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Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr Andresen,

Proposed Rulemaking – Registration of Foreign Boards of Trade

We welcome the opportunity to be able to respond to the proposed Rulemaking regarding Foreign Boards of Trade. This letter is written on behalf of the two ASX Group entities which currently enjoy 'no action' relief from the CFTC:

- ASX Limited (Australian Business Number 98 008 624 691) in respect of the ASX market; and
- Australian Securities Exchange Limited (Australian Business Number 83 000 943 377) in respect of the ASX 24 market (formerly known as 'SFE').

Existing Relief - ASX

ASX has enjoyed no action relief from the CFTC as follows:

- On 24 July 2002 the CFTC issued Letter No. 02-86 granting no action relief in respect of the offer and sale in the US of futures contracts based on the S&P/ASX 200 index and the S&P/ASX 50 index. This relief was granted by CFTC's Letter No. 02-86 dated 24 July 2002. Note that these products are no longer traded.
- On 22 December 2005 the CFTC made a 'Part 30.10 relief' order exempting participants designated by ASX from the application of certain US foreign futures rules (Federal Register Vol 70 No.245 p75934).

Existing Relief - ASX 24

ASX 24 has enjoyed no action relief from the CFTC as follows:

- On 11 August 1999, the Division of Trading and Markets (T&M) of the Commodity Futures Trading Commission (Commission) issued a letter to the Sydney Futures Exchange (now ASX 24) stating that T&M would not recommend that the Commission institute enforcement action against ASX 24 or its Exchange Participants based solely upon ASX 24 making its electronic trading and order matching system, known as SYCOM, available to Exchange Participants in the United States, without obtaining designation as a contract market under Sections 5 and 5a of the Commodity Exchange Act (Act). This relief was provided, subject to several conditions, with respect to: (i) Exchange Participants who trade for their proprietary accounts through the trading platform in the United States; (ii) Exchange Participants who are registered with the Commission as futures commission merchants (FCM) or who

are exempt from such registration pursuant to Rule 30.10 (Rule 30.10 Firm) and submit orders from United States customers for submission to the trading platform; and/or (iii) Exchange Participants who are registered with the Commission as FCMs or who are Rule 30.10 Firms and accept orders through United States automated order routing systems (AORS) from United States customers for submission to the trading platform.

- On 30 July 2001, T&M issued a further letter confirming that, subject to compliance with certain conditions, it would not recommend that the Commission institute enforcement action against ASX 24 or its Exchange Participants solely based upon ASX 24's failure to seek contract market designation or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act, if a non-Exchange Participant located in the United States is provided direct access to the trading platform via a trading terminal. Included among the conditions were the following: (1) the non-Exchange Participant must be authorized to enter orders directly into the trading platform using a trading terminal by an Exchange Participant qualified to clear transactions on ASX 24 (authorizing Exchange Participant); and (2) the authorizing Exchange Participant must guarantee and assume all financial responsibility for all activity conducted through each non-Exchange Participant's trading terminal.
- On 25 October 2004, T&M issued a further letter modifying the relief granted in the 30 July 2001 letter. This allowed Exchange Participants that carry customer accounts and that wish to place terminals with U.S. customers (non-Exchange Participants) but have not been granted clearing privileges to be afforded the relief set out in the 30 July 2001 letter on the condition that a Clearing Participant of SFE Clearing (now ASX Clear (Futures) since 1 August 2010) takes full financial responsibility for all trades placed through those terminals and both the Exchange Participant and the Clearing Entity conform with the other conditions of the relief granted by the 30 July 2001 letter.

Proposed Rules

The ASX Group welcomes the formalisation of the registration requirements and appreciates the fact that, having the benefit of no-action relief, both ASX and ASX 24 will be able to rely on the grandfathering provisions of the new rules.

However, we would like to make comment on the following issues:

1. Direct Access for non-Exchange entities

As set out above, under the no-action letters of 30 July 2001 and 25 October 2004, ASX 24 has obtained relief under the terms of which Exchange Participants that are registered FCMs or Rule 30.10 Firms are authorized to place the Exchange trading terminals with non-Exchange Participants in the United States, subject to certain conditions.

In the consultation paper we do not see recognition of the placement of terminals with non-Exchange Participants.

Proposed Rule 48.8 Conditions of Registration at subsection 4 states:

"(4) Restrictions on Direct Access

(4)(i) Only the foreign board of trade's identified members or other participants will have direct access to the foreign board of trade's trading system from the United States and the foreign board of trade will not provide, and will take reasonable steps to prevent, third parties from providing direct access to the foreign board of trade to persons other than the identified members or other participants."

We request that the placement of terminals in non-Exchange Participant offices, and the conditions thereof, be specified in the new Rules.

2. Modification of relief

The proposed Rules refer to the ability to modify relief. Will there be any clarity around applying for modification and the criteria for modification?

If you would like any further information please contact Catherine Sullivan at catherine.sullivan@asx.com.au or Gavin Davis at gavin.davis@asx.com.au.

Yours sincerely,



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Legal Counsel



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