

CFTC Letter No. 00-93**September 21, 2000****No-Action****Division of Trading & Markets****VIA FACSIMILE and U.S. MAIL**

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1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Re: Sections 5 and 5a - OM London Exchange Limited; Request for No-Action Relief from Contract Market Designation Requirement

Dear Mr. Johnson:

This is in response to your letters dated June 18, 1999 through September 5, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission").¹ By this correspondence, you request, on behalf of OM London Exchange Limited ("OM London" or "Exchange"), that the Division grant no-action relief to permit OM London to make its electronic trading and order matching system, known as the OM Click Exchange System ("OM CLICK"), and its electronic clearing system, known as the OM SECUR Clearing System ("OM SECUR") (OM CLICK and OM SECUR are collectively referred to herein as the "System"), available to OM London members² in the United States³ ("No-Action Request"). Specifically, OM London wishes to make OM CLICK available to: (i) OM London members who wish to trade for their proprietary accounts⁴ through OM CLICK in the United States; (ii) OM London members who are registered with the CFTC as futures commission merchants ("FCMs") or who are exempt from such registration pursuant to Rule 30.10 ("Rule 30.10 Firms")⁵ and who wish to submit the orders of United States customers⁶ from transmission to OM CLICK; and/or (iii) OM London members who are registered with the Commission as FCMs or who are Rule 30.10 Firms and who wish to accept orders from United States customers through automated order routing systems ("AORSs")⁷ for submission to OM CLICK. OM London also seeks relief to permit the above-referenced, OM CLICK-executed trades to be cleared through OM SECUR.⁸ You request that the Division confirm that it will not recommend enforcement action to the Commission against OM London or its members if OM London does not seek designation as a contract

market pursuant to Sections 5 and 5a of the Commodity Exchange Act ("CEA" or "Act"),⁹ or comply with those Commission regulations that specifically relate to contract markets, in connection with the installation and use of OM CLICK and OM SECUR in the United States.

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

In connection with its No-Action Request, OM London has forwarded the following information to the Division:

- General information regarding OM London (*e.g.*, a description of its organization);
- The OM London Commodity Market Rulebook (which contains the rules governing commodity contracts traded on OM London);
- The OM London Rulebook (which contains the rules for equity derivatives and other contracts traded on OM London);
- The specification of the contracts that would be traded through OM CLICK and cleared through OM SECUR in the United States pursuant to the no-action relief requested;
- Descriptions of OM CLICK and OM SECUR;
- A description of the regulatory regime in the United Kingdom applicable to the operation of OM London and the System; OM London and System participants; and transactions executed through OM CLICK and cleared through OM SECUR;
- Selected provisions of the Financial Services Act 1986 ("FS Act"), and certain provisions of Part VII of the Companies Act 1989 and the draft Financial Services and Markets Bill ("FSM Bill")¹² that relate to Recognized Investment Exchanges ("RIEs"); and

- A listing of the information-sharing arrangements between OM London, the Commission, and other regulatory bodies.

Representations made by OM London regarding the Exchange's activities in the United States, the Exchange's membership criteria, the System, the relevant regulatory regime in the United Kingdom, and the information-sharing arrangements applicable to the System are summarized in Sections I - V below. For purposes of its response to the No-Action Request, the Division has relied upon OM London's representations and has not conducted an independent review to confirm their accuracy.¹³

I. GENERAL INFORMATION REGARDING OM LONDON

OM London is a Recognized Investment Exchange ("RIE") under the laws of the United Kingdom. It provides integrated exchange and clearing services to its members for equity derivatives contracts¹⁴ and other financial and commodity instruments.

OM London is a wholly-owned subsidiary of OM Stockholm AB ("OM Stockholm").¹⁵ In conjunction with OM Stockholm, Oslo Börs (a Norwegian derivatives exchange), and NOS (a Norwegian clearinghouse), OM London provides a combined marketplace for OMX Index futures and option contracts, Swedish Government Bond futures contracts, NBSK ("Pulpex") futures and option contracts, and certain other contracts that are not the subject of the No-Action Request. That is, the price of such contracts is produced by the best orders provided by the membership of all three exchanges at the same time. As discussed below, however, the No-Action Request and the relief provided herein extend only to OM London and its products. OM Stockholm, Oslo Börs, and their respective products will not be available to U.S. customers through the System in the United States.

Futures and option contracts have been traded on the OM London since 1989 and have been available for trading through the System since 1990.¹⁶ OM London members currently may execute transactions on the Exchange either: (i) through OM CLICK or (ii) by placing orders with Exchange officials via the telephone (the "Marketplace Service"). All transactions executed on the Exchange are cleared through OM SECUR.

OM London represents that it does not maintain any office in the United States and that its marketing activities in the United States are limited to one-on-one meetings between its staff and current and prospective Exchange members for the purpose of describing the contracts available for trading on the Exchange. OM London represents that its staff does not provide investment services nor accept, solicit, receive, or direct orders with respect to the products traded on the Exchange in the United States. OM London represents further that no trade processing or clearing functions are performed by the Exchange in the United States.

II. MEMBERSHIP

A person may not trade directly on OM London unless the person is a member of the Exchange. The Exchange has three membership categories: (i) General Clearing Members, (ii) Direct Clearing Members, and (iii) Non-Clearing Members. General Clearing Members are permitted to clear and settle positions entered into by other members. Direct Clearing Members may clear only for themselves. Non-Clearing Members are members that have arranged for their positions to be cleared and settled by a General Clearing Member. The clearing arrangements of all OM London members must include arrangements regarding the maintenance of appropriate bank accounts, payment, documentation, and the provision of collateral. All Exchange members are permitted to trade for both their proprietary and customer accounts, as long as they are authorized to trade in that capacity by the relevant trade regulator in their home jurisdiction.

All OM London members are required to satisfy certain legal, financial, and technical membership criteria, on an ongoing basis. Among other things, Exchange members are required to demonstrate that they have received the requisite regulatory authorization for the type of investment business that they wish to conduct on the Exchange. OM London represents that these authorization requirements would preclude retail investors from becoming Exchange members. OM London members that have a permanent place of business within the United Kingdom must be authorized by the Financial Services Authority ("FSA").¹⁷ Members that have a permanent place of business in Iceland, Norway, Liechtenstein, or a country that is part of the European Union ("EU"), but not within the United Kingdom, must be authorized by the relevant regulator in their respective home country. Members that do not have a permanent place of business in any of the foregoing countries must demonstrate to the satisfaction of OM London that they are subject to an appropriate level of regulation with respect to their Exchange-related activities and that they comply with local regulatory requirements. OM London performs background checks to confirm that its members are in full satisfaction of their respective regulatory obligations.

OM London members also are required to demonstrate to the Exchange that they have a capital base and net current assets that are sufficient to conduct business on the Exchange. The financial resource requirements applicable to individual OM London members vary according to the members' clearing and settlement responsibilities. General Clearing Members are required to have net current assets in excess of £2,000,000 (US\$2,901,915)¹⁸ and fully paid-up share capital or other non-distributable reserves of £1,000,000 (US\$1,450,958). Direct Clearing Members are required to have net current assets in excess of £1,000,000 (US\$1,450,958) and fully paid-up share capital or other non-distributable reserves of £500,000 (US\$725,479). Non-Clearing Members are not subject to any specific financial criteria. Members are required to comply with the applicable financial requirements throughout the duration of their membership and must submit financial returns to OM London in order to demonstrate ongoing compliance with their financial obligations.

OM London, in its sole discretion, may refuse any application to become an Exchange member or approve any such application subject to conditions. On an ongoing basis, OM London members are required to provide notice to the Exchange of all legal, financial, or regulatory events material to their respective standings as members of the Exchange.

III. OVERVIEW OF THE SYSTEM

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

A. Technical Aspects of the SYSTEM

1. Introduction

Both OM CLICK and OM SECUR have been developed by OM Gruppen. OM London represents that both portions of the System underwent comprehensive business and technical testing before they were declared operational. Currently, the following exchanges are using OM CLICK or its variant, the Power CLICK Exchange System,¹⁹ to trade and match orders electronically: the American Stock Exchange, the Australian Stock Exchange, the California Power Exchange, EL-EX (the Finnish Electricity Exchange), the Hong Kong Futures Exchange, the Italian Derivatives Exchange, the Korean Futures Exchange, Nord Pool (the Nordic Power Exchange), OM London, OM Stockholm, and ÖTOB (the Austrian derivatives market).

2. Architecture

The System has a three-tiered architecture. It includes: (i) the Back-End Servers; (ii) the Network ("OMnet"); and (iii) the Front-End Systems. The System operates as follows: Exchange members use Front-End Systems to access the OMnet Application Program Interface ("OMnet API"), the OMnet API provides access to OMnet, and OMnet provides access to the Back-End Servers. OM London provides the Back-End Servers and the OMnet API. Exchange Members are responsible for acquiring Front-End Systems.

a. Back-End Servers

The Back-End Servers are located at the offices of OM Stockholm and OM Technology Customer Services in Stockholm, Sweden. They are comprised of four modular sub-systems: (i) the Common Data Base ("CDB"), (ii) Information Dissemination ("IND"), (iii) the Central Marketplace, and (iv) OM SECUR.

The CDB provides the central database for the information used in the System, including contract

specifications, Authorized Users,²⁰ margin requirements, and other Exchange-specific rules and information. Among other things, it validates an Authorized User's authority to trade a particular product. The IND subsystem retrieves real-time information from the Central Marketplace and from other external information providers, stores such information in its internal database, and distributes the information to OM London members in the form of daily trade statistics and other reports. Authorized Users may receive continuous access to up-to-date information, including the five best bid and ask prices, total volume, closing and opening prices, high and low prices, last volume, and the underlying indices of traded index futures or options. At the conclusion of each trading day, the IND subsystem gathers historical trading information that may be used to generate reports summarizing the day's trading activity. The Central Marketplace performs all of OM CLICK's order processing functions (*i.e.*, it validates requests for orders, order modifications, and order cancellations; accepts and records orders; matches orders; sends order confirmations to the parties; processes the order book; provides real-time marketplace information to the IND subsystem; and, where appropriate, activates and inactivates orders). Once a trade is matched, it is sent to OM SECUR where it is cleared.

b. OMnet

OMnet effectuates the interaction between the Back-End Servers and the Front-End Systems. It routes information between the various subsystems and the trading applications installed on the Front-End Systems.

c. Front-End Systems

Front-End Systems are the external devices used by Authorized Users to access the System. An Authorized User may obtain a license from OM London for a pre-packaged workstation containing trading applications developed by OM Gruppen that can communicate with the OMnet API. In the alternative, an Authorized User may use its own Front-End System and access the OMnet API via proprietary trading application software or trading application software that has been developed by a third party vendor. Similarly, Exchange members can access OM SECUR through a back-office application software package that has been licensed to them by OM London or a comparable proprietary or commercial software application package. OM London requires that all proprietary and commercial software applications be tested on a test system prior to use on a live system in order to ensure that they are capable of connecting to the System and performing all System-related operations.

3. Access

Access to the System is restricted to Authorized Users. Authorized Users are those persons that have been authorized by an OM London member to trade on behalf of the member²¹ and who have been licensed in that capacity by the Exchange.²² To become licensed as an Authorized

User, a person must pass a specific course designed to test his capability to use the System safely and securely. OM London members are required to provide the Exchange with a list of their Authorized Users and to notify the Exchange of any changes thereto. Each Authorized User category is given a unique user profile that defines those transactions in which the Authorized User is permitted to engage.²³

The System includes security measures that have been designed to prevent unauthorized access. OMnet (and hence, the System) can be accessed only through the OMNet API. To gain access to the OMnet API, an Authorized User's trading application must send a login message that includes: (i) a "username" that identifies the Authorized User who wishes to access the System and (ii) a password for the specified username. The System compares the Authorized User's login message with information contained in the CDB to confirm that: (i) the Authorized User exists and the password used by him is correct and (ii) the Authorized User or the OM London member for whom he will be trading has not been suspended from trading. In addition, OMnet will accept information only from Front-End Systems with centrally-registered, valid network addresses.²⁴ This prevents foreign equipment from injecting false transactions into the OMnet network.

OM London members are responsible for taking sufficient measure to ensure the physical security of their own premises and the premises of their Authorized Users and to prevent unauthorized access to the System via logged-in and validated equipment. OM London reviews the physical security measures taken by its members in the course of its periodic inspections of the member's firm. OM London is authorized to restrict a member's access to the System and/or the Exchange if such arrangements are unsatisfactory.

Finally, each transaction that is generated by the OMnet API contains a unique message authentication code which ensures that third parties are unable to enter orders on behalf of Authorized Users. To prevent passive eavesdropping upon OMnet transactions, transaction data can be hardware encrypted.

4. Order Processing

OM CLICK accepts several types of orders for execution, including: (i) single orders,²⁵ (ii) standard combination orders,²⁶ (iii) non-standard combination orders, (iv) trade reports; and (v) price quotation orders. Single orders and standard combination orders may be limit orders²⁷ or market orders.²⁸ Limit orders can be placed with the following qualifiers: (i) fill and store;²⁹ (ii) fill or kill;³⁰ or (iii) fill and kill.³¹ Market orders can be: (i) fill or kill or (ii) fill and kill. OM London Rules also permit the trading of flexible contracts, in accordance with specified procedures.³² All OM London members have the opportunity to receive information concerning a proposed flexible contract before the contract is executed.

When placing an order or varying or canceling an order, an Authorized User is required to enter all of the relevant trade details, including: (i) the instrument, (ii) whether it is a single or combination order; (iii) the series; (iv) whether it is a limit order or market order; (v) whether it is a single or block order; (vi) whether the order is to buy or to sell; (vii) in the case of an option, whether it is a put or a call; (viii) the price of the order (or the net price, if the order is a combination order); (ix) the quantity; (x) the expiration month; (xi) the validity time; (xii) the identity of the Authorized User; (xiii) whether the trade is for the house or for a customer; (xiv) the account to which the transaction, if executed, is to be allocated, and, (xv) if appropriate, the customer identification code.³³ OM CLICK has the technical capability to impose order and price and position limits upon house and customer accounts. However, OM London does not require that such limits be imposed.

All orders that have been sent to the Central Marketplace subsystem are acknowledged and are immediately checked to see whether they are matched. When an order that has been placed matches a stored order, the matched order is executed automatically. Matched orders are executed in accordance with OM CLICK's rules of priority, as set forth below. Order entry and execution times are captured, sequenced, and recorded in a log file to the nearest 1/100th of a second. Authorized Users receive a trade confirmation from the Central Marketplace within two (2) seconds of the time that the trade is sent to OM SECUR for clearing.

OM CLICK generally matches orders using a price/time methodology.³⁴ Priority is given to the order having the best price. Where two or more orders are entered at the same price, priority is given to the order that has been stored in the order book for the longest period of time.

An order that has been placed which does not match a stored order is stored, ranked, or cancelled, in accordance with its terms. The ranking of a stored order is not affected if the order is modified and the modification involves only a reduction in the volume or validity period of the order or a variation in the customer identity. Any variation in a stored order that involves its price, an extension of its validity period, a change from a single order to a block order, or an increase in the volume of an order is treated as a cancellation of the original order and a substitution of a new order. The time priority of the new order is determined by the time at which the new order was entered in the order book.

5. Audit Trail

OM London does not impose any specific audit trail requirements upon its members.³⁵ However, exchange members generally are subject to audit trail requirements in the jurisdiction in which they are based.³⁶ The precise audit trail requirements applicable to particular members varies, depending upon the rules adopted by the responsible supervisor in the members' home jurisdiction. For example, members that have been authorized to conduct investment business in the United Kingdom are subject to the audit trail and conduct of business rules imposed by the

SFA. SFA-authorized firms are required to maintain records of any written communication between the firm and its customers concerning regulated business and to retain copies of contract notes, confirmation notes, and exercise notices.

Although OM London does not require its members to maintain particular records, the System itself ensures that all material information regarding the activity of Exchange participants; all orders placed, varied, or cancelled by Exchange members;³⁷ and all transactions executed by Exchange members is recorded, processed, and stored in a manner that enables the information to be reviewed by OM London and other entities that have a regulatory interest in the information. OM London has maintained all of the audit trail information that has been recorded by the System since the System was activated in 1990. The Exchange intends to maintain these records indefinitely. Records are maintained on-line for thirty days. For security reasons, they are extracted from the System after that time period and placed on tape that is stored at an off-site location in Sweden. Records can be retrieved from the off-site location within twenty-four hours.

OM London Rules require Exchange members to permit access to their premises and to their relevant records. In addition, OM London members and their Authorized Users are required to forward information about their activity on the Exchange to OM London, upon request. OM London represents that the Exchange Rules specifically permit OM London to share any information regarding trading or clearing conducted on the System with the Commission and that Swedish law would not prohibit the acquisition of any information maintained in Sweden.

6. Clearing

OM London provides integrated trading and clearing services. All trades executed on OM CLICK are cleared automatically through OM SECUR. OM London enters into contracts simultaneously with each of the Exchange members who have placed the matching orders in the order book. From the time at which the trade is executed, OM London provides a clearing guarantee by entering into balanced contracts with the buyers and with the sellers. Settlement notes are issued by OM London and each member is required to provide collateral to OM London in the minimum amount of the margin requirement calculated by the Exchange for the relevant member. Contracts are settled according to their individual specifications. Absent default, OM London's obligations are met from the payments made to OM London by the parties on either side of each contract. OM London has established specific procedures to remedy a default by one of its members.

7. System & Network Response Times

All instructions transmitted to the System by Authorized Users are dealt with on an impartial basis and in strict accordance with the time at which the instructions were received, regardless of the membership class of the Authorized User. Moreover, the System itself has been constructed to ensure that, as far as is reasonably possible, no one network connection is disadvantaged over another, the effect of differences in geographic location on the time at which orders are received is

de minimis, and the order execution of all participants is equitable. OM London monitors the performance of the network on a daily basis to ensure that domestic users and cross-border users are able to use the System on a sufficiently equivalent basis. Generally, the System has been designed and sized to process transactions in under two seconds, allowing for substantial growth in both product range and trading volume.

8. Reliability and Recovery

The System is located on dual sites in Sweden for redundancy purposes. The System is designed, and each site is equipped, to permit the System to function if any equipment at either site is out of service, or if either site is out of service. All vital functions have standby functionality, with automatic fail-over in the event of a failure at either site. The back-up system is used daily in normal production in order to avoid problems that might be encountered upon activating a long dormant facility.

OM Technology Systems AB ("OM Technology")³⁸ is responsible for providing user assistance and for monitoring the primary and backup computer equipment, the network, and the system interfaces. OM Technology employs specialized software that alerts the computer operator if any computer or network functionality is being lost. The System also includes a disaster detection system that automatically sends notification of possible problems to engineers who are on-call at all times. An OM Technology supervisor is in attendance at all times to answer questions and to address problems. A problem log is maintained and problems are reviewed on a daily basis.

The System incorporates a "heartbeat" mechanism, a continuously transmitted message that confirms to the Authorized User that the System is functioning and that a delay in execution is due to a slow market. In the event that the connection between the System and one of its Authorized Users fails, the Authorized User's orders are inactivated automatically. Similarly, a timer is initiated during periods of inactivity (*e.g.*, in the event that an Authorized User fails to log out) and an Authorized User's orders are inactivated after a prescribed period of time. Inactivated orders are kept in the Central Marketplace for the rest of the day, after which they are discarded from the System. An Authorized User can prevent his orders from becoming deactivated by sending a new login transaction from the same Front-End System or from another, authorized Front-End System. Exchange members are permitted to use "replacement" Authorized Users who may trade on the member's behalf in the event that the initial Authorized User is experiencing difficulties with the System. An Authorized User also can prevent his orders from becoming deactivated by providing OM London with instructions to this effect in advance or by placing orders through the Marketplace Service .

In the event of a system failure of significant length, the order book would be deactivated. The market would be re-opened at a later date following the procedures that are followed at the start of a normal trading day. Prior to the resumption of trading, members would be informed that trading would begin anew in a specific period of time and members would be provided with the

opportunity to delete their orders.

B. Market Supervision

OM London's Market Supervision Department ("Market Supervision") supervises the activity of OM London members to ensure that trading through OM CLICK and clearing through OM SECUR is conducted properly and to ensure that a fair and orderly market is maintained. Market Supervision monitors the OM London market on a continuous basis. Among other things, Market Supervision: (i) reviews trading on contract-by-contract and by-member bases to detect and prevent market abuses; (ii) reviews price movements and settlement prices; (iii) reacts to intraday volatility by reviewing the adequacy of margin levels and the necessity of intraday margin calls with the Exchange's Clearing Department; (iv) conducts computer-based investigations into member trading to ensure that its members are in compliance with OM London Rules; and (v) conducts detailed visits to member firms to evaluate the controls and procedures employed by them in the administration of their Exchange-related business and to verify the members' compliance with Exchange Rules.³⁹ It also may require OM London members to provide, on a regular or periodic basis, information regarding their open trading positions and trading activity.

Market Supervision is closely involved with the disciplinary process. It investigates suspected misconduct that has been reported to the Exchange and identifies suspicious trades or patterns of trades. In order to facilitate investigations, it analyzes, among other things, data held on the Exchange's computer systems and members' trade paperwork. OM London may request that the SFA or another appropriate body assist the Exchange in any of its investigations. OM London members are required to cooperate fully with Market Supervision and to respond to any direction issued by the Exchange following an investigation.

Where Market Supervision has uncovered sufficient evidence of possible violations of OM London Rules, it reports such evidence to the Chief Executive of the Exchange. The Chief Executive appoints a disciplinary panel to formally investigate the allegations. Where the conduct appears to be a breach of a general regulatory provision or an SRO rule, the matter is referred to the appropriate supervisory body for investigation. If the allegations of non-compliance with Exchange Rules are upheld, the appropriate sanctions are applied.

C. Demarcation of Responsibilities and Liability

OM London Rules limit the Exchange's liability to members with respect to its operation of the System. For example, in the absence of gross negligence, OM London may not be held liable to any member, customer, or other party for any loss or damage that may result (directly or indirectly) from any technical problem affecting or interfering with the provision of the System by OM London. OM London generally may not be held liable for loss or damage that arises in other

circumstances, unless the loss or damage is attributable to negligence on the part of the Exchange.⁴⁰

D. Adherence to IOSCO Principles

OM London represents that it has satisfied the FSA that the features and facilities provided by the System and the use of the technology provided by the System are satisfactory in light of 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”).⁴¹ The FSA's predecessor, the Securities and Investments Board (“SIB”), endorsed the IOSCO Principles in April 1991.⁴² OM London represents further that it will continue to comply with the IOSCO principles in the provision of electronic trading and clearing facilities.

IV. OVERVIEW OF THE REGULATORY STRUCTURE IN THE UNITED KINGDOM

A. Introduction

OM London is subject to a comprehensive regulatory regime in the United Kingdom.⁴³ This regulatory structure includes, among other things: financial and other fitness criteria for industry participants; reporting and recordkeeping requirements; procedures governing the treatment of customer funds and property; sales practice and other conduct of business standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse, and market manipulation. Responsibility for financial services legislation and broad policy in the United Kingdom lies with Her Majesty's Treasury, which is answerable to Parliament. Responsibility for regulating the conduct of investment business and for providing investor protection in the United Kingdom rests with the FSA. Additional authority to prevent and prohibit market manipulation rests with the United Kingdom's Department of Trade and Industry and its Serious Fraud Office.

The principal legal provisions for investor protection in the United Kingdom's financial services sector currently⁴⁴ are contained in, or derived from, the FS Act and the FSA fulfills its regulatory responsibilities within the framework established by that Act and related legislation.⁴⁵ The FSA also has established Statements of Principle (“FSA Principles”), that set forth universal standards of practice, including standards relating to internal organization; the financial resources, integrity, skill, care, and diligence of market participants; customer assets; conflicts of interest; market practice; information about customers; information for customers; and relationships with regulators.

The Division notes that the Commission previously reviewed the regulatory regime administered and enforced by the FSA applicable to transactions on United Kingdom exchanges in connection with the relief it granted to the Securities and Futures Authority's ("SFA's") predecessors in 1989. On May 19, 1989, the Commission issued orders pursuant to Rule 30.10 that granted exemptive relief to the members of the Association of Futures Brokers and Dealers ("AFBD"), The Securities Association ("TSA"),⁴⁶ the Investment Management Regulatory Organization (IMRO), and the SIB to permit such members to solicit and accept orders from United States customers for otherwise permitted transactions on non-United States exchanges that are "Designated Investment Exchanges" ("DIEs").⁴⁷ In each of these orders, the Commission noted that the standards for relief set forth in Rule 30.10 generally had been satisfied by each of the petitioning regulatory authorities, and compliance by the Rule 30.10 Firms with applicable United Kingdom law and the rules of the respective petitioning authority could be substituted for compliance with certain provisions of the CEA and the Commission's rules set forth in the Commission's orders.⁴⁸

B. Regulation of OM London as an RIE

Under the FS Act, OM London is an RIE.⁴⁹ As an RIE, OM London is exempt from the requirement that it be "authorized" to conduct "investment business"⁵⁰ in the United Kingdom with respect to the operation of its markets.⁵¹ However, to acquire recognition status, OM London was required to satisfy several statutorily-prescribed recognition requirements. OM London must continue to fulfill these obligations in order to maintain its recognition status. Among other things, OM London is required to: retain sufficient financial resources for the performance of its functions as an RIE; operate its markets with due heed to the protection of investors; ensure that trading is conducted in an orderly and fair manner; maintain suitable arrangements for trade reporting; maintain suitable arrangements for the clearing and settlement of contracts; monitor compliance with its rules; enforce its rules; investigate complaints with respect to its business; maintain rules to deal with the default of its members; cooperate with other regulatory bodies through the sharing of information or otherwise;⁵² maintain high standards of integrity and fair dealing; and prevent abuse. The FSA has provided guidance on some of the statutory recognition requirements that sets forth the FSA's interpretation of those obligations in practical terms. The FSA intends to publish an FSA Sourcebook that will provide more expansive guidance on the FSA's interpretation of equivalent requirements under the FSMA.

The FSA is the authority charged with ensuring that RIEs, such as OM London, continue to comply with the recognition criteria and is authorized to de-recognize any RIE that fails to meet the statutory recognition requirements. Accordingly, OM London is subject to the oversight of the FSA. The FSA exercises its supervisory responsibility by conducting an ongoing assessment of whether OM London's rules, procedures, and practices are adequate for the protection of investors and for the maintenance of an orderly market. For this purpose, the FS Act requires OM London to report changes in its rules and procedures to the FSA within seven days of such amendments becoming effective. In practice, OM London notifies the FSA of significant changes to its rules or

procedures before such changes become effective. OM London is also required to produce an annual regulatory plan detailing its intended regulatory activities over the succeeding twelve months. OM London has never been declared to be in breach of its regulatory responsibilities.

C. Regulation of OM London Members

Because trading on OM London, including trading and clearing through the System, constitutes the carrying on of investment business in the United Kingdom, most United Kingdom-based members of OM London that trade through OM CLICK and clear trades through OM SECUR⁵³ will be required to be authorized under the FS Act. To obtain authorization, an applicant must satisfy the FSA that it is "a fit and proper person" to carry on investment business and to provide the financial services in which it intends to engage. In addition, most OM London members that trade through OM CLICK and clear such trades through OM SECUR are subject to the rules of an SRO.⁵⁴ The majority of OM London members are subject to rules imposed by the SFA.⁵⁵ By virtue of the SFA's recognition status, SFA membership confers the status of authorization for purposes of the FS Act. The SFA evaluates applications for membership to ensure that applicants are "fit and proper persons" to carry out investment business. In evaluating an applicant's fitness, the SFA may consider a variety of factors, including the applicant's integrity, honesty, competence, and financial soundness. The SFA has also promulgated other fitness criteria, financial resource requirements (which are designed to reflect, among other things, the firm's position risk and its exposure to counterparties), sales practice rules, and rules designed to ensure the integrity of the market (*e.g.*, rules regarding best execution, customer order priority, and customer order allocation; restricting the offer of illiquid or off-market investments; prohibiting members from trading ahead of customers; and prohibiting the churning of accounts and switching of contracts). SFA further requires adherence to recordkeeping and audit trail requirements. Violations of the SFA's requirements may result in disciplinary action or fines imposed by the FSA.

D. Exchange Rules

In addition to the regulatory requirements set forth above, all OM London members and their Authorized Users are required to comply with Exchange rules and any guidance that OM London may issue concerning the application or interpretation of such rules. OM London Rules are applicable to all such persons because those rules are based in contract rather than statute and are not, therefore, constrained by jurisdictional boundaries.

OM London Rules require Exchange members to permit access to their premises and to their relevant records to satisfy OM London that the members are in full compliance with Exchange Rules. OM London members and their Authorized Users also are required to forward information about their Exchange-related activity to OM London, upon request, and to cooperate with the Exchange in providing information to the home country regulator of the member.⁵⁶

OM London Members and their Authorized Users are subject to disciplinary action for failure to comply with Exchange Rules. Disciplinary action may result in a written reprimand, fine, suspension, exclusion from trading for a specified period, exclusion from trading in certain instruments or in certain capacities, other conditions or restrictions on the member's activity, or expulsion. Exchange Rules permit OM London to use the services of the SFA or any other appropriate regulatory organization in any investigation undertaken by the OM London pursuant to Exchange Rules.

OM London Rules are designed to enable the Exchange to fulfill its recognition obligations, including the requirement that the Exchange ensure that its market is fair and orderly and is operated with due regard to the protection of investors. OM London Rules incorporate those FSA Principles and other regulatory guidance issued by the FSA that are relevant to OM London's business. The Exchange Rules contain both substantive provisions relating to membership requirements and trading and procedural provisions relating to discipline, arbitration, and the default of members. Among other things, Exchange Rules include: (i) contract specifications; (ii) the information required to be provided when an order is placed; (iii) the procedures to place, vary, and cancel orders; (iv) order ranking and processing rules; (v) prohibitions against market manipulation; (vi) proscriptions against any action that might distort the market; (vii) prohibitions upon the distribution of inaccurate or misleading information that might affect the price of an Exchange-traded instrument; (viii) market closure circumstances and procedures; (ix) clearing procedures; (x) collateral requirements; and (xi) the payment of fees. They also require Exchange members to cooperate with OM London in the promotion of high standards of fair dealing and integrity in trading.

Finally, United Kingdom law requires that RIEs maintain rules that allow the RIE to declare a member to be a defaulter and to close out all open positions on the market. Market authorities are not required to wait for the commencement of formal insolvency proceedings to declare a default if they possess a good faith belief that the member will be unable to meet its future obligations under market contracts.⁵⁷ Accordingly, OM London has promulgated rules that delineate the procedures to be followed by the Exchange in the event of default. The default rules set forth, among other things, the circumstances under which the Exchange may declare a member to be in default, the actions that the OM London may take in the event of default, the type of resources that may be used to satisfy the defaulting member's obligations, and the sequence in which such resources may be used.

V. INFORMATION-SHARING

As set forth more fully below, pursuant to the terms and conditions of the no-action relief provided herein, the Division will be entitled to receive certain specified information regarding the System directly from OM London. Additional information relevant to OM London, the System, and System participants will be available to the Commission and its staff through certain

information-sharing arrangements to which both the CFTC and the FSA (or the SIB, its predecessor in interest) are parties. These include, without limitation, the *Memorandum of Understanding on Mutual Assistance and the Exchange of Information between the United States SEC and the CFTC*, and the *United Kingdom Department of Trade and Industry and the SIB dated September 25, 1991* and the *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations, as amended, March 1998* (commonly known as the "Boca Declaration").⁵⁸

VI. CONCLUSION

Consistent with the Commission's June 2 Order,⁵⁹ the Division has reviewed and considered OM London's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by OM London indicate that OM London does not maintain any office or staff in the United States; provide investment advice, solicit orders, or direct trading from within the United States; or maintain any order matching or clearing facilities in the United States. The materials also indicate that: OM London is an RIE under the laws of the United Kingdom; OM London, the System, and OM London members are subject to oversight in the United Kingdom by a legitimate regulatory authority that is responsible for ensuring their compliance with an extensive regulatory regime; the System adheres to the IOSCO Principles; and the CFTC and the FSA are parties to various information-sharing arrangements applicable to OM London members and the activities of the System.⁶⁰

Based specifically upon these and other representations made by OM London in support of its No-Action Request, the Division has determined that granting no-action relief to OM London and its Members, pending the adoption by the Commission of rules or guidelines regarding access to foreign boards of trade from electronic trading devices in the United States, would not be contrary to the public interest. Accordingly, subject to compliance with the terms and conditions stated herein, the Division will not recommend that the Commission institute enforcement action against OM London or its members solely based upon OM London's failure to obtain contract market designation pursuant to Sections 5 and 5a of the CEA if: (i) OM London members trade for their proprietary accounts through OM CLICK in the United States; (ii) OM London members who are registered with the Commission as FCMs or who are Rule 30.10 Firms submit orders from United States customers for transmission to OM CLICK; (iii) OM London members who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders through AORSs from United States customers for submission to OM CLICK; and/or (iv) OM London members that are registered FCMs or who are Rules 30.10 Firms submit trades that have been executed on OM CLICK pursuant to the no-action relief provided herein to OM SECUR for clearing.

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

- OMX Index futures,^{[61](#)}
- OMXCAP Index futures,
- NBSK "Pulpex" futures,
- NBSK "Pulpex" options,
- 2STAT Swedish Government Bond futures, and
- 10STAT Swedish Government Bond futures contracts.

If additional futures and option contracts become available for trading through OM CLICK, OM London may make such futures and option contracts available for trading through OM CLICK in the United States without obtaining written, supplemental no-action relief from Commission staff ("Supplemental Relief") in accordance with the terms, conditions, and exceptions of the Commission's Statement of Policy regarding the listing of new futures and option contracts by foreign exchanges that are operating electronic trading devices in the United States pursuant to Commission staff no-action relief.^{[62](#)}

The scope of the Division's no-action position is restricted to providing relief from the requirement that OM London obtain contract market designation pursuant to Sections 5 and 5a of the CEA and regulatory requirements that flow specifically from the contract market designation requirement if the above-referenced contracts are made available in the United States for trading through OM CLICK and for clearing through OM SECUR, in the manner set forth herein. The Division's no-action position does not extend to any other provision of the CEA, any other Commission regulations, or to any National Futures Association ("NFA") rules and does not excuse OM London or its members from compliance with any applicable requirements thereunder. Nor does the no-action position alter, restrict, or expand the coverage of existing Commission exemptions for particular products.

The Division specifically notes that its no-action position does not alter the requirement that a firm operating pursuant to the no-action relief provided herein must be a registered FCM or be operating pursuant to Rule 30.10 relief to engage in the offer or sale of a foreign futures contract or a foreign options transaction for or on behalf of a United States foreign futures or foreign options customer. For example, nothing in this letter is intended to alter current Commission rules and staff interpretations that require generally that any foreign firm that clears trades on a fully-disclosed basis on behalf of United States persons (including where the United States person is a non-clearing member of a foreign board of trade trading solely for its proprietary account) be a registered FCM or a Rule 30.10 Firm unless the foreign firm solely carries accounts on behalf of United States customers that are its proprietary accounts (as defined in Rule 1.3(y)) of the foreign

firm.⁶³ If a foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM in the United States and its sole contact with a United States customer is that it carries the FCM's omnibus account, then the firm need not register under Rule 30.4.⁶⁴

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the United States. Thus, Rule 30.10 firms cannot provide direct access to the System in the United States (although they would be permitted to accept orders overseas from customers located in the United States that submit such orders by telephone or through an AORS located in the United States). FCMs or Rule 30.10 Firms who solicit or accept orders from United States customers for trading on the System 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 OM CLICK shall be subject to all existing Commission rules and regulations and to any future rules or guidance propounded by the Commission or the Division. Finally, this letter does not address issues that might arise under the Securities Act of 1933, the Securities Exchange Act of 1934, and other applicable federal securities laws or rules promulgated thereunder.

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

- OM London will continue to satisfy the criteria for designation as an RIE under the applicable laws of the United Kingdom with respect to transactions effected through OM CLICK and cleared through OM SECUR.
- The laws, systems, rules, and compliance mechanisms of the United Kingdom applicable to OM London will continue to require OM London to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of the FSA.
- OM London and the System will continue to adhere to the IOSCO Principles, as updated, revised, or otherwise amended.
- Only members of OM London will have direct access (*i.e.*, not through

an AORS) to the System and OM London will not provide, and will take reasonable steps to prevent, third parties from providing such access to the System to persons other than OM London members.⁶⁵

- All orders that are transmitted through OM CLICK by a member of OM London that is operating pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for "proprietary accounts," as defined herein, of such OM London member.
- All orders for United States customers accepted through an AORS and/or transmitted by OM London members through OM CLICK will be intermediated by an OM London member that is either registered with the Commission as an FCM or is a Rule 30.10 Firm.
- OM London will require each current and future Exchange member that is not registered with the Commission as an FCM to file with OM London a written representation, executed by a person with the authority to bind the member, stating that as long as the OM London member operates pursuant to the no-action relief provided herein, the Exchange member agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the no-action relief. OM London will obtain the foregoing representation before it permits the relevant Exchange member to operate pursuant to the no-action relief and will maintain the representation as long as the member is operating pursuant to the relief. OM London will make such representations available to the Commission upon the request of a Commission representative.
- OM London will require each current and future Exchange member that is not registered with the Commission as an FCM to file with OM London a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of "communications"⁶⁶ that are issued by or on behalf of the Commission. OM London will obtain the foregoing appointment before it permits the relevant Exchange member to operate pursuant to the no-action relief and will maintain the appointment as long as the relevant member is operating pursuant to that relief. OM London will make such appointments available to the Commission upon the request of a Commission representative.
- OM London will require each current and future Exchange member

who is not registered with the Commission as an FCM to file with OM London a written representation, executed by a person with the authority to bind the Exchange member, stating that, as long as the Exchange member operates pursuant to the no-action relief provided herein, the member will provide, upon the request of the Commission, the United States Department of Justice, and, if appropriate, the NFA, prompt access to original books and records maintained at their United States offices as well as to the premises where the System is installed or used in the United States. OM London will obtain the foregoing representation before it permits the relevant Exchange member to operate pursuant to the no-action relief and will maintain the representation as long as the relevant member is operating pursuant to the no-action relief. OM London will make such representations available to the Commission upon the request of a Commission representative.

- OM London will file with the Division a valid and binding appointment of a United States agent for service of process in the United States, pursuant to which the agent is authorized to accept delivery and service of "communications," as defined above, that are issued by or on behalf of the Commission. OM London will maintain the foregoing representation as long as OM London or the System operate pursuant to the no-action relief.
- OM London will maintain the following updated information and submit such information to the Division on at least a quarterly basis, and at any time promptly upon the request of a Commission representative:
 - For each contract available to be traded through OM CLICK, the total trade volume originating from electronic trading devices providing access to OM CLICK in the United States compared with total trade worldwide volume for such products traded through OM CLICK and the total worldwide trade volume for such products traded on OM London generally.
 - A listing of the names, NFA ID numbers (if applicable), and main business addresses in the United States of all OM London members that have access to the System in the United States.
- OM London will promptly provide the Division with written notice of the following:
 - Any material change in the information provided in its No-

Action Request, including any information contained in the documents submitted in support thereof. [67](#)

- Any material change in OM London Rules or the laws, rules, and regulations in the United Kingdom relevant to futures and options.
- Any matter known to OM London or its representatives that, in OM London's judgment, may affect the financial or operational viability of OM London, including, but not limited to, any significant system failure or interruption.
- Any default, insolvency, or bankruptcy of any OM London member known to OM London or its representatives that may have a material, adverse impact upon the condition of OM CLICK, OM SECUR, or upon any United States or firm.
- Any known violation by OM London or any OM London member of the terms or conditions of the no-action relief provided herein.
- Any disciplinary action taken by OM London against any member of OM London operating pursuant to the no-action relief provided herein that: (i) involves any market manipulation, fraud, deceit, conversion or that results in suspension or expulsion; (ii) involves the use of OM CLICK, OM SECUR, or an AORS to submit orders to the System; and (iii) either: (a) the OM London member against whom the disciplinary action is taken located or based in the United States or (b) the disciplinary action results, in whole or in part, from conduct that: (1) involves the use of an electronic trading device or an AORS that is located in the United States to accept or submit an order for trading through OM CLICK; (2) involves a United States customer or firm or a registered FCM; or (3) might have a material, adverse impact upon any United States customer or firm. [68](#)
- Satisfactory information-sharing arrangements between the Commission and the FSA will remain in effect.
- The Commission will be able to obtain sufficient information regarding OM London, the System, and the members of OM London operating pursuant to the no-action relief provided herein necessary to evaluate the

continued eligibility of OM London or its members for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations. [69](#)

- OM London will provide directly to the Commission information necessary to evaluate the continued eligibility of OM London or its members for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the CEA and Commission regulations. [70](#)
- OM London employs reasonable procedures, to be determined by OM London, 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 OM London's No-Action Request and the materials submitted in support thereof. Any materially different, changed, or omitted facts or circumstances may render this letter void. The Division specifically notes that it will examine the volume information submitted as a condition to the no-action relief provided herein as well as any changes in the nature or extent of OM London's activities in the United States to ascertain whether OM London's presence in the United States has increased to a level that might warrant reconsideration of the no-action relief.

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

If you have any questions regarding this correspondence, please contact me or Andrew Chapin at (202) 418-5430.

Very truly yours,

John C. Lawton
Acting Director

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

Henry J. Matecki, Division, Chicago Regional Office

1 Letter from Philip M. Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom, to I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission (June 18, 1999).

2 For purposes of the No-Action Request and the relief provided herein, references to the members of OM London shall include any "affiliate" of any Exchange member that has been granted access by the Exchange member to the System. An "affiliate" of an OM London member shall mean any person that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; or (iii) is owned 50% or more by a third person that also owns 50% or more of the member. OM London represents that, as a condition of access to the System, such affiliates would be required to comply with all OM London Rules and that OM London members will remain responsible to the Exchange for ensuring their affiliates' compliance. For purposes of this letter and the no-action relief provided herein, the terms "OM London Rules" and "Exchange Rules" shall mean the rules contained in the OM London Commodity Market Rulebook and the OM London Rulebook.

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

4 For purposes of this letter and the relief provided herein, the term "proprietary account" shall have the meaning set forth in Rule 1.3 (y). 17 C.F.R. § 1.3(y) (2000). Commission rules referred to herein are found at 17 C.F.R. Ch. I (2000).

5 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 Commodity Exchange 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. pt. 30, Appendix A (2000).

6 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).

7 For purposes of this letter and the relief provided herein, the term "AORS" shall be defined to include any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial intervention, trade matching or execution takes place.

8 OM London represents that OM SECUR systems in the United States will clear only those transactions that have been executed on OM CLICK pursuant to and under the terms and conditions of the relief provided herein.

9 7 U.S.C. §§ 1 *et seq.* (1994).

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

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

12 In June 2000, the FSM Bill was enacted by Parliament, without substantial revision, as the Financial Services and Markets Act 2000 ("FSMA"). It reforms the regulatory structure of the financial services industry in the United Kingdom in accordance with proposals that were announced in May 1997. The FSMA has not yet come into force, however, and its unlikely to do so prior to June 2001. In the interim, the FS Act remains the principal provision governing OM London's activities as a Recognized Investment Exchange in the United Kingdom.

13 As stated below, the no-action relief provided herein is contingent upon the accuracy of the

representations made by OM London 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 OM London acknowledges that the CEA prohibits the offer and sale of futures contracts on individual stocks to United States customers and that the no-action relief provided herein does not alter that prohibition. The Exchange also acknowledges that receipt of a no-action position from Commission staff is a necessary prerequisite to the offer and sale of foreign futures contracts on foreign and domestic stock indices within the United States and that the no-action relief provided herein does not alter that requirement. Foreign futures contracts on individual stocks and foreign stock indices may be offered and sold to non-United States customers, and these contracts currently are available to non-United States customers through OM CLICK.

15 OM Stockholm is wholly-owned by OM Gruppen AB ("OM Gruppen").

16 OM London also permits customers to transmit orders to Exchange members for subsequent execution on OM CLICK through an AORS. Exchange members are required to maintain control over order-routed business to ensure that adequate checks are performed before such orders are submitted. For example, Exchange members are required to comply with order validation and recording requirements with respect to orders that are submitted via an AORS.

17 As discussed in Section IV, the FSA is responsible for regulating the conduct of investment business and for providing investor protection in the United Kingdom.

18 For informational purposes only, the Division has noted the United States dollar equivalent of the sum of British pounds referenced herein based upon the exchange rate of September 5, 2000 (UK1:US\$1.45). The Division notes that the financial requirements imposed upon OM London members, including capital requirements, are not linked in any way to the United States dollar equivalent provided herein.

19 The Power CLICK exchange system is an electronic trading system for electricity markets.

20 Access to the System is restricted to "Authorized Users." The criteria for becoming an Authorized User is discussed in Section III.A.3.

21 An Authorized User is required to submit all orders in the name of the OM London member for whom it is trading and must trade, at all times, in the name of and on behalf of the sponsoring Exchange member. OM London members are responsible for all of the activities of their Authorized Users, including all orders and other instructions entered and all trades made by such Authorized Users on OM CLICK and cleared through OM SECUR. All trades executed on or cleared through the System by an OM London member's Authorized User or through a Front-End

System to which any Authorized User has access are binding upon the member, regardless of whether the trade was authorized by the OM London member or was permitted by Exchange Rules. OM London members also are responsible for ensuring that all activity on the System is conducted in accordance with Exchange Rules and applicable regulatory requirements. OM London members may be held accountable financially for the behavior of their Authorized Users and may be subject to disciplinary action for failure to procure compliance with Exchange Rules.

22 OM London implemented the licensure requirements in January 2000. Persons that were authorized to use the System prior to that time are not subject to the licensure requirement.

23 Where approval for a particular transaction has not been obtained from OM London or any relevant regulator in a particular jurisdiction, OM CLICK will prohibit an Exchange member and its Authorized Users from trading the instrument on OM CLICK and from clearing the instrument through OM SECUR. Accordingly, OM London members and their Authorized Users will not be able to access products from electronic devices providing access to the System which are located in the United States, unless they are authorized to do so pursuant to the no-action relief provided herein.

24 Such network addresses do not enable OM London to identify the physical location of the Front-End System of an individual Authorized User. However, Exchange members are required to provide OM London with their updated business addresses and OM London is authorized to take certain action, including terminating its relationship with the member, depending upon the significance of the change in the member's location.

25 A single order is a solitary bid or ask order related to a specific futures or option series.

26 Combination orders are orders that are comprised of two or more individual orders that are subject to the condition that each individual order that is part of the combination order must be executed simultaneously. A standard combination order consists of up to four single orders on the same underlying instrument that, in the aggregate, comprise a unique contract series that has been predefined by OM London.

27 A limit order trades at the price stated or better. Unless otherwise specified, any residual volume is retained in the order book until it is withdrawn, traded, or automatically cancelled at the end of the day.

28 A market order trades at the best price available. In the case of partial execution, the unfilled portion of the contract is cancelled.

29 A fill and store order is an ask or bid order that is placed in the order book to enable the whole order or the remainder of the order to be matched. The order or remainder of the order is stored in the order book until fully matched or the termination of a specific validity time.

30 A fill or kill order must be filled against any existing orders in its entirety at the specified price or the order will be completely cancelled. The order is not stored in the order book.

31 A fill and kill order must be matched with as much quantity as possible at the given price; the remainder is cancelled. The order is not stored in the order book.

32 Flexible contracts are contracts in which the Exchange member may agree to limited variations on the comparable standardized contract. For example, members may agree to vary the exercise price, the expiration day, and/or the style of contract. The only variable term for a flexible futures contract is its term.

33 Orders are required to have an identifier specific to the customer. However, an Authorized User is permitted to input the customer identifier into OM CLICK after execution.

34 Whether an order is transmitted electronically or via the Marketplace Service does not affect its treatment.

35 OM London represents that, with limited exceptions, RIEs are not required to supervise the relationship between intermediaries and their customers. Rather, the primary responsibility for such supervision and, consequently, the regulation of an intermediary's maintenance of transaction records is within the jurisdiction of the SFA or similar local regulator.

36 OM London does not review the audit trail requirements applied in various regulatory jurisdictions to ensure that its members are subject to a minimum audit trail standard.

37 The order details that an Authorized User is required to input into the System are set forth in Section III.A.4.

38 OM Technology is the company within the OM Group that is responsible for the provision of the System to OM London and OM Stockholm and for the operation and maintenance of the System.

39 Market Supervision also may conduct ad hoc visits to a member firm, if it suspects that OM London Rules have been breached.

40 OM London Rules also provide that the Exchange may not be held liable, in any way, for loss or damage resulting from specified circumstances (*e.g.*, legislative enactments in the United Kingdom or abroad).

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

42 *SIB Endorsement of IOSCO's Principles for the Oversight of Screen-Based Trading Systems for Derivative Products*, Guidance Release 2/91 (April 1991).

43 As discussed above, OM London provides a combined marketplace for certain contracts in conjunction with OM Stockholm and Oslo Börs and maintains certain computer equipment upon which the System functions in Sweden. However, OM London represents that there are no circumstances under which the transactions executed and cleared pursuant to the relief provided herein would be subject to the regulatory regime in either Sweden or Norway.

44 As discussed in footnote no. 12, the FS Act will be replaced in 2001 by the FSMA and by secondary legislation enacted pursuant to the FSMA. The FSMA is substantially similar to the FS Act with respect to the regulation of RIEs and their participants.

45 Violations of the FS Act are criminal offenses.

46 On April 5, 1991, the Commission issued a supplemental order confirming the continued validity of such previous orders following the merger of the AFBD and the TSA into the SFA. On March 7, 1997, the Commission issued an additional order to the SFA clarifying the procedures set forth in its prior orders regarding United Kingdom exchanges and their members.

47 DIEs are those non-United States exchanges that have been identified by the SIB to the Commission in connection with the CFTC's grant of exemptive relief pursuant to Rule 30.10. As an RIE, OM London is included in the SIB's (now the FSA's) list of DIEs.

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

49 As discussed above, OM London operates as an integrated exchange and clearinghouse. OM London is not a Recognized Clearing House, but is authorized under United Kingdom law to provide clearing and settlement services as an extension of its activities as an RIE. Because OM London is authorized to perform these additional functions, it is subject to additional regulatory requirements (*e.g.*, it must maintain financial resources that are sufficient to support its clearing and settlement functions).

50 The FS Act defines investment activities to include, among other things, dealing, arranging deals, managing, giving investment advice, and establishing or operating a collective investment scheme in or in relation to a range of investments, including securities, options, and futures.

51 The FS Act prohibits individuals and entities from carrying on "investment business" in the United Kingdom unless they are either "authorized" to do so or are eligible for an exemption from the authorization requirement. The FS Act imposes criminal sanctions on persons who violate this requirement. While agreements made by or through persons who have not been authorized to conduct investment business as required may be enforced by customers, they are not enforceable on the part of the unauthorized person.

52 An RIE's obligation to cooperate with other regulatory bodies is not limited to cooperation with regulatory authorities in the United Kingdom. The SIB's Guidance Release entitled "Standards for regulation of RIEs" specifically provides, among other things, that an RIE should cooperate with appropriate regulators (including overseas regulators and authorities), market authorities, and other relevant bodies.

53 EU law permits investment firms, banks, and other institutions that are authorized to engage in certain types of investment business in one EU member state to conduct such business in other EU member states, pursuant to the EU's Investment Services Directive and the Second Banking Co-ordination Directive, which provide the regulatory foundation for cross-border activity within the EU. Accordingly, non-United Kingdom EU institutions doing business in the United Kingdom via this "European Passport" are not required to be authorized under the FS Act or to have the benefit of an exemption from the authorization requirement in order to conduct investment business there. Institutions using the "European Passport," however, must comply with the sales practice and other rules in the institutions "host state" when selling investment products to investors in that state.

Dealings by a person who does not carry on investment business from a permanent place of business in the United Kingdom (an "Overseas Person") with a person who has been authorized to conduct investment business in the United Kingdom or who has been exempted from that

requirement are among the "excluded activities" that are not regarded as "investment business in the United Kingdom" under the FS Act. Accordingly, an Overseas Person is able to deal with a regulated firm in the United Kingdom without being required to be licensed in the United Kingdom. OM London members dealing on OM London from outside of the United Kingdom through the System ("Remote Members") can take advantage of this exclusion and, therefore, do not need to be licensed under the FS Act.

Before OM London will agree to allow a member to operate in a "remote" manner, however, it must be satisfied that both the Exchange and the FSA have good working relationships, including information-sharing arrangements, with the regulator that is responsible for authorizing and supervising the member. In any event, as noted, OM London members transacting business with United States customers are required to be registered as FCMs or operating pursuant to Rule 30.10 orders or other applicable exemptive relief whether such members are based within the United Kingdom or outside of the United Kingdom.

54 Market participants apply for membership in one or more SROs, depending upon the nature of the business that they undertake.

55 The FSA is now operationally responsible for monitoring compliance with SFA rules.

56 All OM London members are based in countries whose regulators have information-sharing arrangements with the appropriate regulatory bodies in the United Kingdom.

57 All good faith actions taken by RIEs under their respective default rules (*e.g.*, closing out positions) are protected from the normal workings of United Kingdom insolvency law. That is, while an RIE's action in the event of a default may be challenged by a liquidator or insolvency official, the RIE generally will be granted immunity if the action was taken in good faith.

58 The Division notes that the FSA has confirmed that these information-sharing arrangements would extend to information requested by the CFTC in connection with the no-action relief provided herein. Letter from Matthew Elderfield, to I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission (July 23, 1999).

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

60 The Division notes that the foregoing is not intended to be an exhaustive list of the factors relevant to its decision to grant the no-action relief requested by OM London 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.

61 Effective May 26, 2000, US customers are not permitted to establish new positions in futures based on the OMX Index or increase positions already held. US customers, however, may roll over existing positions until the December contract expiration. OM London Exchange Notice 2000/77.

62 *Notice of Statement 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 Place Electronic Trading Devices in the United States*, 65 Fed. Reg. 41641 (July 6, 2000).

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

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

65 As stated above, "members" includes those persons identified in footnote 2 for the purposes of this no-action letter and the conditions imposed upon the relief provided herein.

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

67 The Division notes that "material" changes in the information provided to it in support of this No-Action Request would include, without limitation, a modification of: OM London's membership criteria; the location of OM London's management, personnel, or operations (particularly changes that may suggest an increased nexus between OM London's activities and the United States); the basic structure, nature, or operation of OM CLICK or OM SECUR, or the regulatory or self-regulatory structure applicable to OM London, the System, or OM London members.

68 The Division notes that the language of this condition incorporates the language contained in the Division's letter to the FSA clarifying the conditions imposed upon similar relief that the Division granted to LIFFE Administration and Management by letter dated July 23, 1999. Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Gay Wisbey, Director, Markets and Exchanges Division, The Financial Services Authority (Sept. 30, 1999) ("Sept. 30 Letter").

69 The Division notes that it will request information referenced in this provision, in the first instance, from the FSA, and that this condition will be satisfied if the FSA provides the Commission with all information requested. *See* Sept. 30 Letter.

70 The Division notes that it will request information referenced in this provision, in the first instance, from the FSA, and that this condition will be satisfied if the FSA provides the Commission with all information requested. *See* Sept. 30 Letter.