter into a Settlement Bank Agreement with NOS. The settlement bank participates in the reporting and settlement systems of NOS, which are established in USD, EUR, GBP and NOK, in order to effect cash settlement and cash collateralization for transactions cleared by NOS. In its capacity as a settlement bank, the bank is entitled to open Collateral and Settlement Accounts. These accounts are established as client accounts of NOS with the settlement bank through which NOS acts as creditor with respect to the settlement bank but the funds are fully segregated from NOS's proprietary assets. Currently DNB NOR Bank ASA and its subsidiaries (together, DNB) serve as NOS's main settlement bank. Trades in Imarex-listed contracts are settled in USD and are all settled by DNB. All settlements between NOS and the settlement bank take place on a daily basis.

C. Risk Management

NOS's clearing concept differs from some other clearing organizations with regard to how potential counterparty losses are covered. First, NOS does not maintain a guarantee fund or reserve fund to which clearing members contribute. Second, NOS does not enforce a mutual loss-sharing scheme among its members. Instead, a conservative and best practice margining methodology, the collateral pledging requirements, the proactive risk management, and NOS's risk-bearing capital act as a buffer between any defaulting counterparty and all other clearing members. Since NOS's own risk-bearing capital is at risk, and not that of the members, Imarex has stated that NOS has a significant interest in ensuring that risk management routines applied at all times provide for the accurate measurement, reasonable control and satisfactory protection against risks arising within the clearing organization.

According to STA 2007, a clearing house must have risk capital appropriate for the risk exposure assumed by the clearing house. There are also regulations with respect to the investment management of clearing house capital. Imarex has stated that in addition, NOS adheres to international standards and recommendations for clearing houses, including the European Association of Central Counterparty Clearing Houses (EACH) standards of risk management for its members. These standards establish guidelines regarding the financial resources of clearing houses. In addition, the Bank for International Settlements (BIS) and IOSCO have established Recommendations for Central Counterparties, and Imarex has stated that NOS adheres to these as well.

In order to achieve control within the clearing system, NOS has a process for actively identifying, analyzing, and addressing its operational risks, including risks arising from its outsourced operations and other activities. NOS establishes strategy and policy as a result of these processes. The risk management group at NOS has the overall responsibility to oversee NOS counterparties and margining requirements, as well as to handle any defaults.⁴⁰ On a daily

⁴⁰ The risk management group consists of four full-time positions: Risk Manager (One year with NOS, 20 years prior experience from capital market risk management); one senior credit risk analyst (seven years with NOS, prior risk management experience from the NFSA and from Norges Bank Investment Management (Norway's \$350bn

basis, the risk management group monitors volatility, counterparties, trades, and collateral. NOS has the authority to change risk parameters in the margin model on short notice based on rapid changes in volatility or to make extraordinary margin calls with one hour's notice. Watch list participants are monitored daily with a focus on trading and exposure limits or changes in the daily margin call.

NOS calculates a daily collateral call once a day, based on a net position. All participants must cover the collateral call with cash or a bank guarantee within the deadlines set forth in NOS's clearing cycle. All risk parameters are updated frequently and the volatility is benchmarked every day against market volatility. NOS risk management stress tests and back tests both the participants and the risk parameters frequently to ensure that NOS has sufficient risk capital and understands the risk-taking of its counterparties, as well as to ensure that the risk parameters are sufficient, efficient and optimal. NOS calculates a margin requirement on a daily basis in order to cover its counterparty risk.⁴¹

D. The Margin System

The margin system has two main elements: the base collateral and the margin requirement. The base collateral is intended to cover overnight risk associated with intra-day position changes not covered by the previous margin calculation. The level is mainly dependent on the trading pattern and credit rating of the counterparty. This margin must be covered by collateral before trading can begin. Imarex has described the base collateral as analogous to the default fund contribution at some other cleared markets. In contrast, however, the base collateral only covers the risk of the specific clearing member and cannot be used to cover other members' losses.

The margin requirement is calculated on a daily basis and is intended to cover NOS's credit and price risk in the case of a member default and the closing out of the member's open positions. The daily margin call consists of the mark-to-market value (accumulated profit/loss) and the scenario risk that reflects a portfolio's market risk during a close-out period, *i.e.*, the worst-case loss a portfolio could suffer during a close-out period of five days if the prices should move up to three standard deviations of observed historical price movements. NOS uses up to 14 price and volatility scenarios in order to simulate worst-case losses for futures, forwards and option positions. The worst-case loss is used as the scenario risk for a position in a contract series. In special circumstances, NOS can change the risk parameters or call for extraordinary margin, with a minimum of one hour's notice. Acceptable collateral to NOS is cash on the Collateral and Settlement Account or Letters of Credit conforming to a standard template.

sovereign wealth fund)); one market risk analyst (four years with NOS); and one senior market risk analyst (15 years with NOS).

⁴¹ Pursuant to the NOS Rulebook, NOS may, at its sole discretion, issue extraordinary and intra-day margin calls. To date, NOS has not issued extraordinary or intra-day margin calls as a result of market movements. Members are, however, required to provide additional margin if, during a clearing day, they want to trade contracts the margin for which would not be covered by the collateral held by NOS prior to such trade.

E. Default Procedures

The collateral call for the previous trading day must be covered by the clearing member no later than the deadline set forth in the clearing cycle. If the deadline is not met, NOS will declare a default according to the NOS Rulebook and take all necessary steps to reduce its counterparty risk.

NOS risk management has the initial responsibility to handle any defaults according to the NOS Rulebook. Depending on the seriousness of the default, there are different actions to be taken. For example, NOS can close out the defaulting member's positions or it can force the defaulting member to close out its positions. NOS can permit the defaulting member to continue to operate in the market, but with all transactions supervised and managed by NOS. Alternatively, NOS may exclude the defaulting member from the market while NOS takes over the portfolio and closes it out. NOS can also suspend the defaulting member and require that Imarex suspend the member from trading in listed products. In such cases as described above, NOS has a special default committee that will be responsible for handling the default. The default committee is a pre-defined group whose members have different pre-defined responsibilities. The default committee's role is to close out a portfolio and to minimize losses for both the defaulting party and for NOS with a minimum effect on the market prices.

In the case of a default by a clearing member, losses are initially covered by the collateral posted by the defaulting member. Losses exceeding the collateral are covered by a combination of NOS's equity and default insurance. NOS's own capital is NOK 330 million (approximately \$55 million). In addition, NOS has default insurance coverage with Swiss Re Insurance Inc., in the amount of \$75 million.

V. THE REGULATORY REGIME IN NORWAY

A. Regulation of Imarex

The business of Imarex is regulated primarily by the Stock Exchange Act which sets out the definition of a regulated market which comprises both licensed exchanges and other regulated marketplaces.⁴² The stated objective of the Stock Exchange Act is to "provide the basis for markets for financial instruments that are efficient and orderly and inspire confidence."⁴³

⁴² Section 3(1) of the Stock Exchange Act states: "A regulated market shall mean an undertaking authorized under section 4 [of the Stock Exchange Act] that decides to list financial instruments in the market, and which organizes or operates a multilateral system facilitating regular trading in the listed instruments in accordance with laws, regulations and non-discretionary trading rules issued by that market."

⁴³ Section 1 of the Stock Exchange Act. Pursuant to Section 2.2(1) of the STA 2007, derivatives are included within the definition of financial instruments. Pursuant to Section 2.2(5), Derivatives means: (i) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash; (ii) commodity derivatives; (iii) credit derivatives; (iv) financial contracts for differences; and (v) other

The EU approach to the regulation of “regulated markets” is contained in MiFID. Among other things, MiFID defines the concept of the regulated market and harmonizes conditions governing the operation of regulated markets. MiFID creates a “European Passport” for the cross-border activities of regulated markets within the EEA. This means that restrictive legislation in EU member states impeding cross-border branching and freedom of regulated markets is largely dismantled, allowing EEA-regulated markets to operate cross-border within the EU based on their home state license and supervised by their home state regulator.

The Norwegian regulatory regime is based upon the STA 2007 and the Stock Exchange Act, with further regulations implementing MiFID requirements and other relevant EEA directives. There are specific provisions in the Stock Exchange Act requiring regulated markets to be operated with due consideration to the principles of efficiency, neutrality, and equal treatment of all participants, as well as to ensure that the market offers a high degree of transparency and the process of price quotation reflects the current market value of the instruments listed. A regulated market is required to operate such systems for carrying out trading, price quotation, transparency, information, distribution, and market surveillance as are necessary in relation to the manner in which the business activities are organized. Imarex’s compliance with these principles is evaluated by the NFSA.

Among the provisions of the Stock Exchange Act rules and conditions applicable to the business operations of Imarex are the following: (i) a regulated market must be organized as a public limited liability company; (ii) the person(s) who effectively run(s) the market operator (the members of the board of directors and top management) must have relevant experience and be of good repute; (iii) the board of directors must ensure that guidelines for the internal control of the market are established; (iv) the regulated market must have internal rules and provide remedies to ensure that conflicts of interest are identified and handled, that significant risks are identified and handled, that non-discretionary trading rules are in place, and that the market has proper systems including back-up solutions and effective settlement procedures for transactions; (v) employees and officers of an exchange are subject to confidentiality obligations; (vi) acquisition of ownership of 10% or more of the share capital or the votes of a regulated market must be reported to the NFSA in advance; (vii) a regulated market must have funds appropriate to the operations conducted; and (viii) the regulated market must have sufficiently liquid/current assets or access to such assets taking into consideration the business of the market operator at all times. In addition, a regulated market must submit its rules and business terms, as well as any changes thereto, to NFSA and must establish effective arrangements and procedures to ensure routine surveillance of its members’ compliance with the market’s own rules (market surveillance).

In addition to the Stock Exchange Act, the conduct of trading members on Imarex is also governed by other broad prohibitions on insider trading, further discussed below, price manipulation, and improper business methods. Norway is a signatory to the EEA Treaty with

instruments not otherwise encompassed by this subsection but having the same characteristics as other derivative financial instruments.

the EU, and, accordingly, the financial directives of the EU are applicable in Norway.⁴⁴ The most important EU directive with respect to market abuse is the Market Abuse Directive, implemented in Norway by STA 2007.⁴⁵ This Directive is supplemented by European Commission Directives and European Commission Regulations that also apply to Norway. STA 2007, which extends to commodity derivatives, prohibits, among other things, misuse of insider information pertaining to listed financial instruments, market manipulation and the use of unreasonable business methods, and provides criminal penalties for the two former activities. In furtherance of this prohibition, the Norwegian Ministry of Finance has issued regulations that include a list of “red flags” concerning market manipulation.

The red flags represent factors that must be taken into account in the assessment of whether orders to trade or transactions constitute market manipulation under the STA 2007. These factors include, among others, (i) whether or to what extent orders or transactions undertaken represent a significant proportion of the daily trading volume in the relevant financial instrument on the regulated market concerned, in particular when these orders or transactions lead to a significant change in the price of the financial instrument, (ii) whether or to what extent orders or transactions undertaken by individuals with a significant buying or selling position in a financial instrument lead to a significant change in the price of the financial instrument or related derivatives or underlying assets admitted to trading on a regulated market, (iii) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market, (iv) whether or to what extent orders or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily trading volume in the relevant financial instrument on the regulated market concerned, and such orders or transactions may be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market, (v) whether or to what extent orders or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed, (vi) whether or to what extent orders change the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally change the order book available to market participants, and the orders are removed before they are executed, and (vii) whether or to what extent orders or transactions are undertaken at or around a specific time when reference prices, settlement prices or valuations are calculated and lead to price changes which have an effect on such prices or valuations.

Preventing insider trading and market manipulation is a key objective for the NFSA in its supervision of the financial markets. The NFSA is also actively involved in the works of the organization of European financial regulators, the Committee of European Securities Regulators (CESR). CESR has addressed market manipulation and provided guidance and information on the common operation of the Directive, addressing types of action that CESR members consider

⁴⁴ The EEA Treaty is an agreement among member states of the European Free Trade Association (EFTA), the European Community and the member states of the EU, which created the EEA and allowed EFTA member states (which include Norway) to participate in the European Single Market without joining the EU.

⁴⁵ Directive 2003/6/EC on insider dealing and market manipulation.

to constitute market manipulation. You represent that NFSA is following the market manipulation guidelines as set forth by the CESR.⁴⁶

With respect to financial requirements, the Stock Exchange Act, as noted above, sets out only a general capital requirement that Imarex as a regulated market at all times shall have its own funds which provide a satisfactory level of capital adequacy based on the business of the exchange. Various factors must be considered when assessing Imarex's capital adequacy, including the risk of the business of Imarex, contractual risk, operational risk and other special risks to which Imarex is exposed. Further, the Stock Exchange Act provides that a regulated market shall have a reserve of liquid assets, or access to such assets, which are adequate when taking into consideration the business of the regulated market. Imarex's current share capital is NOK 12,078 million (approximately \$2.119 million).

B. Regulation of NOS Clearing

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

Among the conditions of the STA 2007 which must be satisfied before authorization as a clearinghouse may be granted and maintained are the following: (i) the clearinghouse must be organized as a public limited company; (ii) the persons who effectively run the clearing operations must have relevant experience and be of good repute; (iii) authorization as a clearinghouse may be denied if a shareholder with a substantial shareholding in the clearinghouse is not deemed fit to ensure sound and prudent management of the clearinghouse;⁴⁷ (iv) the clearinghouse must have a control committee, appointed by the shareholders at its annual general meeting, which shall oversee the institution's operations and ensure that the clearinghouse complies with laws, regulations, terms and conditions as well as the company's articles of association; (v) the general meeting must lay down instructions for the control committee, which must be approved by the NFSA; (vi) no one can own more than 20 per cent of the share capital of a clearinghouse;⁴⁸ (vii) a clearinghouse must have a level of funds that is appropriate to the operations conducted by the clearinghouse (the minimum requirement is NOK

⁴⁶ You represent that Imarex monitors the function of its markets, but does not have the primary responsibility for monitoring the relationship between market intermediaries and their clients. Under Norwegian law, direct regulation of the intermediaries, to the extent that they are licensed investment firms, is the NFSA's responsibility.

⁴⁷ Acquisition of a qualifying holding of the clearinghouse or any increase in the qualifying shareholding whereby a shareholder's proportion of the share capital or voting rights reaches or exceeds 20%, 33% or 50% may only take place after the NFSA been notified in advance.

⁴⁸ The Ministry of Finance has exempted NOS Clearing from this requirement provided that the ownership restriction is complied with at the Imarex ASA ownership level.

50 million, or approximately \$9.7 million);⁴⁹ (viii) a clearinghouse may only pursue activities which are naturally related to the performance of clearing operations (the NFSA may request that the clearinghouse keep non-clearing business-related activities separate from the clearing business); (ix) a clearinghouse must ensure that it has sufficient security to guarantee the performance of contracts that it enters into as a party or otherwise guarantees the performance of (the clearinghouse shall calculate and require the provision of such security on a continuous basis); and (x) employees and officers of a clearinghouse are subject to confidentiality obligations. NOS Clearing's current share capital is NOK 290 million (approximately \$51 million).

C. Supervision by Finanstilsynet/NFSA

NOS Clearing and Imarex are both subject to the supervision of Finanstilsynet which is an independent government agency that implements and expands upon laws enacted by and decisions emanating from the Parliament (Stortinget), the Government and the Ministry of Finance, and is also guided by international standards for financial supervision and regulation.⁵⁰ NFSA's aim is to ensure that financial institutions and markets function securely and efficiently in the best interest of society and users of financial services, and that service providers are afforded an appropriate framework for their operations. According to the Norway Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc., Finanstilsynet shall "ensure that the institutions it supervises operate in an appropriate and proper manner in accordance with law and provisions issued pursuant to law and with the intentions underlying the establishment of the institution, its purpose and articles of association."

Finanstilsynet is headed by a Board of Directors comprised of five members and two alternates appointed for a four-year period by the Ministry of Finance. Day-to-day operations are overseen by the Director General, who is also appointed by the Ministry of Finance for a six year term and is supplemented by a management team of four deputy directors general, a general counsel and a head of communications. Finanstilsynet has approximately 235 employees and is organized in four supervisory departments headed by the deputy directors general and support functions at various levels. Through its supervision of enterprises and markets, Finanstilsynet strives to promote financial stability and orderly market conditions and to instill confidence that financial contracts will be honored and services performed as intended.⁵¹ To achieve its goals

⁴⁹ An amount equivalent to a minimum of 50 percent of the company's own funds must comprise deposits and unconditional drawing rights in credit institution at all times. The Ministry of Finance has issued further regulations, which have promulgated the Capital Adequacy Directive's (CAD) definition of a clearing house's own funds. CAD is an EU directive that aims to establish uniform capital requirements for both banking firms and non-bank securities firms based primarily on the Basel II capital requirements standards. CAD is applicable to Norway by means of the EEA Treaty.

⁵⁰ Finanstilsynet, then known as Kredittilsynet, was established in 1986 as an integrated supervisory authority for the Norwegian financial markets.

⁵¹ Finanstilsynet is responsible for the supervision of banks, finance companies, mortgage companies, insurance companies, pension funds, investment firms, securities fund management and market conduct in the securities

Finanstilsynet engages in a wide range of oversight activities, complying with internationally recognized standards and methods of supervision, including both on- and off-site inspections and supervision.

The supervision of NOS Clearing by Finanstilsynet is authorized in the STA 2007 and the supervision of Imarex by Finanstilsynet is manifested in the Stock Exchange Act.⁵² Both NOS Clearing and Imarex are at all times obligated to furnish Finanstilsynet with such information as it may require about matters related to their respective business and activities. In particular, NFSA monitors the capital levels of both institutions and Imarex and NOS Clearing are required to report key figures in semi-annual and annual reports. Imarex and NOS are required to conduct and report to NFSA annual risk evaluations and audits. Finanstilsynet also approves Imarex rules and rule changes prior to implementation and may, on its own initiative and without notification, undertake on-site inspections.

Finanstilsynet periodically performs reviews of Imarex to ensure that it meets the legal requirements under its license and applicable laws. These reviews typically begin with written questions and document requests, followed by on-site meetings where NFSA may present additional questions. The reviews are documented in a formal report that Imarex is allowed to comment on before the conclusions are made public. This process of review is, to a large extent, standardized for all regulated entities (banks, insurance companies, investment firms, exchanges, clearinghouses, etc.) and carried out by specialized teams at Finanstilsynet.⁵³

D. Regulatory Regime Governing Intermediaries

Sections 9-1 and 9-24 of STA 2007 require that investment firms or credit institutions within the EEA must obtain a public license in order to operate as a broker/broker dealer or provide other investment services in commodity derivatives and other derivatives contracts which, such as the Imarex listed products, constitute financial instruments.⁵⁴ Section 3-9 of the

market, stock exchanges and authorized market places, settlement centers and securities registers, estate agencies, debt collection agencies, external accountants and auditors.

⁵² The rules and regulatory regime to which Imarex is subject also apply to the Oslo Stock Exchange (which, however, is subject to certain additional rules relating to the use of the “exchange” designation), and Imarex is on the list of Norwegian regulated markets reported to the European Commission in accordance with MiFID.

⁵³ Under Norwegian law, there is no specific requirement concerning how often the NFSA should visit a regulated market such as Imarex or NOS as a clearing house. On average, the NFSA visits Imarex and NOS collectively once or twice yearly. Once every two or three years, the NFSA will conduct a full review of Imarex. In addition, Imarex as part of its regular compliance duties, provides information to the NFSA and there is frequent communication between the two parties regarding various matters of compliance. The NFSA engages in regular phone conversations with Imarex Group and the two parties have a running dialogue on matters both small and large

⁵⁴ Section 9-2 of STA 2007 provides for exceptions from the authorization requirement for certain firms dealing mainly in derivatives. The exceptions apply to, among others, anyone who has trading on his own account in commodities or commodity derivatives as his main business, provided that the undertaking is not part of a group the main business of which is the provision of other investment services or banking services; provides investment services consisting exclusively in trading on his own account on the derivatives market and the spot market,

STA 2007, which prohibits unreasonable business methods in trading in financial instruments and is applicable to all Norwegian market participants including non-licensed intermediaries/brokers handling client orders, regulates trade practice matters with respect to trades in financial instruments, including exchange trades and OTC trades in Imarex's listed products.

The Norwegian Securities Trading Regulations impose, among other things, strict recordkeeping requirements with respect to reception and execution of client orders. Investment firms carrying out client orders are required to, among other things: (i) promptly and accurately record and allocate client orders; (ii) execute otherwise comparable client orders promptly and sequentially unless the characteristics of the order or prevailing market conditions make it impracticable to do so, or the interests of the client require otherwise; (iii) inform the client about any material difficulty relevant to the proper execution of the order promptly upon becoming aware of the difficulty; (iv) where responsible for overseeing the settlement of an executed order, take reasonable steps to ensure that any client funds received in the settlement are promptly and correctly delivered to the appropriate client's account; and (v) not misuse, and take reasonable steps to prevent the misuse of, information relating to pending client orders. In compliance with the Securities Trading Regulations, most Norwegian investment firms maintain electronic records of all customer orders and trades.⁵⁵ The STA 2007 also requires all investment firms in Norway to file electronic reports with Finanstilsynet.

Norwegian law strictly prohibits intermediaries (as well as others) from engaging in insider trading practices. The generally applicable provisions of the STA 2007, for instance, require persons possessing inside information to handle such information with due care, to not disclose the information to unauthorized persons, and to not give advice about trading in financial instruments to which the information relates. In addition, persons possessing such information may neither directly nor indirectly, for their own or a third party account, purchase or sell financial instruments or incite others to do so. The general prohibition on insider trading prohibits any intermediary or a client with prior knowledge of an order placed by another client to trade in advance of the order's execution, provided the initial client order is likely to have an effect on the market. All regulatory insider trading provisions are enforced by NFSA. The STA 2007 also contains a general prohibition on market manipulation, as well as attempts to manipulate, applicable to all persons, including both licensed and unlicensed intermediaries.⁵⁶ This provision is enforced by NFSA and Imarex.⁵⁷

provided that his sole purpose is to hedge his own positions on the derivatives market and provided that clearing members or clearing houses on the same markets enter as parties to or otherwise guarantee the performance of contracts; or trades for the accounts of other members on the derivatives markets, or quotes prices for such members, provided that clearing members or clearing houses on the same markets enter as parties to or otherwise guarantee the performance of contracts entered into or prices quoted.

⁵⁵ Any investment firm that does not maintain electronic records is required to maintain hard copy records.

⁵⁶ Although the STA 2007 does not expressly address the concept of "wash sales", it does contain a broad general prohibition on market manipulation practices and prohibits any "transactions or orders to trade which give, or are likely to give, false, incorrect or misleading signals as to the supply of, demand for or price of financial instruments, or which secure the price of one or several financial instruments at an abnormal or artificial level" as well as "any

Finally, as previously noted, under Norwegian law and consistent with general European practice, a market place or exchange is not responsible for the supervision of handling of client orders by intermediaries. Rather, the federal regulator responsible for licensing and supervision of the investment firms (NFSA) conducts all relevant surveillance and enforcement.

VI. IMAREX AND NOS CLEARING INTERNAL REGULATIONS

A. Market and Trade Surveillance

In addition to the provisions of Norwegian statutory law, the Imarex and NOS Clearing rulebooks further regulate the obligations and rights of the market participants in trading and clearing and settlement processes and assure compliance with government regulations. Pursuant to Section 27 of the Stock Exchange Act, which requires all regulated markets to establish an internal market surveillance function, the Ministry of Finance has issued regulations setting forth market surveillance guidelines.

Imarex's market surveillance is carried out in accordance with the Exchange's Market Surveillance Guidelines, which have been submitted to and reviewed by Finanstilsynet and which are designed to ensure that Imarex's market surveillance fulfills the requirements set by applicable legislation and regulation. According to the guidelines, market surveillance at Imarex is designed to prevent market abuses such as insider trading and market manipulation by ensuring that all orders and transactions are genuine, real and non-fictitious, not based on the misuse of inside information,⁵⁸ and that no members misuse the anonymity provided by the trading system.

Pursuant to the Stock Exchange Act, Imarex can require members to provide all the information that Imarex may require to operate the marketplace and to investigate suspicious activities. Such information must be given regardless of any contractual duty of confidentiality to which the member may be subject. A member that does not provide Imarex with such information may, pursuant to the Stock Exchange Act, be fined, sentenced for up to one year in prison, or both. Imarex may also suspend from trading or terminate the membership of a trading

transactions entered into or orders to trade given in relation to any form of misleading conduct." Imarex represents that the broad scope of this prohibition should effectively encompass a prohibition on any "wash trading", as defined under the CEA.

⁵⁷ The Imarex Rulebook requires that Imarex monitor all trading on the markets in order to, among other things, "facilitate fair and orderly trading and detect and prevent conduct that may involve insider dealing, market manipulation or other market abuse."

⁵⁸ Surveillance guards against misuse of insider information by monitoring trading activity to detect contracts matched on terms which could reflect that traders are acting on such information. Such behavior may include a trading member suddenly changing its trading pattern as compared to its historic trading activity or matching contracts on off-market terms, for example at a price which is substantially higher/lower than the prevailing market prices.

member. In addition, under STA 2007, a person who does not provide Finanstilsynet with required information may also be fined, sentenced for up to one year in prison, or both.

The Market Surveillance Committee (MSC) at Imarex is chaired by the Market Surveillance Officer (MSO). The current MSO has been with Imarex for more than 4 ½ years and has an advanced degree from the Norwegian School of Economics and Business Administration as well as extensive experience from the financial shipping market. Having followed Imarex's trading members closely since taking up the post, the MSO is familiar with their trading patterns and habits.⁵⁹ In addition to the MSO, the MSC includes two additional members selected by the Board: a committee member with extensive experience from the shipping market and an attorney. The MSO and one committee member are employed by Imarex and report directly to Imarex's Board. The second committee member is employed by the Imarex Group and, in these market surveillance matters, also reports to Imarex's Board.

The MSO continuously monitors the market conduct of trading participants and investigates possible breaches of the Imarex Rulebook and the prohibitions on market manipulation and insider trading. Imarex does not employ its own accounting/auditing team or legal counsel; these functions are supplied by the Imarex Group, which employs two full-time legal professionals, one certified auditor and an accounting staff of three at the same office location as Imarex. In London, Spectron, whose IT team provides technical market supervision for the Imarex trading system, employs additional resources in the form of one UK qualified attorney and several professionals with auditor/accounting background.

Neither Imarex nor its regulators utilize a routine large trader reporting regime and do not rely upon computerized trade practice surveillance. Rather, Imarex relies on a team of professionals with significant market experience to identify and follow up on suspicious market activity. MSC members have access to a computer system that allows them to access and routinely monitor trading data for all contracts traded. In addition, each of the two trading desks, Tanker and Dry Bulk, has a Desk Manager who is also responsible for monitoring on his own set of computer screens, as part of the general supervision of the market, the actual transacted prices of contracts and reporting to the MSC any prices that deviate from the acceptable volatility range. Should any contract observed by the Desk Manager appear to be other than a legitimate contract (an irregular action),⁶⁰ the Desk Manager will immediately notify the MSO, who will investigate.⁶¹

⁵⁹ The MSO was approved by Finanstilsynet on December 9, 2009.

⁶⁰ The Imarex Market Surveillance Instruction defines irregular action to include, among other things: (i) misuse of inside information; (ii) market manipulation; (iii) use of unreasonable business methods; (iv) a transaction that constitutes a violation of the Rulebook; (v) an act other than a transaction that constitutes a violation of the Rulebook; and (vi) any other activity by a trading member which Imarex, in its reasonable opinion, believes constitutes an attempt to irregularly and unjustifiably influence the market.

⁶¹ You represent that suspicious trading has not been identified more than a few times per year and, as such, suspicious trading represents a negligible percentage of overall trading at Imarex.

The MSO conducts a review of trading twice daily, reviewing contracts matched following the prior review, as well as contracts matched in Trayport outside of office hours.⁶² At least once each week the MSO is required to review the trading members' positions to determine if a possible concentration of positions exists. If so, the MSO will investigate to determine if such concentration constitutes an irregular action. At least quarterly, the MSO is required to perform a routine review of at least five randomly chosen trading members that have entered into contracts during the preceding six months to evaluate compliance with the Imarex Rulebook. Market surveillance undertakes formal reporting of suspected breaches on laws and regulations to the Norwegian supervisory authorities according to the requirements in the licenses. Any sanctions imposed are published after taking effect.

Imarex's surveillance program focuses largely on two areas. With respect to insider trading, market participants are prohibited from trading when possessing insider information or from misuse of insider information. The STA 2007 defines insider information as any information of a precise nature relating to financial instruments, the issuers thereof or other circumstances which has not been made public and is not commonly known in the market and which is likely to have a significant effect on the price of those financial instruments or related financial instruments. Inside information on commodity derivatives means information of a precise nature which is not publicly available or commonly known and which directly or indirectly concerns one or several commodity derivatives, and which the participants in the market where the commodity derivatives are traded would expect to receive in accordance with Finanstilsynet's view on accepted market practice on the market in question.⁶³ NFSA guidelines indicate that insider information with respect to commodity derivatives includes "any information which an investor reasonably would use as part of the basis for its investment decision."

With respect to market manipulation, market participants are prohibited from engaging in market manipulation as defined in applicable Norwegian law, a definition which stems from the definition of market manipulation contained in the EU Market Abuse Directive,⁶⁴ which sets forth a common framework for handling insider dealing and market manipulation in the EU and the proper disclosure of information to the market. The public regulations on market surveillance, which are included in the regulations to the Stock Exchange Act, regulate tasks that the market surveillance department performs. The main task of the market surveillance team is to monitor the orders of market participants and trades in the Imarex regulated market. If there is suspicion of any breach, the team gathers information and investigates according to the procedures described below.

⁶² You represent that Imarex staff in Houston and Singapore will be monitoring the trading activity on Trayport outside of Norwegian office hours.

⁶³ "Information which participants would expect to receive" means information which is normally made available to market participants or information the publication of which is required by statute, regulations or other regulatory regime, including private law regulation and practices on the commodity derivatives market concerned or the underlying commodity derivatives market.

⁶⁴ EU Market Abuse Directive 2003/6/EC.

The Imarex Rulebook states that each trading member represents and warrants that it will not engage in any form of illegal trading activity, including but not limited to trading that is based upon inside information or market manipulation as defined in Norwegian law incorporating the EU Market Abuse Directive. Pursuant to the Rulebook, Imarex's MSC has the responsibility to take action on attempts at insider dealing or market manipulation. Imarex can cancel, reverse or disregard any trade if the MSC determines that the trade has been executed using insider information or is an attempt to manipulate the market, and trading members may be suspended if found to have acted in such a manner.

B. Investigation and Enforcement

The Imarex regulated market is continuously monitored by a team of individuals with significant market experience, as well as legal training. If the team discovers conduct that appears to be in breach of the applicable rules, it must conduct a further investigation. Such investigation entails contacting the members having concluded a trade and, if necessary, asking for a written explanation of the events that triggered the investigation. If the matter is not resolved after the initial investigation, a case will be opened. Imarex will continue to investigate, seeking to obtain additional information from the relevant market participants and, if relevant, other parties and authorities.

Imarex's enforcement powers over its members are those provided for in the Rulebook and in the Stock Exchange Act. Pursuant to the Imarex Rulebook, Imarex may cancel, reverse or disregard trades if the trades have been made utilizing improper trading practices and/or attempts to manipulate the markets in any way. Imarex may cancel or alter a contract that is the result of an erroneous order.⁶⁵ Imarex may suspend members found to have violated the rules and/or engaged in undue trading practices and/or attempts to manipulate the markets in any way. Imarex may also terminate the membership of a member and may suspend or withdraw a member's trading rights immediately if it suspects market abuse.

If Imarex, after its review and investigation of suspicious activity, concludes that a violation of the rules or prohibitions against insider trading or market manipulation likely has occurred, it will send a report to the NFSA for further investigation, which may result in additional sanctions or reporting to the public prosecution authority (Økokrim). Finanstilsynet has a separate unit generally responsible for investigating insider trading violations and instances of market manipulation (this unit is separate from the unit responsible for surveillance and regulation of Imarex, investment firms and other regulated institutions) that is staffed accordingly. Under the Securities Trading Regulations, Finanstilsynet has an expansive set of powers that permit it to investigate and pursue market abuses, including, among others, authority to order any party, including non-members, to disclose information and present documents, authority to order the surrender of unlawful gain, and authority to impose violation penalties.

⁶⁵ Any action to cancel or alter a contract must be determined by the management of Imarex in consultation with the Board.

C. Price Developments Monitoring

Imarex represents that the product listing mechanism adopted by the Exchange allows for early detection of manipulative practices without heavy reliance on computerized surveillance processes. For each Imarex-listed product there are a number of different series with different delivery periods listed. The pricing in the different products series in each main product typically represents an established pattern over extended periods of time, which allows Imarex and market participants to detect from one minute to the next if traded prices deviate from the pattern. All trading and price developments are carefully monitored by qualified Imarex personnel. Historically, any significant price developments have been effectively and promptly identified by Imarex following internal investigations and analysis. Traders and market participants also play an important role in identifying significant price developments that are not warranted by changed circumstances or availability of new information on the market and provide leads for further investigation by Imarex's personnel.

The limited number of listed products on Imarex differentiates Imarex from a number of other derivative markets with a much broader scope of listed products, such as stock derivatives markets offering derivatives products in a variety of underlying references or commodity markets, where derivatives are listed for a large number of commodities. You represent that, arguably, computer-based surveillance systems play a significantly greater role in these larger and more diversified derivative markets, as they must simultaneously monitor price developments in a large number of non-related products and require a "trigger" when significant price developments occur. Finally, you represent that since the Imarex market opened, market surveillance has reviewed several contracts for potential market manipulation cases and that none of Imarex's investigations of deviating market prices have thus far resulted in the discovery of actual attempts at market manipulation.

VII. INFORMATION-SHARING

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

With respect to information sharing among the regulatory authorities, additional information relevant to Imarex and Imarex's market participants will be available to the Commission and its staff under the terms of the information-sharing arrangement to which both the CFTC and the NFSA are parties, the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU)* dated

May, 2002. By letter dated January 15, 2010, the Finanstilsynet confirmed that the NFSA will, upon request from the Commission or any division thereof, provide the Commission with information, as regulated by the MMOU, in connection with the placement in the U.S. of electronic facilities providing access to a regulated market supervised by NFSA.⁶⁶

VIII. CONCLUSION

Consistent with the Commission's Policy Statement and the June 2 Order, the Division has reviewed and considered Imarex's direct access no-action request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by Imarex indicate that Imarex and its members are subject to oversight in Norway by a regulatory regime that is responsible for enforcing regulatory objectives that generally are equivalent to those in the U.S.; that the regulatory regime provides basic protections for customers trading on Imarex's market and for the integrity of the market itself; that Imarex and its regulatory authority employ surveillance, compliance and enforcement mechanisms designed to ensure compliance with statutes and Imarex's and the regulatory authority's rules and regulations; that Imarex adheres to the IOSCO Principles; and that adequate information-sharing arrangements applicable to the activities of Imarex are in place.⁶⁷

Based specifically upon these and other representations made by Imarex in support of its no-action request, the Division has determined that granting direct access no-action relief to Imarex and its members would not be contrary to the public interest. Accordingly, subject to compliance with the terms and conditions stated herein, the Division will not recommend that the Commission institute enforcement action against Imarex or its trading members if Imarex does not seek designation as a DCM or registration as a DTEF pursuant to Sections 5 or 5a, respectively, of the Act or comply with any other section of the Act or Commission regulations relating specifically to DCMs or DTEFs if:

1. Imarex trading members that qualify as ECPs trade for their proprietary accounts as defined in Commission Regulation 1.3(y) through Trayport and MPS in the U.S.;
2. Imarex trading members that are registered with the CFTC as FCMs or are Rule 30.10 Firms submit orders to the trading system for execution from or on behalf of U.S. customers that qualify as ECPs;
3. Imarex trading members that are registered with the CFTC as CPOs or CTAs, or that are

⁶⁶ Letter from Eirik Bunaes, Deputy Director General and Britt Hjellegjerde, Head of Section, Finanstilsynet, to Duane C. Andresen, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission (January 15, 2010).

⁶⁷ The Division notes that the foregoing is not intended to be an exhaustive list of the factors relevant to its decision to grant the direct access no-action relief requested by Imarex nor of the factors that the Division might consider when analyzing no-action requests from other exchanges. No-action requests, by their nature, require case-by-case evaluation and the Division's conclusion regarding any particular no-action request will be based upon the facts and circumstances presented at the time of its review of that request.

exempt from such CPO or CTA registration pursuant to Commission Regulation 4.13 or 4.14, submit orders on behalf of U.S. pools they operate that qualify as ECPs or accounts of U.S. customers that qualify as ECPs, for which they have discretionary authority, respectively, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees without limitation all such trades of the CPO or CTA effected through submission of orders on the trading system; and

4. Imarex trading members that are registered with the CFTC as FCMs or are Rule 30.10 Firms accept orders transmitted via AORS for submission to the trading system from or on behalf of U.S. customers that qualify as ECPs.

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

Tanker Futures

Underlying	Index provider	Available series
TD3	Baltic Exchange	6M / 6Q / 2Y
TD5	Baltic Exchange	6M / 6Q / 2Y
TD7	Baltic Exchange	6M / 6Q / 2Y
TD8	Baltic Exchange	6M / 6Q / 2Y
TD9	Baltic Exchange	6M / 6Q / 2Y
TD11	Baltic Exchange	6M / 6Q / 2Y
TD16	Baltic Exchange	6M / 6Q / 2Y
TD17	Baltic Exchange	6M / 6Q / 2Y
TC2	Baltic Exchange	6M / 6Q / 2Y
TC4	Platts	6M / 6Q / 2Y
TC5	Platts	6M / 6Q / 2Y
TC6	Baltic Exchange	6M / 6Q / 2Y
TC11	Baltic Exchange	6M / 6Q / 2Y
TD3_TCE	Baltic Exchange	6M / 6Q / 3Y

Dry Bulk Futures

Underlying	Index provider	Available series
Baltic Dry Index	Baltic Exchange	4M / 4Q / 4Y
BDI		
C4	Baltic Exchange	12M / 3Y
C4 AVG	Baltic Exchange	4M / 6Q / 3Y
C7	Baltic Exchange	12M / 3Y
C7 AVG	Baltic Exchange	4M / 6Q / 3Y
P2A	Baltic Exchange	6M
P3A	Baltic Exchange	6M
CS4TC	Baltic Exchange	4M / 4Q / 2 halfY / 5Y

PM4TC	Baltic Exchange	4M / 4Q / 2 halfY / 5Y
HS6TC	Baltic Exchange	4M / 4Q / 2 halfY / 5Y
SM6TC	Baltic Exchange	4M / 4Q / 2 halfY / 5Y

Bunker Oil Futures

Underlying	Index provider	Available series
RDM35FO	Platts	6M / 6Q / 2Y
NWE10FO	Platts	6M / 6Q / 2Y
SPO180FO	Platts	6M / 6Q / 2Y
SPO380FO	Platts	6M / 6Q / 2Y
USG30FO	Platts	6M / 6Q / 2Y

If additional futures and option contracts become available for trading through the trading system, Imarex may make such futures and option contracts available for trading by direct access from the U.S. in accordance with the provisions of the Commission's "Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that have Received Staff No-Action Relief to Provide Direct Access to their Automated Trading Systems from Locations in the United States"⁶⁸ and (for option contracts) "Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems From Locations in the United States List for Trading From the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts."⁶⁹

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

⁶⁹ 74 Fed. Reg. 3570 (January 21, 2009). The Division recognizes that none of Imarex's currently listed contracts are linked contracts as that term is defined. See *Id.* at 3571. However, the NYMEX, a CFTC-regulated DCM, offers several of the same contracts. The Division notes that both the Imarex and NYMEX contracts are settled based upon the same indices published by the Baltic Exchange and Platts. Therefore, although the Division has determined that, with respect to these contracts traded on both exchanges, it does not see a current need for enhanced market surveillance or additional information sharing with Imarex, the Division may revisit the issue in the future to determine if such a need has arisen. In addition, the Division notes that as part of Imarex's direct information-sharing obligations to the Commission pursuant to the conditions attached to this no-action relief, Imarex will provide immediate and direct response to inquiries from Commission staff regarding potential market abuse associated with these identically settled contracts.

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

The Division specifically notes that its no-action position does not alter the general requirement that a firm operating pursuant to the no-action relief provided herein must be appropriately registered or exempt from such registration to engage in the offer or sale of a foreign futures contract or a foreign option transaction for or on behalf of a U.S. customer. For example, nothing in this letter is intended to alter current Commission rules that require that any foreign firm that clears trades on a fully-disclosed basis on behalf of U.S. persons (including where the U.S. person is a non-clearing member of a foreign board of trade trading solely for its own account) be a registered FCM or a Rule 30.10 Firm.⁷⁰ However, if a foreign firm solely carries accounts on behalf of U.S. customers that are the foreign firm's or any registered FCM's proprietary accounts (as defined in Rule 1.3(y)) or the foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM and its sole contact with a U.S. customer is that it carries the FCM's omnibus account, then the firm need not register under Rule 30.4 nor confirm relief under Rule 30.10.

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of CPOs, CTAs, FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the U.S. Thus, Rule 30.10 Firms cannot provide direct access to Trayport in the U.S. (although they can accept orders overseas from customers located in the U.S. that submit such orders by telephone or through an AORS located in the U.S.). FCMs or Rule 30.10 Firms who solicit or accept orders from U.S. customers for trading on Trayport remain responsible for, among other things, complying with risk disclosure, the handling and allocating of customer orders, and the segregation of customer funds.

The Division's no-action position does not affect the Commission's ability to bring appropriate action for fraud or manipulation. The Division specifically notes that the use of AORSs to transmit orders to Trayport shall be subject to all existing Commission rules and

⁷⁰ At this time, the Commission has not issued a Rule 30.10 order to Imarex permitting its members to conduct brokerage activities on behalf of U.S. persons without having to register as an FCM. However, an Imarex member otherwise may qualify as a Rule 30.10 firm pursuant to other orders issued by the Commission pursuant to Rule 30.10. See, e.g., 67 FR 30785 (May 8, 2002) (permitting firms authorized by Eurex Deutschland to solicit and accept orders from U.S. persons for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized to conduct business on behalf of customers pursuant to German law).

regulations and to any future rules or guidance issued by the Commission or the Division. Finally, this letter does not address issues that might arise under the Securities Act of 1933, the Securities Exchange Act of 1934, or any other applicable federal securities law or rule promulgated thereunder.

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

1. Imarex will continue to satisfy the criteria for a regulated market supervised by NFSA according to the Stock Exchange Act and other Norwegian laws with respect to transactions effected through the trading system.
2. The laws, systems, rules, and compliance mechanisms of Norway applicable to Imarex will continue to require Imarex to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.
3. Imarex will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended to the extent consistent with United States and Norwegian law.
4. Only trading members of Imarex will have direct access to the trading system from the United States and Imarex will not provide, and will take reasonable steps to prevent third parties from providing, such access to Imarex to persons other than Imarex trading members.⁷¹
5. All orders that are transmitted through Trayport by a trading member of Imarex that is operating pursuant to the no-action relief provided herein will be solely for the trading member's own account unless (i) such trading member is registered with the CFTC as an FCM or is a Rule 30.10 Firm, or (ii) such trading member is registered with the CFTC as a CPO or CTA, or is exempt from such registration pursuant to Commission Regulation 4.13 or 4.14, provided that an FCM or Rule 30.10 Firm acts as clearing firm and guarantees without limitation all such trades of the CPO or CTA effected through submission of orders on the trading system. All U.S. customers must qualify as eligible contract participants.
6. All orders for U.S. customers accepted through an AORS and transmitted by Imarex members through the trading system pursuant to the relief granted herein will be intermediated by an Imarex member that is either registered with the CFTC as an FCM or is a Rule 30.10 Firm.
7. Imarex will require that each current and prospective member that operates pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM, a CTA or a CPO execute and file with Imarex a written representation, executed by a person with the authority to bind the member, stating that as long as the relevant Imarex member operates pursuant to the no-action relief provided herein, the member agrees to and submits to the jurisdiction of the CFTC with respect to activities conducted pursuant to the no-action relief. Imarex will maintain the foregoing representations as long as the relevant member is operating

⁷¹ For purposes of these conditions, "member" includes those affiliates identified in footnote 2.

pursuant to the no-action relief and shall make such representation available to the Commission upon the request of a CFTC representative.

8. Imarex will require that each current and prospective member that operates pursuant to the no-action relief provided herein and that is not registered with the CFTC as an FCM, a CTA or a CPO execute and file with Imarex a valid and binding appointment of a U.S. agent for service of process in the U.S. pursuant to which the agent is authorized to accept delivery and service of “communications” issued by or on behalf of the Commission.⁷² Imarex will maintain the foregoing appointments as long as the relevant member is operating pursuant to the no-action relief and shall make such appointments available to the CFTC upon the request of a Commission representative.

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

10. Prior to operating pursuant to the no-action relief provided herein, Imarex will file with the Division, and maintain thereafter as long as Imarex operates pursuant to the no-action relief, a valid and binding appointment of a U.S. agent for service of process in the U.S., pursuant to which the agent is authorized to accept delivery or service of “communications”, as defined above, that are issued by or on behalf of the CFTC.

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

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

b. A listing of the names, NFA ID numbers (if applicable), and main business

⁷² For purposes of these conditions, “communications” is defined to include any summons, complaint, order, subpoena, request for information, or notice or any other written or electronic documentation or correspondence issued by or on behalf of the Commission.

addresses in the U.S. of all Imarex trading members that have access to Trayport in the U.S.

12. Imarex will request that the NFSA provide to the Division not later than July 1st of each year a letter or email confirming that Imarex retains its authorization in good standing as a regulated market under the Stock Exchange Act or other licensing methodology used in Norway.

13. Imarex will promptly provide the Division with written notice of the following:

a. Any material change in the information provided in its no-action request, including any information contained in the documents submitted in support thereof;⁷³

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

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

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

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

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

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

15. The Commission will be able to obtain sufficient information regarding Imarex and its

⁷³ The Division notes that "material" changes in the information provided to it in support of the no-action request would include, without limitation, a modification of: Imarex's membership criteria; the location of Imarex's management, personnel or operations (particularly changes that may suggest an increased nexus between Imarex's activities and the U.S.); the basic structure, nature, or operation of the trading and/or clearing system; or the regulatory or self-regulatory structure applicable to Imarex and its trading members.

members operating pursuant to the no-action relief provided herein. Imarex will provide directly to the Commission information necessary to evaluate the continued eligibility of Imarex or its members for the relief, to enforce compliance with the terms and conditions of the relief, or to enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or U.S. DCMs and DTEFs. Such information will include immediate and direct responses to inquiries from Commission staff regarding potential market abuse associated with Imarex contracts settled based upon the same indices as contracts traded on any CFTC-regulated market, including existing NYMEX-listed contracts.

16. Imarex will employ reasonable procedures, to be determined by Imarex, 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 Imarex'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 any changes in the nature or extent of Imarex's activities in the U.S. to ascertain whether Imarex's presence in the U.S. has increased to a level that might warrant reconsideration of the no-action relief. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

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

Very truly yours,

Richard A. Shilts
Director

cc:

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

Attachment

Attachment

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

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

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

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

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

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

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

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

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