REGULATION OF DERIVATIVE MARKETS, PRODUCTS AND FINANCIAL INTERMEDIARIES

COLLATED SUMMARY OF RESPONSES TO COMMON FRAMEWORK OF ANALYSIS AND CROSS REGULATORY SUMMARY CHART

INTERNATIONAL ORGANIZATION
OF
SECURITIES COMMISSIONS

REPORT OF THE TECHNICAL COMMITTEE

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INTRODUCTION

This report contains a description of various models or approaches to the regulation of derivative markets, as of June 30, 1990, based upon regulatory summaries prepared pursuant to a common framework of analysis by the eight jurisdictions which participated in this effort of Working Party 7. 1/ The report consists of several components which are intended, as a whole, to provide an overview of specific regulatory responses to general issues relating to derivative instruments.

The Introduction consists of three sections. Section I contains preliminary observations concerning various approaches to regulation. It is important to note that some of the features of both the products and the regulatory programs discussed in this Section apply equally to markets other than derivative markets.

Section II contains an analysis of the characteristics of derivative products and of certain particular concerns relative to derivative markets. The primary areas of regulatory concern relating to derivatives including the recognition of markets and products, financial safety and fairness, to name only a few, are explored and the approaches adopted by different jurisdictions are briefly summarized in Section III.

PART ONE of this report is the "Collated Summary of Responses to Common Framework of Analysis" which contains the specific responses of participating jurisdictions to the common framework of analysis. That framework also

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1/ The eight jurisdictions are: Australia, Canada (Ontario, Quebec), France, Hong Kong, Italy, Japan, United Kingdom and United States (Commodity Futures Trading Commission and Securities and Exchange Commission).

constitutes the table of contents of PART ONE. PART TWO is the "Cross Regulatory Summary Chart" which summarizes the responses in PART ONE.

Generally speaking, derivatives [2/] are agreements which specify rights and obligations based on some underlying instrument, investment, currency, product, index, right or service (the "underlying interest"). Such rights and obligations may be a cash settlement, delivery of, or the transfer of rights to the underlying interest. Derivatives do not themselves grant or transfer the underlying interest; the transfer of rights in any underlying interest arises upon maturity or exercise, depending on the type of derivative.

For purposes of this report the term "derivative" is construed to refer to only those products:

(i) in which the market itself is the issuer;

(ii) that are subject to the rules of an exchange; and

(iii) for which a clearing organization is used to settle profits and losses, make deliveries and guarantee cleared trades.

While it is recognized that some jurisdictions permit off-exchange trading in futures and option contracts, the issues raised by such trading or relating to a definition of markets are not within the scope of this report. Similarly, the different approaches to recognition and cross-border jurisdiction, such as "national treatment," "lead-regulator arrangements," "comparability," "reciprocity," or "mutual recognition" are not separately addressed.

2/ Both futures and options contracts are derivative products, but options trading may raise certain issues which are different from or additional to those related to futures.

I. Preliminary Observations

In general, there is no single "preferred" model for the regulation of derivative products, markets, clearing houses or those who participate in such markets directly or as intermediaries. However, a review of the regulatory summaries indicates a substantial similarity in perceived regulatory objectives. From these summaries, it appears that these regulatory objectives may be achieved in various jurisdictions by different means and that regulation need not be identical to adequately address common regulatory goals. At a minimum, the consensus was that the aims of regulation should be:

(i) financial safety including the integrity of clearing houses and market participants;

(ii) fairness, including fiduciary and related customer (investor) protection concerns; and

(iii) market efficiency and integrity.

There may be a number of explanations for the differences in regulatory structure and practice among jurisdictions. These reasons include:

- The different nature and structure of markets; for example, pit trading as compared to screen-based or other electronic trading mechanisms,
- The different nature and design of products,
- Different cultural and national customs and practices,
- Legal or juridical distinctions among jurisdictions; for example, differences between common law and civil law jurisdictions, public and private markets, and universal banking and non-universal banking or mixed jurisdictions, and
- Historically, different legal implications of specified conduct; for example, in some jurisdictions, concerns related to anticompetitive practices are a fundamental aspect of the regulatory system.

Among regulators, perceptions vary as to the significance of specific regulatory differences and how these differences could be resolved or accommodated where cross-border transactions occur and other jurisdictions have an interest in a particular transaction, market or person. Regardless of whether differences in the regulatory approach exist, there is consensus that bilateral or multilateral arrangements for information sharing between relevant regulatory authorities (whether governmental, quasi-governmental or private) are essential to addressing cross-border transactions effectively. Within the framework of these arrangements, and otherwise, several ways of resolving regulatory differences may be identified. Among others, these may include:

- harmonization efforts;
- disclosure of specific regulatory differences upon request to non-national market participants; and
- arrangements, including choice of law or home/host provisions, which allocate rules from different jurisdictions to particular transactions or market participants.

II. Features of Derivative Instruments with Implications for Regulatory Regimes

Derivatives are agreements (contracts) which confer rights and/or obligations based on some underlying interest. The specific rights and obligations encompassed by a derivative contract may be cash settlement, delivery of, or the transfer of rights to, the underlying interest. The underlying interest of a derivative may include physical assets such as commodities (e.g., gold, wheat), equities or equity indexes, debt instruments, other derivative instruments, or any agreed upon pricing index or arrangement, such as the movement over time of the Consumer Price Index or freight rates.

Whether the underlying interest is a financial instrument or a commodity does not alter the nature of the derivative.

The derivative contract is not in itself a transfer of the underlying interest; that transfer occurs as part of a separate transaction unless the contract is extinguished by offset. Since the underlying interest itself is not being transferred in a transaction relating to a derivative, there is no limit to the value of outstanding open positions of a particular derivative instrument. For example, the open interest of a futures contract is theoretically unconstrained, but the financial status of market participants and other market factors serve to keep the open interest below certain resistance levels, whereas the quantity of authorized and outstanding shares of a particular issuer constitutes the limit for trading in that issue.

o Regulatory issues relative to the underlying interest characteristic of derivatives tend to center on fairness and efficiency, concentration of positions, and the delivery process including allocation of deliveries or exercise in the case of options.

o When the underlying interest is traded in a jurisdiction other than the one where the derivative instrument is traded, or identical derivative products are traded in two jurisdictions, there may be concern that increased potential may exist for fraud or manipulation because of the likely inability of a regulator in one jurisdiction to monitor market activity directly and/or to conduct complete investigations of market activities in another jurisdiction. This may create a need for increased cross-jurisdictional communication and cooperation. Legal and regulatory issues relating to the transfer of rights across international boundaries also may be raised.

On organized exchanges derivatives are, by design, standardized or fungible. Such standardization together with the interposition of a clearing house or the exchange itself as a counterparty or guarantor permits multilateral offset and random assignment of delivery notices (although these features are not exclusive to derivatives). In futures, although not necessarily in options, for example, a price movement increases the value of one position while reducing the value of the opposite position by an equal amount. Thus, derivative trading generally is said to be zero sum.

The interposition of a clearing house (or an exchange) and the requirement to post standing or initial margins is intended to eliminate counterparty credit risk. (In some markets, price limits or capital-based position limits are also used to address financial risk.) Margin posted on derivatives generally is analogous to a performance bond rather than a down payment. As such, margin is intended to cover the potential failure due to default to meet settlement variation prior to liquidation of a position. The level of margin also affects the degree of leverage associated with a contract.

Ordinarily, the daily gain or loss on a position is marked-to-market and, in most markets, the difference is collected by the clearing house and may be transferred from the losing to the gaining position holders through the clearing house. For options, in most markets but not all markets, the writer/seller only is required to post margin which is marked-to-market each day but not passed through the market.

o Because the clearing house or exchange is interposed as the buyer to the seller and the seller to the buyer, the identity of other market participants is less material. Such clearing arrangements enhance confidence and liquidity in exchange-traded derivatives.

o It is important that the exchange and/or clearing house set margin levels which are sufficient so as not to imperil the financial integrity of the market and which do not adversely affect liquidity.

o The distribution, to customers, of a generic risk disclosure statement is often required before trading is undertaken. The notification of risk relative to futures and options trading is not unique to derivatives and does not imply a negative judgment by the regulator regarding trading in those instruments.

Derivatives facilitate risk shifting and may assist in price discovery for the underlying interest. Prices from derivative markets may have an effect on the price in the market for the underlying interest and vice versa. Prices in the derivative market may be influenced by a concentration of positions, both in the derivative instrument and the underlying interest. Economic inefficiencies may arise if trading occurs at artificial or distorted prices.

When physical delivery of the underlying interest is specified in the derivative contract, issues relating to delivery may arise. These may include the definition of acceptable commodities or instruments, the appropriateness of alternative delivery locations and media, the operation of warehouses, or the timing of delivery.

o Due to these factors, regulatory or enforcement mechanisms may be employed to deter manipulation and the undisclosed concentration of positions. Regulatory methods may include large trader reporting, position limits, hedge limit determinations, monitoring, and/or moral suasion. To the extent trading

is centralized or is reported to a centralized source, compliance monitoring is facilitated. Enforcement methods involve, at a minimum, the prosecution of fraud and manipulation.

o In some jurisdictions, to assure maintenance of a centralized market, certain off-exchange transactions are precluded; in those jurisdictions where such transactions are permitted, often they must be reported to a central authority (such as the exchange).

o The ultimate value of the rights or obligations conferred by derivatives may be heavily dependent on developments in the underlying market. Derivatives differ from their underlying interest; these differences may have regulatory implications. On the other hand, there is a fundamental relationship between the market for the derivative and the market for the underlying interest. The nature of this relationship will depend on the rights and obligations covered by the derivative instrument and may also have regulatory implications.

o Particular characteristics of derivatives may raise possible regulatory issues. Alternative regulatory responses may be designed or may have evolved to address such characteristics in different markets.

III. Areas of Regulatory Concern

A. The "Recognition" of Markets and Products

Domestic: The collected responses of the reporting jurisdictions suggest that the juridical and factual bases for determining whether a market, product, transaction or clearing house is domestic or foreign differ among jurisdictions:

- most jurisdictions reported that official domestic markets must be "recognized," authorized by statute or otherwise, or created by grant, although many jurisdictions have private, wholesale or other markets for which there exists no governmental or quasi-governmental supervisory authority;
- some jurisdictions reported that domestic products or certain domestic products must also be recognized, authorized, licensed and/or otherwise approved; and
- the majority of the jurisdictions reported that domestic clearing houses must be recognized, authorized, approved or drawn from a specific class of market participant such as a bank.

Although criteria for such approvals or the establishment of markets exist in most jurisdictions, they are frequently not very specific. All jurisdictions, however, consider the public interest in regulating markets and generally construe that interest to encompass, to various degrees, the general objectives of fairness, market efficiency and financial safety.

No jurisdiction reported different considerations for electronic markets, and very few singled out regulatory principles uniquely applicable to derivative markets.

In some jurisdictions, derivative products (including futures, futures options and options) are each specifically recognized, and must satisfy a test of economic utility. In other jurisdictions, this enquiry is not undertaken and market forces are relied upon to determine whether a derivative product is offered by an exchange.

Foreign: To the extent that separate criteria exist in some jurisdictions for reviewing, authorizing or recognizing foreign markets, clearing

organizations, transactions or products, they involve a different regulatory interest from those related to domestic markets. For example, all reporting jurisdictions appear to share concerns about adequate information sharing; many also consider access to grievance procedures for national customers participating in foreign markets to be important. There may also be concerns regarding the adequacy from a prudential perspective of home regulation.

Where foreign clearing houses are separately recognized or authorized, recognition issues include review of the function of custodianship, transfer of funds capability, and adequacy of home regulation, in conjunction with the function of guaranteeing transactions.

B. The Regulation of Financial Intermediaries

Most jurisdictions report differences in applicable regulations based on the type of relationship of the intermediary to and its contact with the jurisdiction.

Some jurisdictions, and different regulators within others, distinguish the regulatory requirements to be applied to commercial and/or sophisticated customers from those applied to non-commercial and/or unsophisticated customers. Similarly, in some cases, regulatory (as opposed to enforcement) jurisdiction is not asserted in relation to customer orders which are "accepted" as opposed to "solicited."

No separate regulatory concerns were reported with respect to the authorization, licensing or recognition of financial intermediaries for the execution of transactions on screen-based trading systems or with respect to the effecting of transactions in derivative products.

C. Financial Safety

Prudential or financial safety requirements protect markets and funds from credit and systemic risk and also seek to ensure that only those persons who have been deemed to be creditworthy have access to the markets. In relation to derivative markets, these requirements are designed to reflect the special risk attributes of derivatives, for example, the fact that positions in these markets may be highly leveraged or geared. Financial requirements, then, generally are an aspect of all regulatory programs, and the types or combination of types of requirements are fairly similar in form. The degree of reliance on each of capital, credit, margin, guarantee deposits, segregation and surveillance may vary; the information with respect to such matters which is available to regulators will also differ and reflect variations in the relevant regulatory regimes. For example:

Capital-based qualifications for financial intermediaries exist in all jurisdictions, however, none of the jurisdictions reported specified capital requirements for exchanges. There are jurisdictional differences as to whether requirements are imposed on clearing organizations and clearing members. Differences also exist regarding the type of organization which imposes such requirements.

Adequate clearing facilities are an element of universal regulatory concern; while most jurisdictions have some operating requirements, many matters relevant to the clearing process may be determined at the discretion of the clearing house or the exchange.

Margin and credit extension requirements. Margin requirements generally are set by the relevant exchange and, in many jurisdictions, are subject to some form of regulatory oversight (e.g. emergency authority). Levels of margin ordinarily are set by reference, in part, to formulae related to

volatility. The definition of good collateral varies among jurisdictions. Practice among clearing houses or exchanges varies as to whether letters of credit and equity securities are acceptable as margin. A financial intermediary may accept different types of collateral from that which is accepted by the relevant clearing house or exchange. Most markets settle daily on T+1; different margin models are typical. Some clearing organizations or exchanges collect original margin on a gross basis and some collect net; if collected, variation margin ordinarily is collected on a net basis. Certain jurisdictions restrict the giving of credit for securities-regulated derivative products; in other jurisdictions, the relevant regulatory authorities do not restrict credit.

Financial Compliance. Most regulatory authorities maintain continuous and/or periodic financial surveillance of markets and financial intermediaries. The components and timing of these programs differ substantially from jurisdiction to jurisdiction.

Customer Funds Protections and Insolvency. There is some diversity in the manner in which protection of customer funds is achieved: some jurisdictions have insurance or performance guarantees while others require segregation of customer funds from those of the firm -- the calculation of what must be segregated and for whom differs from jurisdiction to jurisdiction -- some require a combination of segregation and other prudential requirements. In circumstances where a trust is implied by segregation, its scope (and hence its impact on clearing organization priority) varies among jurisdictions. Many jurisdictions also have requirements regarding the location of customer funds and how they must be invested. These protections are intended to provide some protection from defalcation, to facilitate the transfer of positions in market disruptions, and to accord special treatment to customer funds when the financial intermediary becomes insolvent.

Reporting and Recordkeeping for Financial Safety. All jurisdictions require the creation, maintenance and retention of current financial records, although the form and supervision of records and the periods of retention differ.

o **Increased international cooperation among regulators in relation to financial surveillance would enhance efficiency; it may also be necessary to achieve and sustain adequate levels of supervision, especially in circumstances where activities undertaken in one jurisdiction have an impact in another. Additionally, in increasingly internationalized markets, effective financial surveillance may not be feasible without cooperation among relevant authorities.**

o **Domestically, coordination is achieved within most jurisdictions by joint audit plans and lead regulator arrangements. To the extent that the scope and emphasis of financial audit or surveillance programs can be made more uniform across markets and jurisdictions, surveillance may be made more effective and cost-efficient. A better understanding of the financial regulatory requirements and audit customs and practices in different jurisdictions should facilitate cooperation efforts and enhance the utility of any information obtained. Increased cooperation in relation to international clearing and settlement procedures also may be desirable to reduce systemic risks.**

D. Fairness

Customer protection generally is addressed by regulatory standards imposed on financial intermediaries; these relate to: the integrity, skill and diligence of those who deal for customers; conflicts of interest;

observance by persons who deal for customers with requirements related to the conduct of business, including order execution, restrictions on the misuse of information, the equitable availability of information, prohibitions on misrepresentation, and required disclosure; and the availability of procedures and forums to resolve grievances.

Two of the main differences which exist among reporting jurisdictions in the application of particular regulatory requirements intended to ensure customer protection are the distinctions made between solicited and unsolicited business and sophisticated and unsophisticated customers.

A jurisdiction-by-jurisdiction review indicates the following:

Authorization, Qualification and Good Standing. All jurisdictions have fitness requirements for financial intermediaries, which consider previous violative conduct, character and competency. A bar from doing business in one jurisdiction is in all cases considered by other jurisdictions in making fitness determinations.

Order Execution Requirements. The trading rules relating to order execution differ from jurisdiction to jurisdiction but each reporting jurisdiction indicates that its rules are intended to provide fair execution to customers and to prevent fraud. All jurisdictions report restrictions on the misuse of information; differences exist as to what constitutes misuse. On a world wide basis, dual capacity is in effect precluded for most options trading although no explicit ban exists for derivative trading in most jurisdictions. Generally, however, a "customer first" rule is imposed when dual capacity trading is permitted.

Sales Practice Requirements. Sales practice standards related to required disclosures, prohibitions on misrepresentations and improper trading activities such as churning or trading ahead of customers exist in most

jurisdictions. All jurisdictions with derivative markets require the provision of a risk disclosure statement to customers, however, the form of disclosure and to whom it must be provided differ from market to market. All regulated jurisdictions prohibit provision of false or misleading information but differences exist concerning liability for omissions and the legal standard for finding violations.

The general rules against misrepresentation and fraud apply to advertising in all cases, but some jurisdictions have special supervisory rules or explicit restrictions on the content of promotional material. Most jurisdictions do not restrict cold-calling.

Compliance Monitoring. In most jurisdictions, the monitoring of compliance with sales practice programs focuses on internal controls (self-policing) and the investigation of customer complaints. The frequency of review of sales practices and the scope of such reviews, however, vary among jurisdictions. Enforcement cases frequently center on abuses in the sales practice area which may not be readily addressed by audit or review programs.

Records and Information Available to Customers. All jurisdictions require the creation and maintenance of records with respect to the execution and financial effect of transactions. Jurisdictions differ as to the records and information which must be made available to customers.

o Information relating to trading and any specific local requirements should be available both to customers and financial intermediaries. It would be helpful if the types of information about markets, trading on those markets and specific local requirements could be in "standard" form. Additionally, transaction and market information should be available to all customers in an equitable manner and, ideally, on a real time basis.

o **Risk disclosure statements for derivative products generally cover, at a minimum, "generic" risks and to that extent could potentially be harmonized to reduce duplication. The potential for harmonizing additional risk and other disclosures required in certain jurisdictions, however, is significantly less certain.**

o **The jurisdiction where the customer resides may have an enforcement interest in using its own law to prevent misrepresentations to such customers independent of any required risk disclosure statement.**

E. Market Efficiency

Market integrity issues are central to regulatory programs relating to derivative markets and products. Various methods are used by relevant regulatory authorities to address these concerns.

Product Design. Most markets do not report requirements for product design, although a few restrict products which can be the subject of derivatives, and have delivery specifications or procedures. One market reported volume requirements. These types of requirements appear to be unique to derivative markets.

Market Disruption and Surveillance. Most markets prohibit market manipulation. The precise definition of the term "manipulation" may vary from jurisdiction to jurisdiction. The means of preventing this practice, whether by direct surveillance, product design requirements, position limits or other measures, as well as the extent to which it is subject to regulatory oversight differ among markets. Some markets report special procedures and regulations; for example, position limits, price limits or market halts, settlement price rules, dormancy rules and emergency actions, although the mix of these varies

from jurisdiction to jurisdiction. Differences, however, exist as to the degree of the relevant regulator's responsibility and authority to prevent disruptions.

Trading Rules relating to types of permitted orders, off-exchange trading restrictions, and types of permitted market-making activities differ considerably from jurisdiction to jurisdiction.

Audit Trail. All jurisdictions report that they require some means to permit the reconstruction of trades and transactions (i.e., audit trail). However, the manner in which the audit trail is recorded and made available differs among jurisdictions.

Reporting Requirements, such as large trader reporting, exist in a few jurisdictions only. These requirements are used for financial as well as market surveillance.

o When activities in one market have an effect on another market (whether or not those markets are in the same jurisdiction), adequate information sharing between relevant regulatory authorities, sufficient to assure effective enforcement, is of common concern. Participants in the markets also have a strong interest in the applicable rules, including those related to preventing manipulative market activities.

o Among regulators, there is agreement that there must be an adequate audit trail of all transactions. Ideally, the types of information constituting the audit trail and the degree of its accessibility, to both the relevant regulatory authorities and the public, should be as similar as possible across jurisdictions. At present, there are substantial differences due to the varying legal and regulatory requirements of different jurisdictions.

Reference should be made to the material in PARTS ONE and TWO of this document for more specific information on individual regulatory approaches to the trading of derivative instruments.

Two other Technical Committee reports also may be of interest: "Screen-Based Trading Systems for Derivative Products" and the "Compliance Information Collection and Data Reporting Compendium and Chart."

PART ONE

COLLATED SUMMARY OF RESPONSES TO COMMON FRAMEWORK OF ANALYSIS

I. Operational Definitions ("home" vs. "host")

A. Markets and Products

1. (a) Describe the factual bases for determining for regulatory purposes in your jurisdiction that a clearing house, market and/or product is a domestic clearing house, market and/or product (e.g., place of incorporation, location of trading floor) and identify all such clearing houses and the markets and products traded thereon in your jurisdiction.

CFTC

Section 4 of the Commodity Exchange Act (CEA) requires that all futures and certain option contracts traded in the United States must be effected on boards of trade that have been designated as contract markets through such contract markets. To date, fourteen boards of trade have been designated as contract markets and all of the contract markets are incorporated in the U.S. The CEA does not require separate designation of clearing houses. However, for regulatory purposes, the clearing house is deemed to be subject to the same regulatory treatment as the exchange for which it clears. See, Board of Trade Clearing Corp. v. Commodity Futures Trading Commission, No. 78-1263 (D.C. Cir. March 29, 1979).

Through the proposed Globex computerized trading system of the Chicago Mercantile Exchange (CME), it may be possible for a foreign exchange to "list" its products on the Globex system. The CFTC staff has expressed its opinion that the mere presence of Globex terminals in the U.S. should not cause the CFTC to deem any exchange for which products are listed through that system to be a domestic exchange. However, in so stating, the CFTC staff stated that it would have to review the particulars of any proposal for foreign exchange products to be listed on the Globex trading system and that it is committed to maintaining the integrity of the U.S. markets and protecting U.S. customers. Moreover, the staff would expect the CFTC to review such proposals to determine whether access to information necessary to meet its own responsibilities under the CEA would be adequate.

SEC

Section 5 of the Securities Exchange Act of 1934 (34 Act) provides that it is unlawful for any broker, or exchange . . . to make use of the mails or any means or instrumentally of interstate commerce for the purpose of using any facility of an exchange . . . to effect any transaction in a security . . . unless such exchange (1) is registered as a national securities exchange under Section 6 of [the 34 Act], or (2) is exempted from such registration . . . .

"Interstate commerce" is defined in Section 3(a)(17) of the 34 Act to include trade, commerce, transportation or communication, through the use of any interstate instrumentally, among the several states or between any U.S. state and a foreign country. Section 17A of the 34 Act also requires clearing agencies making use of the mails or any means or instrumentally of interstate commerce to register with the SEC. The terms "exchange," "clearing agency," and "security" are defined in the Act. See Sections 3(a)(1), 3(a)(23), and 3(a)(10), respectively.

U.S. securities markets are comprised of: (1) nine registered national securities exchanges (including five options exchanges); (2) sixteen registered clearing agencies (including one clearing agency for all standardized options, and one for over-the-counter (OTC) options on government securities); (3) an OTC market regulated by a national registered securities association, subject to SEC oversight; and (4) several screen-based proprietary trading systems, one of which trades options on U.S. treasury securities. Numerous products trade on these markets, including, but not limited to: (1) individual stock and stock baskets; (2) corporate and government bonds; (3) individual stock and stock index options; (4) foreign currency options and (5) stock index warrants.

SIB

The Financial Services Act 1986 (FSA) does not require differentiation between "domestic" or "foreign" products. The comments in this section are, therefore, restricted to exchanges and clearing houses only.

An exchange will be regarded as "domestic" if the head office is located in the UK and it is carrying on investment business, that is making arrangements for persons to deal in investments, in the UK (FSA, Schedule 1, paragraph 13(b)). Such an exchange will be subject to direct and primary UK regulatory oversight.

Similarly, a clearing house will be regarded as "domestic" if the head office is located in the UK and it is carrying on investment business, that is making arrangements for persons to deal in investments, in the UK (FSA, Schedule 1, paragraph 13(b)). Such a clearing house will be subject to direct and primary UK regulatory oversight.

COB

The notion of a domestic futures market does not exist in France. The law of the 28 of March 1885 on futures markets, as amended, provides that every futures market, on public and other bills, securities, commodities and interest rates is deemed to be legal.

CONSOB

An exchange will be regarded as "domestic" if the trading floor is located in Italy.

MOF

At present, markets operated by stock exchanges established and licensed in our jurisdiction are regarded as domestic markets. (It is prohibited to operate a market or a quasi-market in Japan without a license.)

NCSC

If the facility being used is within Australia or the business is established within Australia then the conduct of the business is regulated. Products are indirectly regulated.

The prohibition is on establishing, maintaining or providing a futures market in a participating jurisdiction. A futures market is a place at which, or a facility by means of which, futures contracts may be traded. To provide a place at which futures may be traded in, say, Victoria, is clearly enough to do a thing within the jurisdiction.

To provide a facility whereby futures may be traded within Victoria might be done by instituting a computer system in, say, Sydney or Singapore, and allowing Victorians to connect to it and trade futures by means of it. It is not clear that this would be within the territorial scope of the legislation, were it not for section 154 which provides that conduct is regulated by the Futures Industry Code (FIC), even if only partially carried out within the jurisdiction.

It follows that section 45 of the FIC applies to establishing, maintaining or providing within Victoria the use of a facility, the physical manifestations of which need not be in Victoria, if futures can be traded by means of the facility. In the example given, Ministerial Council approval or exemption is required to offer to Victorians access to the computer in Sydney or Singapore, because that would be provision within Victoria of the out-of-state facility. Similarly with a similar system run by telephone like an SP book.

The Australian Financial Futures Market (AFFM) is a wholly owned subsidiary of the Australian Stock Exchange Limited (ASX) and now uses the business name "ASX FUTURES". Products on the AFFM, referred to as Australian Futures Contracts (AFCs), are based on specific ordinary listed shares for settlement in cash at a predetermined future date. In addition the AFFM has introduced the Twenty Leaders Index contract and the Australian Gold Share Price Index.

OSC

An exchange is a domestic exchange if it carries on business in Ontario, i.e. is located in Ontario. A product is a domestic product if it is traded on an Ontario exchange. There is only one exchange in Ontario which trades "derivatives", as defined by the survey, the Toronto Futures Exchange (the "TFE"). The contracts traded on the TFE are the TSE 35 Stock Index Futures Contract and the TSE 300 Spot Index Contract.

CVMQ

The Montreal Exchange (ME) cooperates with Trans Canada Options Inc. ("TCO") to designate contracts on the following qualified underlying values as exchange-traded options:

Equity securities, provided that the issue is:

- posted for trading on a Canadian TCO participating exchange (Montreal, Toronto, Vancouver);

- not subject to any of the deficiency criteria set out below:

  -- there is a failure to have a minimum of 3,600,000 outstanding publicly held shares;

  -- there is a failure to have a minimum of 1,000 beneficial and actual shareholders;

  -- the combined trading volume on TCO Participating Exchanges, on the New York Stock Exchange and on the American Stock Exchange has been less than 400,000 shares in the preceding twelve months;

  -- it is no longer listed on a Canadian TCO participating exchange;

  -- the market price per share closed below $5 on a majority of the business days of the preceding nine-month period as measured by the highest closing price recorded in its most active market in Canada;

  -- the issuer of its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred shares, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long-term leases, and such default has not been rectified within six months;

  -- the issuer has failed to make timely reports as required by the ME rules; or

  -- the market capitalization of the issuer, including all common and preferred shares, has been less than

$100,000,000 on a majority of the business days in the preceding nine month period.

The underlying interest of an option issued by TCO and the unit of trading of that underlying interest have to be approved by the Board of TCO following the recommendation of the ME. The options issued by TCO are designated by reference to the underlying interest, the month of expiration, the exercise price and the type and style of options.

Options - Approval of underlying bonds

Qualified Underlying Values as Exchange-Traded Options: Canadian government bonds, provided that:

- the outstanding amount of the issue is at least $500 million face value at maturity.

Options - Approval of underlying gold

Each gold option contract is for ten troy ounces of gold. Gold bullion acceptable for delivery in satisfaction of gold options is all gold which can be freely traded on the London Gold Market (and other major gold markets). Gold for good London delivery must have a fineness of purity of at least 995 parts per 1,000.

Canadian bankers' acceptance futures

The futures issued by TCO must satisfy the ME criteria, i.e.:

- 3-month Canadian bankers' acceptance

Each trading unit consists of a face amount of Can $1,000,000 of 3-month major bank bankers' acceptance.

10-year Canada bond futures

The underlying interest is Government of Canada Bonds with 6 1/2 to 10 years to maturity.

Each trading unit consists of Can $100,000 face value of a notional Canadian Government Bond, bearing a coupon of 9%.

Precious metal certificates

Gold. The unit of trading is individual gold certificates having a minimum specified value of five troy ounces of gold or any quantity in troy ounce increments above this amount.

Silver. The unit of trading is individual silver certificates having a minimum specified value of 250 troy ounces of silver or any quantity in troy ounce increments above this amount.

Platinum. The unit of trading is individual platinum certificates having a minimum specified value of ten troy ounces of platinum or any quantity in troy ounce increments above this amount.

The trading currency for Exchange traded certificates listed on the ME is U.S. dollars.

SFC

The Hong Kong Futures Exchange Ltd (HKFE) is currently the only market in Hong Kong which trades in derivative products consisting of contracts in Hang Seng Index (HSI) and three-month Hong Kong Interbank Offered Rate (HIBOR); HKFE also trades sugar, soybean and gold contracts.

(b) Once a determination is made that a clearing house, market and/or product is domestic, must such clearing house, market and/or product be designated?

CFTC

Section 4 of the CEA requires that all futures and certain option contracts traded in the United States must be effected on boards of trade that have been designated as contract markets.

The CEA does not require separate designation of clearing houses. However, as noted above, for regulatory purposes, a clearing house is deemed to be subject to the same regulatory treatment as the exchange for which it clears. Individual contracts also must be designated separately before they may be traded on or subject to the rules of a contract market.

SEC

Sections 5 and 17A of the 34 Act require the registration of exchanges and clearing houses as "registered national securities exchanges" and "clearing agencies," respectively. Under section 5 of the Securities Act of 1933 (33 Act), it is unlawful for any person, directly or indirectly, to sell any security, provided the security or a transaction in that security is not exempt from section 5, unless a registration statement is in effect as to that security.

SIB

By virtue of its carrying on investment business within the UK, a domestic exchange must be authorised or acquire the status of "Recognised Investment Exchange" (RIE) (FSA, s.3, 36 and 37). As a practical matter, all current UK domestic exchanges have obtained recognition.

As in the case of an exchange, a domestic clearing house must be authorised or acquire the status of "Recognised Clearing House" (RCH) in order to carry on investment business within the UK (FSA, s.3, 38 and 39). As a practical matter, all existing UK domestic clearing houses have obtained recognition.

COB

The law of the 28 of March 1885, as amended, instituted the Conseil du Marche a Terme (CMT) in charge of the good running of the market, of the constitution of a general regulation, of the admission of contracts to be traded and of disciplinary powers on intermediaries and their employees.

Two markets are under the authority of the CMT today, Marche a Terme International de France (MATIF) SA and Options Market France (OMF). The listed products are:

-Future on the French treasury bill,
-Future on the notional French government Bond,
-Option on the future contract on the notional Bond,
-Future on future contract on the notional Bond,
-Future Paris Interbank Offered Rate 3 months (PIBOR 3 mois),
-Future on the CAC 40 index,
-Future on the EURO-DEUTSCHEMARK 3 months,
-Option on the PIBOR futures contract,
-Future on white sugar,
-Option on the future contract on white sugar,
-Future on potatoes,
-Future on cocoa,
-Future on ROBUSTA COFFEE,
-Future on a notional French treasury note 4 years (BTAN 4 ans).

Clearing and ultimate financial guarantees of the trades on BTAN 4 ans are provided by both OMF and MATIF.

Morevover, the MONEP, Paris Traded Options Market, is under the authority of the Conseil des Bourses de Valeurs (CBV), the Securities exchange council. The MONEP was created on the 6th of September 1987. The clearing house is the Societe de Compensation des Marches conditionnels (SCMC), which is a subsidiary at 100 percent of the Societe des Bourses Francaises (SBF).

Underlying stocks or index are the following: CAC40 index, ACCOR, BOUYGUES, CERUS, CGE, ELF, AQUITAINE, EURODISNEYLAND, EUROTUNNEL, HAVAS, LAFARGE-COPPEE, MICHELIN, Cie DU MIDI, PARIBAS, PERNOD-RICARD, PEUGEOT SA, RHONE POULENC cpi, ST GOBAIN, SOCIETE GENERALE, SOURCE PERRIER, SUEZ, THOMSON CSF.

The licensed credit firm qualified to be a clearing house on the futures market must be a specialized financial institution (IFS) as defined by the Banking Law. The SBF is also a

specialized financial institution (Law of the 22nd of January 1988).

The IFSs are the credit firms which have received from public authorities a mission of public interest. This clearing house is registered with the "comite des Etablissements de credit" and is also permanently controlled by and submitted to the Banking Commission (Commission Bancaire). This Committee is chaired by the governor of the Bank of France.

The application for admission of a product on the official market supposes that the product is standardized and cleared through a qualified clearing house.

Conditions for admission of products are based on general criteria for safety, transparency and perception of the opportunities they offer. Consultations of the COB and the Banque de France are also required.

CONSOB

A domestic exchange is instituted by presidential decree under proposal by the Minister of Treasury.

MOF

Licensed stock exchanges are required to obtain approval of the Finance Minister in order to open securities-related futures and options markets. Each stock exchange has its own clearing facility, therefore, there is no independent licensing of clearing houses. In order to trade securities related futures and option products, securities companies and financial institutions are required to obtain licenses.

NCSC

A market, once it has been determined as domestic, must either be recognised or made an exempt market. Products, to be traded on domestic exchanges, are approved by the process of non-disallowance by the NCSC of the relevant Business Rules of the participating exchange.

A clearing house must be approved by the Ministerial Council. Section 47 of the FIC stipulates:

- "A person shall not provide; or hold himself, herself or itself out as providing, clearing house facilities for a futures market (other than an exempt futures market) unless:

  -- the futures market is a futures market of a futures exchange;

  -- the person is a body corporate; and

-- an approval of the person as a clearing house for that futures exchange is in force under sub-section 48(1).

Section 48 - Power of Ministerial Council To Approve Clearing Houses reads:

- 48(1) [Application for approval as clearing house] A body corporate that proposes to provide clearing house facilities for a futures market of a futures exchange may lodge with the Commission an application in writing for approval by the Ministerial Council as a clearing house for that futures exchange.

- 48(2) [Approval] The Ministerial Council may, by instrument in writing, approve as a clearing house for a futures exchange a body corporate that makes an application under sub-section (1) if it is satisfied:

  -- that the business rules of the body corporate are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures exchange;

  -- that the business rules of the body corporate make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules of the body corporate or for a contravention of the FIC or a corresponding law in force in a participating State or a participating Territory, and

  -- that the interests of the public will be served by the granting of the application."

OSC

Pursuant to section 19 of the CFA, domestic exchanges must be registered with the Ontario Securities Commission (OSC). The CFA does not currently require separate registration for clearing houses although it provides regulatory oversight for their activities and de facto registration. The Recognized Options Rationalization Order, which provides the regulatory framework for exchange-traded equity options requires recognition of clearing houses. Contracts traded on commodity future exchanges registered pursuant to section 19 must be accepted by the OSC pursuant to section 36 of the CFA.

CVMQ

Before issuing a new type of option or futures contract the issuing person must file with the Commission all the complete information regarding the new contract; it can issue the new

contract when the Commission agrees thereto or does not raise any objection within 10 days of receiving the information.

The issuing person must also prepare an information document (instead of preparing a prospectus) describing how the market operates and where such is the case, the various types of contracts. The information document has to be approved by the Commission.

SFC

HKFE was granted a license by the "Governor in Council" to operate a commodity exchange under the Commodities Trading Ordinance (CTO). All traded products must be specified in a schedule to the CTO. A separate ordinance prohibits establishment of any other exchange trading in products specified in that ordinance.

(c) Recognition Criteria

CFTC

CEA §5 sets forth those criteria which a board of trade must satisfy to acquire contract market designation. In sum, the requirements are as follows:

- the board of trade is located in a terminal market where the underlying commodity is sold in sufficient volume so as to reflect the general value of the commodity;

- the board of trade provides for the making and filing of records with respect to all aspects of the transaction;

- the board of trade prohibits the dissemination of false or misleading information which tends to affect the price of any commodity;

- the board of trade does not exclude any duly authorized representative of a lawful cooperative association having adequate financial responsibility;

- the board of trade provides for the prohibition of price manipulation;

- the board of trade provides for the compliance with the CFTC's orders and other regulatory requirements; and

- the board of trade must demonstrate that the futures transaction in a particular market for which designation is sought will not be contrary to the public interest.

No separate designation criteria exists in the CEA or regulations thereunder for a clearing house.

With respect to transactions for future delivery of any securities issued or guaranteed by the U.S. or any agency thereof, the CFTC must deliver a copy of the application for designation as a contract market to the Department of the Treasury and to the Board of Governors of the Federal Reserve System. See CEA §2(a)(8)(B)(ii). The CFTC is not allowed to designate a board of trade until 45 days after the application is delivered to the agencies or until after the CFTC has received comments from the agencies, whichever period is shorter. The CFTC shall take into consideration all comments it receives from the Department of the Treasury and the Federal Reserve and "shall consider the effect that any such action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities."

CEA §2(a)(1)(B)(iv)(II) requires the CFTC to provide the SEC with a copy of an exchange's designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. The CFTC may not approve the application if the SEC determines that the contract fails to meet the minimum requirements set forth in §2(a)(1)(B)(ii) of the CEA.

An integral part of the §5 designation process and whether a proposed futures or option contract is contrary to the public interest is that the contract market show whether the contract to be traded has an "economic purpose." The CFTC promulgated Guideline No. 1, entitled "Interpretive Statement Regarding Economic and Public Interest Requirements for Contract Market Designation," which outlines the economic requirements.

SEC

Markets

Sections 6, 15A, and 17A of the 34 Act provide specific guidelines for the registration of exchanges, securities associations, and clearing agencies (self-regulatory organizations (SROs)), respectively. In general, the rules of the SROs must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. The rules of the SROs also must be designed to perfect the mechanism of a free and open market by not imposing any unnecessary or inappropriate burden on competition. In addition, an SRO must demonstrate the capacity to enforce compliance by its members with the Act, rules and regulations thereunder, and the rules of the SRO. Section 19 of the 34 Act requires SROs to, among other things, file with the SEC, for review and approval, copies of any proposed rules concerning the administration of the SRO and the regulation of its members and employees and any proposed change in, addition to, or deletion from such rules.

Section 5 of the 34 Act also provides the SEC with the authority to exempt an exchange from registration if it finds that, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

Securities

Pursuant to section 5 of the 33 Act, it is unlawful for any person, directly or indirectly, to use any means of interstate commerce to offer to buy (sell) any security unless a registration statement is in effect as to the security. Securities must be registered in accordance with the guidelines set forth in sections 6 and 7 of the 33 Act. Section 4 of the 33 Act provides exemptions from these registration requirements for certain transactions, e.g., transactions not involving an issuer, underwriter, or dealer, and transactions not involving a public offering. The exemption for a transaction not involving a public offering has been used to permit private placements of securities to institutional investors.

In addition, section 12(a) of the 34 Act makes it unlawful for any member, broker, or dealer to effect any transaction in a security on a national securities exchange unless a registration statement is in effect as to the security. Section 12(g) of the 34 Act imposes a similar registration requirement upon securities traded OTC that are issued by companies with 500 or more shareholders and more than $1 million in assets. Registration under section 12 requires, among other things, periodic, annual, and quarterly reporting to shareholders.

For U.S. standardized options, which are publicly offered to individual as well as institutional investors, the "issuer" is deemed to be the options clearing corporation (OCC), which registers the options listed and traded on the various exchanges. As part of the registration and issuance process OCC prepares and distributes an options disclosure document ("ODD") explaining the risks of options.

In addition to these disclosure requirements, options, as well as other products traded on an exchange or quoted in NASDAQ, must satisfy the "listing criteria" of the exchanges and the NASD, respectively.

The SEC has no specific listing criteria for index options traded on an exchange or quoted in NASDAQ. An index option, however, must meet some general guidelines to obtain SEC approval. First, the SEC must find that the introduction of such an option is in the public interest. In other words, the index option must serve some economic purpose. See SEC response to II.C.1.(a). Second, the exchange listing the index option must have a surveillance plan to detect trading abuses. Third, the exchange must have a surveillance sharing agreement

with the underlying cash market. The options SROs employ different definitions of "narrow-based" and "broad-based" indexes. These definitions dictate the regulatory treatment of the product (e.g., higher margin requirements and lower position and exercise limits for narrow-based index options). These definitions, however, do not represent minimum listing standards for narrow-based index options. As with broad-based indexes, there are no specific listing criteria for narrow-based index options. In sum, the exchanges must comply with Section 6 of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

SIB

The FSA vests the Secretary of State for Trade and Industry (Secretary of State) with the powers to authorise and to regulate investment business in the UK. The FSA also provides for the Secretary of State to transfer a significant proportion of his powers to a Designated Agency; under the FSA (Delegation) Order 1987, these were transferred to the Securities and Investments Board (SIB).

In addition to other powers, such as the recognition of SROs, SIB has the authority to recognize domestic exchanges and clearing houses.

Schedule 4 to the FSA identifies the requirements which must be met by an exchange in order to acquire RIE status. Briefly, these include:

- sufficient financial resources;

- adequate safeguards for investors, including inter alia, arrangements for ensuring the performance of transactions effected on the exchange (arrangements being provided either directly or by means of services provided by an RCH);

- arrangements and resources for the effective monitoring and enforcement of compliance with its rules and clearing arrangements;

- arrangements for the investigation of complaints;

- ability to promote high standards of integrity and fair dealing and to cooperate by the sharing of information; and

- default rules which enable action to be taken with respect to unsettled market contracts to which a member is party where that member appears to be unable to meet his obligations. (FSA, Schedule 4, Act 1989, Schedule 21).

A clearing house may be recognized if it appears to SIB that it:

- has sufficient financial resources;

- has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or with respect to monitoring, arrangements for that function to be performed on behalf of the clearing house (and without affecting its responsibility) by another body who is able and willing to perform it;

- provides or is able to provide clearing services which would enable a recognised investment exchange to make arrangements with it that satisfy the requirements of Schedule 4 to the FSA;

- is able and willing to promote and maintain high standards of integrity and fair dealing and to cooperate by the sharing of information; and

- has default rules which enable action to be taken to close out a member's positions in relation to all unsettled market contracts, to which he is a party, where that member appears to be unable to meet his obligations (FSA, s.39, Companies Act 1989, Schedule 21).

No exchange or clearing house shall be recognised unless the Secretary of State is satisfied that the rules and any particulars provided with the application do not have and are not likely to have, to any significant extent, the effect of restricting or preventing competition more than is necessary for the protection of investors (FSA, s.119 and s.120).

Before deciding whether to grant leave to SIB for the making of a recognition order with respect to an RIE or RCH, the Secretary of State shall send to the Director General of Fair Trading (DGFT) a copy of, inter alia, rules and regulations of the exchange or clearing house. The DGFT shall report to the Secretary of State whether in his opinion the rules and regulations or arrangements have or are likely to have, to any significant extent, the effect of restricting or preventing competition. The Secretary of State shall have regard to the DGFT's report before making a decision (FSA, s.122).

COB

CONSOB

The CONSOB is entrusted with the task of determining which "typical contracts" can be traded on the exchanges as stated in law 216 of 1974 (art. 1/3 lett. f).

MOF

Under Article 83 of the Securities and Exchange Law, the Finance Minister shall grant a license for founding a securities exchange if (1) its articles of incorporation, etc. conform to the law and are adequate to ensure the fairness of trading and the protection of investors, (2) its organization conforms to the law, and (3) its founding is necessary and appropriate in the public interest and for the protection of investors.

NCSC

Under Section 46 of the FIC the Australian Ministerial Counsel may approve as a futures exchange any body corporate if it is satisfied:

(a) that the business rules of the body corporate make satisfactory provision --

- for the admission as members of persons licensed, or proposing to apply to be licensed, under Part IV or under the provisions of a law in force in a participating State or in a participating Territory that correspond with that Part, or a specified class of such persons;

- for the standards of training and experience, and other qualifications, for membership;

- for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficiency, honesty and fair practice in relation to such dealing;

- for the exclusion of a body corporate from membership where a director of the body corporate, a person concerned in the management of the body corporate or a person who has control, or substantial control, of the body corporate would be excluded from membership;

- for the exclusion from membership of a person who is not of good character and high business integrity;

- for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, for a contravention of the business rules of the body corporate or for a contravention of the FIC Code or a corresponding law in force in a participating State or in a participating Territory;

- for an appropriate mechanism whereby a person whose application for membership of the body corporate is refused, or whose membership of the body corporate is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under sub-section 53(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;

- for an appropriate mechanism whereby a person who has been disciplined by the body corporate otherwise than by way of cancellation or suspension of the person's membership of the body corporate may appeal against the decision to discipline the person;

- for the inspection and audit of the accounting records of members, being accounting records required to be kept by the FIC or by the corresponding law in force in a participating State or in a participating Territory;

- with respect to the classes for futures contracts that may be dealt in by members;

- prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;

- prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;

- prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;

- prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;

- with respect to the conditions under which members may deal in futures contracts;

- for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members;

- for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings; and

- generally for carrying on the business of the proposed futures exchange with due regard for the interests and protection of the public; and

(b) that the interests of the public will be served by granting the application.

Under Section 48 of the FIC, the Ministerial Council may approve as a clearing house for a futures exchange a body corporate if it is satisfied:

- that the business rules of the body corporate are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures market of the futures exchange;

- that the business rules of the body corporate make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules of the body corporate or for a contravention of the FIC or a corresponding law in force in a participating State or in a participating Territory; and

- that the interests of the public will be served by granting the application.

Also under Section 48(3), without limiting the matters to which the Ministerial Council may have regard in considering an application for approval as a clearing house for a futures exchange, the Ministerial Council may, in considering the application, have regard to any business rules of the applicant that relate to the guaranteeing, to members of the applicant, of the performance of futures contracts made on a futures market of the futures exchange.

OSC

Subsection 19(2) of the CFA sets out the factors to be considered in granting registration to a domestic commodity futures exchange. The OSC must be satisfied that registration would not be prejudicial to the public interest and in making such a determination must consider:

(a) clearing arrangements and the financial condition of the exchange, its clearing house and members;

(b) the rules and regulations applicable to exchange members and whether or not they are in the public interest and are actively enforced;

(c) whether or not floor trading practices are fair and properly supervised;

(d) whether adequate measures have been taken to prevent manipulation and exessive speculation; and

(e) whether provisions have been made to record and publish details of trading.

CVMQ

SFC

The Securities and Futures Commission (the "Commission") is charged with the duty of supervising the futures and securities market in Hong Kong.

2. (a) Must a foreign clearing house, market and/or product be recognized in order to be used by your nationals?

CFTC

Generally, there are no established criteria for the recognition of a foreign clearing house, market and/or foreign product. However, the Part 30 rules include a provision which, in effect, lifts the ban on foreign options on a market-by-market basis. Further, certain additional conditions are applicable before foreign stock index futures contracts and foreign government debt futures contracts may be offered or sold by a U.S. financial intermediary to or for a U.S. customer.

SEC

There are no restrictions on U.S. nationals trading on a foreign securities market. If a foreign market or product falls within the definition of an exchange or security under Section 3(a)(1) or 3(a)(10) of the 34 Act, respectively, it must be recognized to the same extent as a domestic market or product in the U.S. [See domestic markets and products discussion above at I.A.1.c.]

SIB

For these purposes, the term "foreign" is applied to those exchanges and clearing houses which have their head offices overseas. (The concept of "head office" is based on the general principles of law of the European Community in relation to the legal notion of "siege.") These exchanges and clearing houses are not subject to primary and direct UK regulatory oversight.

The FSA provides for the recognition of overseas exchanges deemed to be carrying on investment business in the UK and which are subject to supervision by foreign regulators. These exchanges are required to provide arrangements for investor protection at least equivalent to that afforded under the FSA (FSA, s.40). Conditions of recognition of these overseas exchanges include notification obligations which result in the provision of information to UK regulators regarding developments on the relevant exchange.

A different category of overseas exchange, in respect of which the FSA is silent, is the DIE; this is a concept introduced in

SIB Conduct of Business Rules (CBRs) to identify those exchanges which do not carry on investment business in the UK but which are deemed to provide adequate investor protection arrangements. This category of exchange is relevant for purposes of the CBRs only.

A foreign exchange must be either a Recognised Overseas Investment Exchange (ROIE) or a DIE to qualify as an exchange upon which margined transactions may be effected by an authorised firm on behalf of an inexperienced private customer (CBRs, 11.04).

Authorised firms are not restricted or prohibited from effecting trades in margined transactions on exchanges which are neither ROIEs nor DIEs on behalf of business, experienced or professional investors (CBRs, 11.04) and where an authorised firm is acting as a discretionary portfolio manager for an inexperienced private customer and the trades are for hedging purposes only (CBRs, 11.04(e)(2)).

Customers who are UK nationals will not be treated differently from customers who are nationals of other countries. For regulatory purposes, customers are treated equally, regardless of nationality.

Section 40 of the FSA provides for the recognition of overseas clearing houses, deemed to be carrying on investment business in the UK, which have their head office overseas and which are subject to supervision by foreign regulators.

(Important note in relation to references to the CBRs in this document:) The CBRs referred to in this document are those currently in force under SIB rules and they apply to persons directly authorised to carry on investment business by SIB. Existing rules of the self-regulating organisations which apply to their members have been found to provide investor protection at least equivalent to that provided under SIB's CBRs. Powers to make changes to the regulatory structure have been recently granted by the Companies Act 1989 to create a three-tier approach to regulation. While some parts of the system have been introduced at time of writing, the full structure will not be in place until 1991 when the regulatory fabric will consist of a combination of principles, designated core rules and codes of practice. The totality of an SRO's rules will be required to meet a standard of investor protection which is adequate.

SIB has been give a new legislative power to issue statements of principle. The principles, which came into force on 30 April 1990, are intended to form a universal statement of conduct expected of all authorised persons, including members of self-regulating organisations, where monitoring and enforcement will be primarily the responsibility of the relevant SRO. The principles are as follows:

Integrity

1. A firm should observe high standards of integrity and fair dealing.

Skill, Care and Diligence

2. A firm should act with due skill, care and diligence.

Market Practice

3. A firm should observe high standards of market conduct. It should also, to the extent endorsed for the purpose of this principle, comply with any code or standard as in force from time to time and as it applies to the firm either according to its items or by rulings made under it.

Information about Customers

4. A firm should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfill its responsibilities to them.

Information for Customers

5. A firm should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A firm should similarly be ready to provide a customer with a full and fair account of the fulfillment of its responsibilities to him.

Conflicts of Interest

6. A firm should either avoid any conflict of interest arising or, where conflicts arise, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A firm should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

Customer Assets

7. Where a firm has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

Financial Resources

8. A firm should ensure that it maintains adequate financial resources to meet its investment business

commitments and to withstand the risks to which its business is subject.

Internal Organisation

9. A firm should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of investment business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

Relations with Regulators

10. A firm should deal with its regulator in an open and cooperative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

SIB has also been empowered to designate particular provisions of its rulebook. The effect of designation is that these rules apply directly to the members of an SRO and constitute a common core within the investor protection systems of SIB and the SROs.

A self-regulating organisation will be able to waive or modify core rules on a case-by-case basis in order to adapt them to the circumstances of a particular member. While SROs can issue general waivers of their own rules, the legislation allows SROs to waive core rules only on a case-by-case basis.

SIB has also been enabled to issue codes of practice. In the spirit of the new settlement, in which SIB would stand back from the detail of regulation, SIB does not, for the present, propose to issue codes but self-regulating organisations may use codes, made under their own powers, to fill out the detail of principles and rules applying to those they regulate, subject, of course, to the overall results being adequate.

COB

The Law of the 2nd of August 1989 provides that the public can be solicited to operate on foreign futures and option markets only when these markets have been recognised, complying with conditions fixed by decree and under reciprocity condition. The decree has not yet been promulgated, the application guidelines for recognition have not yet been defined, and an application for recognition cannot be answered for the moment.

CONSOB

For these purposes, the term "foreign" is applied to those exchanges established abroad under local regulations.

None of those exchanges have been yet recognized in Italy, so the Italian investors are subject to no restrictions while investing in these markets.

Only securities can be listed in the Italian exchanges. Therefore, a foreign product to be officially listed in a Italian Exchange must be authorized to the same extent as a domestic one.

MOF

Securities companies and financial institutions are required to obtain necessary licenses to trade foreign products.

NCSC

A foreign market must be recognized to be traded by Australians on that market. A foreign product, if it is being traded on a recognised foreign exchange, may be traded by an Australian or if the product is traded on an exempt market it may be traded by Australians who participate in that market. Foreign products which are offered on Australian exchanges must be approved for trading by the NCSC.

Products, to be traded on domestic exchanges, are approved by the process of non-disallowance by the NCSC of the relevant Business and Trading Rules of the participating exchange. Within 28 days after the Board of the Exchange has notified the NCSC of the introduction of a new product by amending its rules to accommodate that product the NCSC may disallow the whole or a specified part of the amendment. This power resides with the Ministerial Council, however the power has been delegated to the NCSC. No set criteria exists for the non-disallowance of amendments to business rules of a futures exchange, clearing house for a futures exchange, or of a futures association.

OSC

Foreign exchanges must be recognized and the form of foreign contracts must be accepted by the OSC. Blanket OSC Orders, however, relieve all foreign exchanges from the need to be formally recognized and from the need to have the form of their contracts accepted by the OSC. (This blanket relief means that most of the answers below apply equally to foreign dealers/products and Ontario dealers/products.)

CVMQ

SFC

No, foreign clearing houses, markets and/or products do not need to be recognized.

(b) If so, describe the factual bases for requiring recognition of such clearing house, market and/or product and identify the clearing houses, markets, and/or products so recognized.

CFTC

Pursuant to rule 30.3(a), it is unlawful for any person to engage in the offer or sale of any foreign option until the CFTC, by order, authorizes the foreign option to be offered in the U.S. Foreign option is defined in the regulations by rule 30.1(b).

In determining whether to grant the petition of a foreign market with respect to the offer and sale of particular option products in the U.S., the CFTC will examine:

- the existence of mechanisms for information sharing and the ability to confirm transactions and prices;

- the arrangements in place for assuring that sales practice abuses in such options do not occur; and

- the regulatory environment in which such foreign options are traded.

Pursuant to rule 30.3(a), the CFTC has approved the following option contracts:

- ME: IOCC Options on Foreign Currencies, Canadian Dollar, Gold and Platinum.

- Singapore International Monetary Exchange ("SIMEX"): Options on Eurodollar, Japanese Yen, Deutschemark and Three-Month Euroyen futures.

- Sydney Futures Exchange: 3-Year and 10-Year Australian T-Bonds, Australian Dollar and 90-Day Bank Accepted Bill futures.

- London International Financial Futures Exchange ("LIFFE"): Options on Long Gilt, US Treasury Bond, German Government Bond, Three-Month Sterling Interest Rate futures, Sterling and Dollar-Mark currencies, and options on the Three-Month Eurodeutschemark and Three-Month Eurodollar Interest Rate Contracts.

- International Petroleum Exchange: Options on Brent Crude Oil Futures and Gas Oil Futures.

- London Futures and Options Exchange: Options on Robusta Coffee Contract, No. 5 White Sugar Contract, No. 6 Raw Sugar Contract, No. 7 Cocoa Contract, and MGMI Futures Contract.

CEA §2(a)(1)(B)(v) authorizes futures contracts based on, among other things, "exempted securities." Thus, a foreign government debt instrument must first be designated as an "exempted security" by the SEC under Section 3(a)(12) of the 34 Act before such futures contract based on a foreign government debt instrument can be offered or sold to or by a person in the U.S. To date, the SEC has designated the debt instruments of the governments of the United Kingdom, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, Netherlands, Switzerland and West Germany as "exempted securities" for purposes of futures trading.

Under §2(a), the CFTC staff has issued no-action letters providing for the offer and sale of foreign stock index futures based on an index of foreign securities in the U.S. In issuing these letters, the staff generally has followed the guidelines set forth in CEA §2(a)(1)(B)(ii). To date, no-action letters have been issued with respect to the following contracts:

- LIFFE: Financial Times Stock Index.

- Toronto Futures Exchange: Toronto Stock Exchange ("TSE") 300 Index Futures Contract, TSE 300 Spot Index, TSE 35 Index Futures Contract and TSE 35 Spot Index.

- SIMEX: Nikkei Stock Average Futures Contract.

- International Futures Exchange (Bermuda) Ltd.: Financial News Composite Index Futures Contract.

SEC

See SEC response at I.A.2.a. above.

SIB

With respect to ROIEs and Recognised Overseas Clearing Houses (ROCHs), the FSA provides for recognition by the Secretary of State of exchanges and clearing houses which have their head offices overseas and which undertake activities which are characterized as carrying on investment business in the UK by virtue of the provision of facilities for the purposes of arranging deals in investments (FSA. s.40). As in the case of ROIEs (And ROCHs), DIEs are not subject to direct and primary oversight by UK regulators. The purpose of the DIE concept is to provide an additional element of investor protection by the identification of those overseas exchanges which are considered to provide adequate investor protection.

Upon the acquisition, by an exchange, of ROIE or DIE status, all of the products traded on that exchange are covered by the recognition or designation.

COB

CONSOB

MOF

NCSC

The considerations listed in I.A.2.(b) form part of the requirements in the legislation in relation to exempt futures markets as well as for approval of futures exchanges which operate within Australia. The non-Australian markets identified in I.A.1.(a) are not selected solely by this criteria, although these considerations do have a bearing on the selection. Further information in relation to the NCSC policy on this matter may be obtained from the NCSC Policy Release 152.

OSC

The Winnepeg Commodity Exchange has been recognized pursuant to section 34 of the CFA. All other foreign commodity futures exchanges have been exempted from the need for recognition provided that trades are made through futures commission merchants registered in Ontario. The factors to be considered in recognizing a foreign exchange (rendered redundant by the Blanket Orders) are essentially the same as those described at I.A.1.(c))

CVMQ

SFC

Inapplicable.

(c) Recognition criteria

CFTC

SEC

See SEC response at I.A.2.a. above.

SIB

In order to achieve ROIE status, an exchange must satisfy the Secretary of State:

- that it is subject to supervision in the country where its head office is located which, together with its rules and practices, is such that investors in the UK are afforded protection at least equivalent to that provided under the FSA in relation to domestic RIEs or RCHs;

- of its ability to cooperate in the sharing of information; and

- of the existence of adequate arrangements for cooperation by those responsible for the supervision of the exchange in the foreign country (FSA, s.40).

Parallel requirements are imposed on ROCHs and ROIEs.

The Secretary of State is required to consider the competition aspects of the proposed activities of the exchange or clearing house (FSA, s.119) and before making a decision regarding recognition, he must have regard to the report of the Director General of Fair Trading (FSA, s.122).

COB

CONSOB

MOF

Licenses to trade foreign products are given by category of products.

NCSC

No set criteria exists for the recognition of foreign markets. Consultation with the relevant exchange or market participants with a view to ensuring that investor protection is adequate and that the interests of the public will be served are the general guidelines used. In addition, NCSC must be satisfied in particular that:

- the standards of training and experience, and other qualifications, of the operators of the market are appropriate;

- the manner in which the members would conduct their business of dealing in futures contracts will promote efficiency, honesty and fair practice in relation to such dealings;

- a mechanism exists for the exclusion from membership of a person or a body corporate, where that person or in the case of a body corporate a director of the body corporate, a person concerned in the management of the body corporate or a person who has control or substantial control of the body corporate, is not of good character and high business integrity;

- the classes of futures contracts that may be dealt in are acceptable;

- the conditions under which members may deal in futures contracts are adequate;

- provisions exist for the equitable and expeditious settlement of claims and grievances between members; and

- appropriate mechanisms exist for the conciliation and settlement of disputes between members and their clients.

OSC

Since the OSC has by blanket order exempted all foreign exchanges from the need to be recognized the recognition criteria are irrelevant.

CVMQ

SFC

Inapplicable.

B. Financial Intermediaries

1. Describe the factual bases for determining that a financial intermediary is subject to regulation in your jurisdiction (e.g., legal domicile, presence of an office, solicitation of business).

CFTC

In general, a financial intermediary will be deemed to be subject to CFTC regulation if it either is legally domiciled in the U.S., is otherwise physically present in the U.S., has consented to jurisdiction or is deemed to be conducting business in the U.S. Whether a financial intermediary is deemed to be conducting business in the U.S. is not dependent on whether the financial intermediary is physically present in the U.S. and no distinction between solicited and unsolicited business is made; mere acceptance of orders constitutes "doing business."

The presence of a U.S. affiliate of a foreign firm engaged in a related business may also cause the CFTC to find that the foreign firm is subject to regulation in the U.S. Adequate representations as to access to the U.S. affiliate's books and records may cause the CFTC to disregard the affiliate's presence in applying the CFTC's regulatory requirements.

SEC

The SEC requires broker-dealer (B/D) registration in two general types of situations. First, all B/Ds physically operating within the U.S. that effect, induce, or attempt to induce any securities transactions are required to register with the SEC, even if these activities are directed only to foreign investors outside the U.S. Second, B/Ds who solicit securities transactions from persons located in the U.S. are required to register with the SEC, regardless of where the B/Ds are located.

The SEC has not required registration of B/Ds located outside the U.S. who execute transactions for U.S. persons who sought out the B/Ds and initiated transactions in foreign securities markets entirely of their own accord. The SEC generally views "solicitation," however, as including any affirmative effort by a B/D intended to induce transactional business for the B/D or its affiliates. Conduct deemed to be solicitation includes telephone calls from a B/D to a customer encouraging use of the B/D to effect transactions, as well as advertising one's function as a B/D, in newspapers or periodicals of general circulation in the U.S. or on any radio or television station whose broadcasting is directed into the U.S. Similarly, solicitation would include conducting investment seminars for U.S. investors or recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the B/D.

A B/D who disseminates quotations for securities to U.S. persons also generally would be considered to have solicited securities transactions. The SEC has indicated, however, that third-party distribution of quotations will be allowed on an interpretive basis. The SEC's position only applies to third-party systems that do not have internal execution capabilities.

The SEC has adopted a rule that provides exemptions from registration for certain foreign B/Ds engaged in certain activities involving U.S. investors and markets. One exemption permits foreign B/Ds to solicit U.S. institutional investors, but requires, among other things, that any resulting trades be executed through a U.S. registered B/D. The rule provides another exemption for foreign B/Ds who provide research reports to U.S. institutional investors with assets in excess of $100 million. The research reports cannot, however, recommend the use of the foreign B/D to execute trades and cannot be provided pursuant to any understanding that commission income will be directed to the foreign B/D. Finally, the rule exempts foreign B/Ds who effect transactions with or for U.S. registered B/D banks acting in a B/D capacity, certain international organizations, foreign persons temporarily present in the U.S., U.S. citizens resident abroad, and foreign branches and agencies of U.S. persons.

The SEC also has solicited comment on a conceptual approach to regulation of foreign B/Ds that would recognize comparable foreign B/D regulation. Under the approach, certain foreign B/Ds would receive conditional exemptions from U.S. registration. The principal elements of the conceptual approach are (1) its limitation to foreign B/Ds operating outside the U.S., whose business is predominantly foreign, who do not have a U.S. B/D affiliate, and who limit their U.S. activities to providing cross-border services to major U.S. institutional investors; (2) the existence of investigative and financial memoranda of understanding between the SEC and the foreign regulatory

authority; (3) the existence of a foreign regulatory regime that is comparable to the U.S. regulatory regime; and (4) compliance by foreign B/Ds with certain U.S. requirements, such as notifying the SEC of their U.S. activities and consenting to service of process in the U.S.

SIB

The FSA provides that no person shall carry on, or purport to carry on, investment business in the UK unless he is authorised or exempted from authorisation (FSA, s.3).

For these purposes, "financial intermediary" is used to refer to firms which are "authorised persons," i.e., authorised to carry on investment business in the UK. Applications for authorisation may be made to SIB or the relevant SRO which in the case of margined transactions, would likely be the Association of Futures Brokers and Dealers (AFBD) or The Securities Association (TSA) (primarily financials under specified conditions). It has recently been announced that the AFBD and the TSA intend to merge in 1991. Reference in this paper to CBRs relate to those of SIB. SROs must have rulebooks which, for a transitional period, meet either the "adequacy" or "equivalence" tests (at the election of the SRO). At the conclusion of the transitional period, the SRO rulebooks must satisfy the "adequacy" test.

Pursuant to the FSA, a person carries on investment business in the UK if he carries on investment business from a permanent place of business maintained by him in the UK or if he engages in an activity in the UK which falls within one of several categories identified in Part II of Schedule I to the FSA and, in respect of that activity, he is not an exempt person.

A financial intermediary is, therefore, subject to regulation in the UK where investment business is carried on from a UK base, wherever the customer is situated. A financial intermediary will also be subject to UK regulation where that financial intermediary, not operating from a UK base, nevertheless, carries on business from overseas into the UK (e.g., soliciting UK customer business). Certain exceptions apply in the latter case, e.g., where the overseas persons is: transacting with a UK authorised person; responding to an initiative taken by a UK investor or continuing an existing business relationship with him; or promoting his investment services in accordance with the advertising and cold-calling rules, the overseas person is not otherwise restricted by the provisions of the FSA.

COB

The Law of the 28th of March 1885 provides that clearing members of financial futures markets can only be brokerage firms (societes de course), credit firms, securities houses or the Caisse des Depots et Consignations. They designate traders

(negociateurs) on the futures markets, complying with the general regulation of the CMT. Under specific circumstances, commodities intermediaries can also participate in clearing and trading.

The firms mentioned above, the designated "negociateurs," commodities intermediaries and firms approved by the CMT, complying with skill, fairness and solvency rules, are the only persons authorized to produce orders on the commodities market.

Solicitation or cold-calling is authorized for persons who could apply for clearing membership (see above). This business is defined as the usual activity of advising someone to operate on markets and receiving funds for this operation.

These persons have to comply with the French regulation of solicitation or cold-calling on futures contracts.

Legal provisions on cold-calling protect all clients solicited by French intermediaries whatever their nationality as soon as they are domiciled in France.

Until now, there is no difference between sophisticated and non-sophisticated customers, except that court admits that a sophisticated customer cannot engage responsibility of the intermediary in case of coverage call conditions unfilled.

On the MONEP, brokerage firms (societes de bourse) are qualified directly as clearing members. Credit firms can also be clearing firms. Acting as market-maker can be asked to the SCMC only by brokerage firms or counterparty firms (societes de contrepartie) controlled by brokerage firms.

CONSOB

The securities regulatory regime takes into account only domestic financial intermediaries properly recognized.

Regulated institutions are:

- Stockbrokers ("Agenti di Cambio"):

are public officials appointed by presidential decree. They have the legal monopoly in executing transactions on the floor of the stock exchange, they are not allowed to operate as principals but only as agents. Only Italian citizens are eligible for an official stockbroker's license.

- Banks:

can be admitted to the stock exchange trading area as observers. They cannot directly execute transactions but they are allowed to operate also as principals. There is no restriction

for foreign banks holding a branch registered in Italy as far as securities operations are concerned.

- Commission dealing companies ("Societa' commissionarie di borsa"):

are admitted by CONSOB to the stock exchange where they can operate similarly to the banks, but they cannot directly execute transactions.

Only companies registered in Italy are eligible to be licensed as Commission dealing companies. Nevertheless their foreign ownership is not an impediment.

- Financial institutions admitted in a special register with the Bank of Italy:

do not have direct access to the stock exchange. They are subject to supervisory control by the CONSOB to the extent they perform securities intermediation activity.

- Trust companies ("Societa fiduciarie"):

are entitled to offer personalized portfolio management services. Registration in Italy is required in order to be licensed as a trust company.

- Sales network:

persons performing door to door selling of financial services are subject to authorization and supervision by the CONSOB. Registration in Italy is required and foreign ownership is not an impediment.

- Mutual funds:

are entitled to offer collective portfolio management service. They are regulated by law 77 of 1983 and supervision is performed by the Bank of Italy. They have no direct access to the trading floor. Registration in Italy is required to be licensed as mutual funds, and foreign ownership is not an impediment.

Non-Regulated institutions:

Only floor trading, collective and personalized portfolio management are licensed activities and have to be performed, respectively, by registered stockbrokers, mutual funds and trust companies.

All other activities (such as: underwriting, placing off-exchange, investment advice etc.) are not regulated and can be performed even by non-regulated foreign institutions.

MOF

Any person who performs securities business (including futures and options) with Japanese investors must either be established or have a branch office in Japan. Any person who is so established or has a branch office must get a license from the Finance Minister in order to perform securities business in Japan.

NCSC

If the intermediary is conducting business in Australia then that intermediary is subject to regulation.

Section 154 of the FIC applies to dealers as well as markets and section 61 of the FIC prohibits a person to hold himself out as carrying on a business of dealing in futures contracts on behalf of others, unless he is licensed. Dealing is defined in sub-section 7(1) of the legislation in terms which would be satisfied by either taking or executing orders. The following acts are all prohibited to the unlicensed:

- taking orders in Sydney to be executed in Amsterdam (including taking orders by telephone, the broker being in Amsterdam and the client in Sydney);

- executing orders in Sydney which were taken in Amsterdam (unless they are executed on behalf of another broker); and

- advertising in Sydney that a broker in Amsterdam offers his services, irrespective of the markets on which he trades.

Although there must be some act or omission in the jurisdiction, the offence has been made as wide, in terms of territorial connection, as constitutional power will permit.

No distinction is made between solicited versus non-solicited business. The legislation defines a "futures broker" as:

- a person who carries on, or 2 or more persons who together carry on, a futures broking business, whether or not the person, or any of the persons, also deals in futures contracts on the person's own account; or

- a person who holds a futures broker's license under Part IV or the provisions of a law in force in a participating State or in a participating Territory that correspond with Part IV;

"futures broking business", in relation to a person, means, subject to subsection 7(4), a business of dealing in futures contracts on behalf of other persons.

A similar definition for "futures advisors", based upon the carrying on of a business of advising exists.

Net Tangible Assets are defined by the SFE Articles of Association as being:

"The sum of the values of the assets (both fixed and current) owned by the Member or Prospective Member as the case may be (such value being the lower of cost or market) attaching to those assets or to the Member or Prospective Member generally (and in the case of a partnership then attaching to the partners).

The values of assets for the purpose of this definition shall not include the value attributed to any future tax benefits, goodwill, patent, trademark, Membership of the Exchange, preliminary expense or other items of a like nature which in the opinion of the auditors of the Exchange are regarded in current accounting practice as intangible or the value attributed to any debt owed to the Member which is disputed or may otherwise be regarded as doubtful or the value of any asset for which in the opinion of the auditors of the Exchange there is no ready market. Liabilities shall include provision for estimated liability for income tax, long service leave and any other contingency for which in the opinion of the auditors of the Exchange provision is properly made in current accounting practice. Liabilities may, if the Committee for Inspection and Audit so approves, having regard to all the circumstances, exclude Approved Subordinated Debt."

Approved Subordinated Debt is defined as:

"An amount owing by a Member which is payable at a time or by installments approved by the Exchange and is to the satisfaction of the Exchange effectively subordinated so that any right of the creditor in question to receive payment in the case of bankruptcy or of any composition or compromise with creditors by or appointment of a trustee in bankruptcy or in the case of liquidation, liquidator in respect of the Member or the partners or any of them is extinguished to such an extent as will ensure payment or provision for payment in full of all claims of all other present and future creditors of the Member in priority to the claim of the subordinated creditors and in respect of which a Subordinated Loan Deed has been executed under seal by the Member, the Lender and the Exchange."

OSC

Dealers and advisers are required to be registered in Ontario if they trade with or solicit trading or advisory business from Ontario residents or if they are a member of an Ontario exchange. The definition of the term "trade" is very broad and includes entering into contracts as principal or agent, the receipt of an order to effect a transaction and any act,

advertisement, conduct or negotiation directly or indirectly in furtherance of a trade. Physical presence is not necessary to trigger a registration requirement although a dealer that the OSC determines requires a registration in Ontario must establish an office in Ontario. Advisers do not need to maintain a physical presence in Ontario but are not allowed to hold customer funds and any discretionary trading must be conducted through dealers registered in Ontario with customer funds remaining in Ontario.

CVMQ

It must be registered with the Quebec Securities Commission.

It must have an office in Quebec.

No dealer/broker may carry on business in Quebec unless he is registered as such with the Quebec Securities Commission.

A securities dealer/broker must have a principal establishment in Quebec, under the direction of a person who is an officer residing in Quebec. To carry on business as an intermediary in respect of options and futures contracts the dealer/broker is subject to the following conditions:

- It has to be registered as a full service dealer/broker with the Commission;

- Any representative authorized to trade in futures markets must have successfully passed the examination on futures markets organized by the Canadian Securities Institute or the National Commodity Futures Examination;

- A person already registered with the Commission as a dealer with an unrestricted practice (full service) wishing to also carry on business as an intermediary in respect of futures contracts must notify the Commission of the names of the representatives authorized to execute such transactions; however, in the case of an exchange recognized as a self-regulatory organization (ME), the notice is given to the exchange rather than the Commission;

- A candidate for registration who wishes to trade futures or options contracts must have successfully complete the courses required by the ME.

SFC

In Hong Kong, a person who conducts a business of trading in commodity futures contracts, or holds himself out as carrying on such a business, must register as a dealer. A person conducting a business of trading in commodity futures contracts on his own account and through a registered Hong Kong dealer is

not required to register as a dealer. Thus, investors are not required to be registered as dealers.

2. **(a) Are there differences in the regulations applied based on the relationship of the intermediary to the jurisdiction?**

CFTC

Once the determination is made that a financial intermediary is subject to regulation in the U.S., the applicable principle of regulation is that of national treatment. That is, under U.S. laws, the foreign firms are treated no less advantageously than U.S. firms in terms of the regulations which may be applicable to their activities. However, depending on the degree of nexus with the U.S., the CFTC's regulatory interest may vary.

"Foreign brokers" are defined as entities located outside the U.S. that carry an account in futures or options for or on behalf of non-U.S. persons on U.S. markets through a carrying FCM. Under CFTC regulations, foreign brokers are not required to register with the CFTC as FCMs, however, they remain subject to, among other things, the reporting requirements in Parts 15-21 of the CFTC regulations.

The CFTC's Part 30 rules govern the offer or sale of any foreign futures or option contract to a person resident in the U.S. Although the rules apply to any person, U.S. or non-U.S., who engages in the above-referenced activities with respect to a customer resident in the U.S., the rules contain an exemptive provision pursuant to which the CFTC may exempt a financial intermediary located outside the U.S. from the application of the CFTC's rules and regulations based upon substituted compliance by the financial intermediary with the comparable regulatory requirements imposed by the foreign jurisdiction. See rule 30.10. To be eligible for rule 30.10 exemptive relief, a firm must also be doing business with customers in the foreign jurisdiction in which it is located and whose regulation it is subject to. In considering an exemption request, the CFTC will take into account, among other things, the extent to which U.S. persons are permitted to engage in futures-related activities, or U.S. contracts are permitted to be offered, in the jurisdiction from which an exemption is sought.

SEC

As discussed above, the SEC exempts certain foreign B/Ds from U.S. registration based on the location of the B/D and on the limitation of their customers to institutional investors. The SEC does not differentiate its regulation of registered B/Ds based on the location of the B/D or on the location or type of its clients. Non-resident B/Ds are required, however, to provide their books and records in the U.S. upon request.

SIB

It is the activity of carrying on investment business in the UK, in the absence of an exemption (e.g., soliciting business or advising UK customers), which triggers the application of the FSA. (Solicitation is defined in neither the FSA nor the CBRs.)

The principle of "national treatment", briefly stated, means that foreign firms are treated no less advantageously than domestic firms in terms of the regulations which may be applicable to their activities. Once it is determined that a financial intermediary is subject to regulation in the UK and, if not otherwise exempt, requires authorisation to carry on investment business, the principle of "national treatment" applies and foreign firms are treated in the same way as domestic firms.

The UK has entered into lead regulation agreements, regarding the sharing of financial information, with the regulators or relevant authorities of 28 foreign countries. The foreign regulator takes the lead in relation to financial supervision and provides financial information, on the basis agreed, concerning the overseas entity which could be relevant to the UK entity. The UK regulator continues to monitor for its purposes, compliance with conduct of business rules.

Any arrangements which are developed between UK and foreign regulators and/or supervisors for purposes of the financial regulation of intermediaries operating from overseas through a branch in the UK will not displace or otherwise overcome the need for the overseas entity to acquire authorisation where it is undertaking investment business in the UK and an exemption is not available.

In relation to the authorisation of firms undertaking investment business in the UK, where authorisation is required, there is no alternative to membership in an SRO or direct authorisation from SIB. A certain overlap of SRO scope minimizes the need for a firm to obtain multiple SRO memberships, however, in circumstances where a firm is compelled to obtain authorisation through membership in more than one SRO, arrangements will be made for one of those SROs to adopt a lead in the regulation of the activities of the firm in question.

COB

CONSOB

MOF

No differences exist in the regulations applied to Japanese securities companies and foreign securities companies with branch offices in Japan.

NCSC

Non-Australian financial intermediaries carrying the accounts of non-Australian financial intermediaries on Australian markets are subject to the same regulatory regime to which financial intermediaries either in Australia and/or conducting business for Australian financial intermediaries are subject.

A non-Australian financial intermediary is subject to the same requirements to which an Australian financial intermediary is subject.

OSC

All dealers carrying on business with Ontario residents are regulated the same way.

CVMQ

The Commission may, on such conditions as it may determine, exempt a person or a group of persons from certain requirements where it considers the exemption not to be detrimental to the protection of investors.

Exemption from registration:

- A person who trades in futures contracts solely for the account of hedgers is exempted from registration as a dealer with the Commission to carry on business as an intermediary in the trading of futures contracts, under the following conditions:

  -- the person is an associate member of the ME;

  -- the person is subject to the by-laws and rules of the ME concerning futures contracts; and

  -- the person responsible for the trading of the contracts meets the qualification requirements of the ME.

- Section 157 of the Securities Act also specifies that a dealer or adviser who deals only with persons likely to be sophisticated purchasers within the meaning of Section 44 is exempt from registration. Pursuant to Section 44 the following persons are sophisticated purchasers to the extent that they subscribe for or purchase securities for their own account:

  -- a company of which all of the voting securities belong to the Gouvernement du Quebec, the Government of Canada or the government of the Canadian province, or to one of their departments or agencies;

  -- a bank governed by the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or by the Quebec Savings Banks Act (R.S.C., 1970, chapter B-4);

-- a loan and investment society incorporated under an Act of Quebec or registered in accordance with the Loan and Investment Societies Act (R.S.Q., chapter S-30);

-- a federation of savings and credit unions within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4);

-- the Caisse centrale Desjardins du Quebec established under the Act respecting the Confederation des caisses pupulaires et d'economie Desjardins du Quebec (1971, chapter 80);

-- a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41);

-- an insurance company licensed under the Act respecting insurance (R.S.Q., chapter A-32);

-- a municipal corporation, an urban community or regional community, a school corporation, the Conseil scolaire de l'ile de Montreal, an intermunicipal management board or a public agency or body established pursuant to an Act of the Government of Canada or of the government of a Canadian province;

-- a dealer or an adviser registered in conformity with section 148;

-- a pension fund with assets of over $100 000 000 and governed by the Act respecting supplemental pension plans (R.S.Q., chapter R-17) or the Pension Benefits Standards Act (R.S.C., 1970, chapter P-8);

-- the subsidiary of a person mentioned in paragraph 2, 6 or 7, to the extent that such person holds all the voting securities;

-- a person designated in an order of the Commission on such conditions as it may determine.

ME - Criteria of admission

To be admitted as a member of the ME, the applicant must obtain a membership vacancy from the exchange or a membership transfer from a member or former member.

Among other criteria, a member corporation:

- shall be a corporate entity having as its principal business that of a broker or dealer in securities or commodity futures and it shall be active in such business to an extent acceptable to the ME;

- shall be incorporated under the laws of Canada or one of the provinces thereof, unless it is a member corporation that does not deal with the public in Canada and is registered with a securities commission or another regulatory organization recognized by the ME;

- at least 40 percent of the members of the board of directors of a member corporation shall be industry members.

The ME rules specify also certain requirements to become an Associate Member for TCO Options or to become a correspondent member for International Options Clearing House (IOCC) options.

SFC

Corporate members of HKFE must be incorporated in Hong Kong.

(b) Are there differences in the regulations applied based on the type or location of clients with which the intermediary does business?

CFTC

The CFTC rules and regulations do not distinguish intermediaries based on the type of clients. (But see definition of proprietary accounts.) The location of the client is relevant because of the need to establish a nexus with the U.S.

In order to trade for U.S. customers on domestic or foreign markets, firms must either register or be exempt from registration.

In order to trade for non-U.S. customers on U.S. markets, whether the full panoply of customer protections is applicable or not is a function of the location of the financial intermediary.

Transactions on non-U.S. markets for non-U.S. customers are deemed to be nonregulated transactions under the CFTC's regulatory system.

SEC

SEC does not differentiate its regulation of registered B/Ds based on type or location of B/D's customers.

SIB

The CBRs differentiate between several types of investors. Briefly these are:

- "Business investor": this category includes government and public authorities, large companies (minimum net assets of £500,000 or £5 million, depending on other circumstances) and

trustees of large trusts (minimum trust assets of £10 million (CBRs, 1.05));

- "Experienced investor": this means an individual who, by virtue of the size and frequency of transactions, can be reasonably expected to understand the nature of every transaction within that description of transaction and the risks involved (CBRs, 1.06); and

- "Professional investor": this includes a person who carries on business which is investment business or which would be investment business if it were not for the exemptions that might otherwise be available (CBRs, 1.07).

A private customer is an investor who is not identified above.

Business, experienced and professional investors may have margined transactions effected on their behalf by authorised firms whether exchange-traded or off-exchange and, in the former case, regardless of the recognition status of the exchange.

There are restrictions with respect to the transactions which may be effected for inexperienced private investors which are not undertaken in the context of discretionary portfolio management; generally, these transactions must be undertaken on RIEs, ROIEs or DIEs.

In so far as the location of customers is concerned, this is not a factor which imports a differentiation in applicable regulation: once it is established that the authorised firm is undertaking investment business in the UK and is dealing on behalf of a customer, the applicable rules must be respected regardless of that customer's nationality or where he is located.

The CBRs contain specific rules in relation to transactions undertaken for "connected customers." This term is applied to, inter alia: partners; employees; appointed representatives; controllers; and officers of a firm. It includes as well spouses and children of those persons identified above and persons acting as trustee of a trust, the beneficiaries of which he knows (or ought to know) include any of the above, including spouses and children. "Connected companies" are also connected customers. A connected company is a company where any of the following arrangements exist: the same person is the controller of each company; where a group of two or more persons are controllers of each company and the group consists of the same persons or could be regarded as consisting of the same persons by treating as a member of either group a member's close relative; a person with whom that member is in partnership or by a company of which that member is an officer or controller; or where both companies are members of the same "group." ("Group" includes any body corporate which is a

related company, within the meaning of paragraph 92 of Schedule 4 to the Companies Act 1985, of any member of the group or would be such a related company if the member of the group were a company within the meaning of that Act.) (CBRs, 1.04).

If the firm in question is not a company, a connected company would be a company which is controlled: by the firm; by a partner of the firm; by a close relative of a partner of the firm; or collectively by any of the partners of the firm and their close relatives (CBRs, 1.04).

Generally, a firm shall not, as agent, effect a transaction in relation to an investment of any description, for a customer whom the firm knows or ought reasonably to know to be a connected customer dealing on his own account or a person dealing on the account of a third person who, if the firm dealt with him direct, would be a connected customer of the firm, when it has an instruction from a customer who is not a connected customer or when it has made a decision on behalf of a customer to effect a transaction in relation to an investment of that description and that instruction or decision has not been executed (CBRs, 5.15(2)). For these purposes, a firm may, but need not, treat an employee (including that employee's spouse and children) or the trustee of a trust whose beneficiaries include such persons, as not being a connected customer (CBRs, 5.15(3)).

Part 14 of the CBRs addresses restrictions on dealings by officers and employees. Generally, an officer or employee of a firm should not effect, on his own account or on that of a person connected with him, any transaction that the firm would be forbidden to effect (i.e, a transaction in advance and with knowledge of a customer order) (CBRs, 14.03). For the purposes of these rules, a person is connected with an officer or employee of a firm if he is so connected with that person by reason of any domestic or business relationship that that officer or employee can reasonably be expected to have influence over that person's judgement as to his investment or to be consulted before any such judgement is made (CBRs, 14.01).

COB

CONSOB

MOF

No differences exist in the regulations applied to licensed securities companies, according to the type or location of their clients.

NCSC

If the clients are sophisticated in the use of futures (generally certain institutions e.g, Banks or Trading Houses) then the market or the institutions engaged in that market may be exempted from the application of the FIC provisions.

There are no differences in the application of regulations based upon the location of the financial intermediary's clients.

Sophisticated clients, in the context used, are investors with expert knowledge of a specialist markets' characteristics.

No further distinction is made based on the location of the customer.

OSC

There is an exemption from the registration requirement for business done with hedgers.

CVMQ

SFC

There are no differences in the regulations applied based on the type or location of clients with which the intermediary does business.

C. Explain any Special Factors Affecting the Treatment of Screen-Based Trading Systems.

CFTC

The CFTC has stated that the mere presence of screen-based trading terminals in the U.S. should not cause the CFTC to deem any exchange for which products are listed through the system to be a domestic exchange. However, the relationship or interface between the exchanges or between the exchange and U.S. customers may raise regulatory concerns which the CFTC may wish to consider that are unrelated to the internal operations of the foreign exchange. As a result, the CFTC would review the particulars of any proposal to trade the contracts of a foreign exchange through a screen-based system in light of the CFTC's obligations under the CEA to maintain the integrity of U.S. markets and to provide for the protection of U.S. customers. Systems that allow members of one exchange to trade the contracts of the other exchange ("cross-exchange trading") would require appropriate information sharing arrangements between regulators to permit the CFTC to fulfill its regulatory responsibilities.

The CFTC has not promulgated any rules or regulations specifically related to screen-based trading systems. Pursuant to §5a(12) of the CEA and rule 1.41(b), a U.S. exchange implementing a screen-based trading system must submit its rules regarding the system to the CFTC for its approval. The CFTC has issued an Interpretation which makes clear that the record retention requirements in its regulations apply to any records created by or for an SRO to document the development,

implementation, or maintenance of any automated systems supporting or incident to the performance of its self-regulatory responsibilities and functions. 55 Fed. Reg. 17932 (April 30, 1990).

Exchanges that have developed screen-based trading systems have amended or expanded their existing rules, regulations and bylaws to insure consistency with the CEA and CFTC rules (e.g., treatment of non-registered terminal operators should there be any trading violations).

SEC

Currently, unless a screen-based proprietary trading system falls within the definition of an exchange or a clearing agency under Sections 3(a)(1) or 3(a)(23) of the 34 Act, respectively, or are otherwise classified as SROs, the system would not be governed by the formal regulatory structure (including registration) applicable to exchanges and clearing agencies. Even if the systems do not fall within these definitions, however, they generally do meet the definition of a B/D under Sections 3(a)(4) and (5) of the 34 Act, respectively, and are registered as such.

The functions of such a system, however, may be subject to certain regulations under the federal securities laws. For example, if the system issued options, the issuance of those options would be covered by a registration statement subject to the full panoply of disclosure requirements under the 34 Act (e.g., Rule 9b-1 of the 34 Act). In addition, the anti-fraud, recordkeeping, and reporting provisions of the federal securities laws provide the SEC additional regulatory authority over such systems.

Moreover, although the SEC's Division of Market Regulation ("Division") has informed several systems operators, that, subject to certain conditions, the Division would not recommend enforcement action if such systems were not registered as exchanges or clearing agencies under the 34 Act, recent concern about the Division's interpretative approach has prompted the Division to recommend that the SEC adopt Rule 15c2-10. Proposed Rule 15c2-10 would govern the operation of systems that are not operated as facilities of national securities exchanges or associations.

SIB

Currently in the UK, there are no special provisions, whether in the applicable legislation or in rules, specifically applicable to screen-based trading (SBT) or the features of SBT systems. While there are no SBT-specific provisions which directly apply to the execution of transactions, firms providing services which constitute making, or offering or agreeing to make arrangements, with a view to a person who participates in the arrangements buying, selling, subscribing for or

underwriting investments (FSA, Schedule I, paragraph 13(b)), are subject to a specific scheme of regulation. The rules applicable to "Service Companies" require the submission, to SIB, of a business plan which provides that:

- the investment business of the firm will be restricted to FSA, Schedule I, paragraph 13(b) activities; and

- the firm will not guarantee or otherwise be responsible for the performance by any of its customers in connection with transactions arranged or settled under the facilities provided by the firm.

The business plan must be accompanied by a document identifying the terms under which services will be provided to the customer (CBRs, 1.15(1)).

The regime applicable to service companies is currently under review.

COB

There is no specific rule related to screen based trading systems in the general regulation established by the CMT.

However, this general regulation provides that each market has to establish a trading regulation and a clearing regulation. Some OMF trading rules are specific to the screen based transactions. For instance, they provide that an order remains valid up to the end of the day when it has been entered in the system.

The MONEP has just implemented a new screen based transaction system (system STAMP: Systeme de transactions automatise du MONEP).

A new rule has been adopted to regulate this system. The STAMP system must be used only for introduction and cancellation of orders. Each recorded order is time-stamped and the responsibility of its execution is transferred to the SCMC.

CONSOB

As a general rule in Italy, "solicitation", which includes any effort made by a dealer intended to induce securities transactions for itself or its affiliates, is regarded as an activity to be authorized.

Therefore, the solicitation through dissemination of quotations by means of screen based systems is to be considered as subject to authorization.

An official market for secondary transactions on Government bonds has been established in 1988 by decree of Minister of

Treasury. Transactions are conducted through a screen based trading system with bid/offer prices made in competition by authorized "primary dealers". These offers can be accepted only by authorized "dealers" that are not, therefore, allowed to make quotations. There is no limitation for institutions registered in Italy and with foreign ownership to participate as "primary dealer" or "dealer" to this market.

Information on primary dealer quotations is available only to dealers which are members of such market and therefore the primary dealers quotations are not considered public offers falling under the regulation of solicitation.

MOF

When a screen-based system is operated by a licensed stock exchange, it is regulated by general rules applied to stock exchange transactions, and there are no specific rules applied only to screen-based trading. However, we have not yet reached a conclusion on the treatment of screen-based trading systems operated by foreign exchanges and other entities.

NCSC

Factors include: System access, terminal security, training of operators, information sharing and special reporting requirements.

OSC

There are no special factors affecting the treatment of screen-based trading systems.

CVMQ

There are no special factors affecting the treatment of screen-based trading systems.

SFC

At this time, the law generally prohibits operation of a commodity exchange in Hong Kong other than HKFE. The definition of commodity exchange refers to an exchange trading in specified contracts. Accordingly, a screen-based system trading any other products would not necessarily be prohibited nor explicitly be required to be licensed as an exchange. A screen-based system could be required to register as a dealer if its activities included offers to make an agreement with another person in Hong Kong to enter into a futures contract.

II. Common Regulatory Concerns

A. Financial Safety

1. Capital-based qualification, authorization or good standing requirements (e.g., specified minimum amounts, qualifying assets) for:

(a) Exchanges

CFTC

The CEA and the regulations thereunder impose no regulatory or self-regulatory capital-based requirements on commodity exchanges.

SEC

A national securities exchange registered with the SEC is not subject to any specified minimum capital-based requirements. It must, however, demonstrate that it has the financial means to comply with Section 6 of the 34 Act, giving consideration to the nature of the products traded, volume, and number and character of members. Section 6 of the 34 Act provides specific guidelines for the registration of exchanges.

SIB

The FSA does not impose specific financial requirements in respect of RIEs or ROIEs. An RIE is reviewed for purposes of ensuring that it has financial resources which are deemed "sufficient for the proper performance of its functions" (FSA, Schedule 4, paragraph 1). Where an exchange has an integrated clearing house, the assessment includes a determination as to the adequacy of the financial resources in light of the business (i.e., volume, value and volatility) which that exchange/clearing house currently undertakes or in the future proposes to clear and guarantee. There are not specified requirements regarding the nature or form of the financial resources. Currently, these are in the form of capital and reserves, insurance, shareholder guarantees and bank bonds. SIB is the relevant recognising body for RIEs. The Secretary of State is the relevant recognising body for ROIEs.

COB

See II.A.1(b) below.

CONSOB

MOF

No capital based qualification is imposed.

NCSC

There are at present no set capital based qualifications.

OSC

There are no specific capital requirements. Exchanges must have satisfactory clearing arrangements and be in satisfactory financial condition to provide reasonable assurance that all obligations arising out of contracts entered into on the exchange will be met.

CVMQ

Working Capital Securities Act (Quebec)

A dealer/broker must have a net free capital at least equal to the sum of:

- a proportion of the adjusted liabilities, subject to a minimum of $75,000, calculated as follows:

  -- 10% of the first $2,500,000;
  -- 8% of the next $2,500,000;
  -- 7% of the next $,500,000;
  -- 6% of the next $2,500,000;
  -- 5% of the amount exceeding $10,000,000.

plus

- the amount deductible under the insurance policy or bonding.

National Contingency Fund:

A dealer/broker must also participate in the National Contingency Fund (NCF). The NCF is an investor-protector fund for the securities industry. The Investment Dealers Association goal will include $100 million in cash, to be raised by a levy of Canada's 122 securities firms, and $150 million in bank credit. The plan would provide automatic payments of up to $250,000 each to individual and corporate customers of failed securities firms to cover losses on their accounts. The $250,000 includes a maximum of $60,000 for cash on deposit. Actually, any repayments and the amount of such payment are at the discretion of the contingency fund's managers.

ME - Minimum Requirements:

Clearing members and/or members dealing with the public shall maintain net free capital at least equal to the sum of:

- 10% of the first $2,500,000 of adjusted liabilities, plus

- 8% of the next $2,500,000 of adjusted liabilities, plus

- 7% of the next $2,500,000 of adjusted liabilities, plus

- 6% of the next $2,500,000 of adjusted liabilities, plus

- 5% of adjusted liabilities in excess of $10,000,000

with a minimum of $250,000 provided that:

-- the minimum net free capital to be maintained by the introducing brokers shall be $75,000;

-- members of the ME as at December 30, 1988 whose minimum net free capital at that date is less than $250,000, shall be permitted to maintain minimum net free capital of: $75,000 prior to June 30, 1989, $125,000 prior to June 30 1990, $185,000 prior to June 30, 1991 and thereafter $250,000; plus

- an amount to be provided for each market maker employed by the member

plus

- the greatest deductible amount under the Brokers Blanket Bond

plus

- additional requirement related to the futures contracts business.

National Contingency Fund

The members also have to participate in the National Contingency Fund. The terms of any agreement entered into by the ME with other stock exchanges or other securities industry bodies in Canada providing for the protection of the ME and the public in the event of members becoming insolvent or unable to meet their liabilities to their customers shall be binding on members. No member shall act contrary to the terms of any such agreement or expose the ME to liability thereunder.

TCO - Minimum Capital Requirements

Every clearing member shall meet the minimum capital requirements provided for in the rules, by-laws and directions of the Participating Exchanges of which he is a member. When the requirements of the Participating Exchanges are not consistent, the clearing member must adhere to the most stringent requirement.

SFC

The CTO requires that the authorized share capital of HKFE be not less that HKD25 million divided into shares and its issued

capital be not less than HKD 3 million. The authorized capital of HKFE is currently HKD70 million and its issued and paid-up capital is HKD16.65 million. Shareholding is prerequisite to obtaining membership in HKFE. HKFE has 4 categories of membership with minimum capital requirements ranging from HKD500,000 to HKD25 million.

(b) Clearing organizations

CFTC

The CEA and regulations thereunder impose no regulatory or self-regulatory capital-based requirements on clearing organizations.

SEC

A clearing agency registered with the SEC is not subject to any specific minimum capital-based requirements. It must, however, demonstrate that it has the financial means to comply with Section 17A of the 34 Act regarding the organization and structure of a registered clearing agency.

SIB

In respect to clearing organisations, no specific financial requirements are imposed. The FSA provides that a recognition order may be made in respect of a clearing house where it appears inter alia, that the clearing house has "financial resources sufficient for the proper performance of its functions" (FSA, s.39(4)(a)). A determination is made with respect to the necessary quantum of financial resources in light of the volume, value and volatility of the derivatives which are cleared by the RCH. The assets or other items which make up the financial resources of an RCH may take the form of capital and reserves, insurance and shareholder guarantees.

SIB is the relevant recognising body of RCHs. For those clearing houses which are overseas and not subject to direct and primary oversight in the UK, the Secretary of State determines whether to confer recognition (i.e. ROCH status) but does not undertake surveillance.

COB

The French Futures Market Law of March 28, 1885 as amended provides that the clearing house, which records each transaction and guarantees the full performance thereof, has to be a licensed credit firm. Therefore the clearing house is required to comply with all regulations issued by the banking regulations committee, e.g., capital requirements and good standing requirements. There is no specific absolute capital requirement for clearing houses but the new general regulation established by the CMT provides that all funds received by clearing houses have to be employed in liquid and unrisky assets.

CONSOB

MOF

NCSC

There are at present no capital based qualification requirements on clearinghouses.

OSC

The rules of clearing corporations must be approved by the OSC. Such rules must include reasonable assurance that all clearing member liabilities will be met and must include adequate record keeping. The TFE's clearing organization is TCO.

CVMQ

SFC

Under the CTO, HKFE can use one or more clearing houses if approved by the Commision. The Commission has approved HKFE's use of HKFE Clearing Corporation Ltd. (HKCC), which is a wholly-owned subsidiary of HKFE with an issued and paid-up capital of HKD1 million. In addition to typical risk management procedures, HKCC maintains a Reserve Fund of approximatley HKD200 million which is available to it if a member defaults.

(c) Clearing members

CFTC

The CFTC has no requirements for clearing members as such. Most clearing houses, however, require their members to maintain a minimum level of capital in order to ensure that clearing members will be able to meet their obligations to the clearing house and to their customers. Most clearing houses also require their members to make substantial deposits to a clearing house guaranty fund to cover any default made by that member, and if necessary, to cover the default of another member.

SEC

Pursuant to OCC rules approved by the SEC, OCC members must generally maintain initial net capital equal to $1,000,000 for a period of up to one year and thereafter must maintain minimum net capital equal to at least $750,000. OCC clearing members who carry options positions for other firms generally maintain higher levels of net capital.

SIB

Before granting an applicant the status of "authorised person", a determination is made as to whether the applicant's financial

resources are adequate to support the investment business which that firm intends to undertake.

A "clearing firm" carries and clears customer business of one or more non-clearing firms, performs the settlement function and is exposed to the legal liability and responsibilities of relationships with customers and the market. The categories and applicable nomenclature are currently the subject of review.

In the UK, clearing firms are identified as "Category 4 firms" in SIB's Rules (The Financial Services (Financial Resources) Rules 1987, as amended Chapter 2, section 2). These firms must maintain, at all times, liquid capital equal to or in excess of a specified minimum; the amount is calculated by determining the firm's investment position risk requirement (IPRR) and adding to that amount the greatest of the following three amounts:

- "absolute minimum" - £250,000 for a clearing firm;

- "expenditure based requirement" - a quarter of the last year's defined annual audited expenses after deduction of avoidable profit related expenses; or

- "volume of business requirement" - 3.5% of customers' initial margin requirements.

The IPRR is designed to ensure that the firm has sufficient capital to support its proprietary positions, that is to provide for the economic risk of potentially adverse price or interest rate movements. For most investment products, e.g., equities, bonds and swaps, the IPRR is derived by applying a stated position risk factor (quoted in percent) to the value of the positions held by the firm. In respect of futures and options, the IPRR is based mainly on the initial margin requirements of such futures and options positions.

Schedule 3 to the Financial Resources Rules sets forth the adjustments and deductions, from a firm's gross capital (broadly, share capital and reserves less intangibles plus subordinated loans), to determine the amount of its "liquid capital". Schedule 3 requires deductions, for inter alia, exchange memberships (paragraph 4), unmortgaged land and buildings (paragraph 5), partially secured unmargined options (paragraph 11), undermargined customer accounts (paragraph 12(2)), customer deficits (paragraph 12 (3)), prepayments (paragraph 15), debtors from physical deliveries of commodities (paragraph 17), and extensions of credit for futures and options transactions (paragraph 18), long term deposits of cash (paragraph 20) and most sundry debtors (paragraph 21).

The amount, therefore, of liquid capital which a firm should have and which will be deemed to satisfy the "adequate financial resources" requirement is that amount which is the sum of

the IPRR and the greatest of: the absolute minimum requirement, the expenditure base requirement, or the volume of business requirement. The counterparty risk aspects of the firm's activities are dealt with by deduction from liquid assets or by addition to the IPRR (Schedule 5A, paragraph 12A).

Firms may obtain authorisation (and be subject thereby to regulatory oversight) either direct from SIB or through membership of relevant self-regulating organisations (SROs).

COB

On the MATIF, individual clearing members (ICM) are required by the CMT to maintain a minimum net capital of 200 million French Francs ("FF"). General Clearing members (GCM) are not only "del credere" agents of their customers as ICM are, but also of all customers of non-clearing members (NCM) who require that contracts be recorded by such GCM in their own name rather than in the name of the introducing NCM. These GCM are required to maintain a minimum net capital of FF750 millions.

ICMs and (with MATIF S.A.'s approval) GCMs that do not satisfy these minimum capital requirements may supplement their capital by providing a bank guaranty in an amount at least equal to 20% of the deficiency and covering exclusively obligations incurred in connection with transactions on the MATIF, provided that their net capital is at least equal to half of the minimum amount required.

On OMF market, the clearing schedule is on a gross basis: All deposits received by the clearing member from their clients are immediately paid to the clearing house. Therefore the minimum net capital the clearing member is required by the CMT to maintain by the CMT regulation is less high: FF20 million francs.

CONSOB

MOF

NCSC

In Australia there are at present no capital based requirements for clearing members other than solvency.

OSC

Clearing members and all other dealers engaged in trading contracts in Ontario must belong to the TFE, which is a recognized SRO as well as a registered exchange. The other recognized SRO is the Investment Dealers Association (the "IDA"). SROs perform day-to-day surveillance, investigation, audit compliance and other oversight functions. Each dealer is required to submit to the primary audit and compliance jurisdiction of one of the SROs. If a dealer is subject to the

primary audit and compliance jurisdiction of the IDA, it is still subject to the market surveillance jurisdiction of the TFE by virtue of the TFE's responsibilities as an exchange. Therefore, firms are subject to the rules of the SROs to which they belong, the rules of the exchanges to which they belong, the rules of TCO, Ontario regulations and the policies of the OSC. To be registered by the OSC, all dealers must meet certain capital, proficiency and organizational requirements. The capital requirements are set out in the Joint Regulatory Financial Questionnaire and Report (the "JRFQR") which is a document prepared by various Canadian SROs and approved by the OSC.

CVMQ

SFC

The HKCC has two types of clearing memberships: General Clearing Memebers (GCM) and Clearing Members (CM). A GCM is permitted to clear transactions for its own account and the accounts of non-clearing HKFE members. A CM generally is permitted to clear trades only for its own account. HKCC imposes minimum capital requirements of HKD25 million for GCMs and HKD2 million to HKD5 million for CMs. HKCC also bases membership on the knowledge and financial integrity of the individuals or principals behind the proposed clearing firm.

HKF members are also required to maintain a debt-to-equity ratio of 2:1 or less and Adjusted Net Admissible Assets of no less than the greater of:

-- 50 percent of the minimum level of the capital applicable to that member, and

-- 4 percent of the amounts required to be segregated for clients' accounts.

Finally, HKCC imposes position limits on members in relation to their capital.

(d) Other financial intermediaries

CFTC

CFTC rule 1.17 prescribes the minimum levels of "adjusted net capital" which FCMs and IBs must maintain. Adjusted net capital equals "net capital" (current assets minus liabilities) minus various charges or adjustments such as undermargined accounts of customers, charges for exchange options granted by the FCM's customers, and uncovered futures positions and exchange options granted in the house account of the FCM. In addition, certain deductions known as "haircuts" must be made from the value of securities and various other obligations carried as assets of the FCM or IB.

Pursuant to rule 1.17, the required minimum levels of adjusted net capital are as follows:

- For FCMs which are not also securities B/Ds (even if they are also introducing securities B/Ds, the greater of:

  -- $50,000 (or $100,000 if not a member of a Designated SRO (DSRO); or

  -- 4% of customer funds required to be segregated (See II.A.5.(a) below) plus the foreign futures and options secured amount (if transacting business on non-U.S. exchanges for U.S. customers (see II.A.5.(a) below) less the market value of exchange-traded commodity options purchased by the FCM's customers up to the amount of funds in the customers' options accounts.

- For FCMs which are also B/Ds, the amount of net capital required by SEC rule 15c3-1(a), 17 C.F.R. 240.15c3-1(a), unless this is less than the amounts specified above, then the highest amount.

- For IBs which are not operating pursuant to a guarantee agreement with an FCM, the greater of:

  -- $20,000 (or $40,000 if not a member of a DSRO) (IBs which are also introducing securities B/Ds would be included in this category); or

  -- If also a B/D, the amount of net capital required by SEC Rule 15c3-1(a), 17 C.F.R. 240.15c3-1(a).

- For an IB for which an FCM has assumed complete financial responsibility for the IB's commodity-related activities under a guarantee agreement which complies with rule 1.10(j):

  --- If not also a B/D or an introducing securities B/D, no capital requirement.

  --- If also a B/D or an introducing securities B/D, the amount of net capital required by SEC rule 15c3-1(a), 17 C.F.R. 240.15c3-1(a).

- FCMs and IBs which are members of a DSRO are not subject to the CFTC prescribed levels, if they meet the minimum financial standards and related reporting requirements set by their DSRO. (The DSRO's rules must have been previously approved by the CFTC and may not be less stringent.) Rule 1.17(a)(2)(i).

Rule 1.52 requires each SRO to adopt, and submit for CFTC approval, rules prescribing minimum financial and related reporting requirements for all its FCM members. The NFA is also obligated to adopt such rules for its IB members, while exchanges are so obligated only if they elect to have a

category of membership for IBs. The financial and related requirements adopted by the SROs must be equal to, or more stringent than, the CFTC's minimum levels. An FCM which is not in compliance with rule 1.17, or unable to demonstrate compliance, is required to transfer all customer accounts to another firm and immediately cease doing business as an FCM until it can demonstrate compliance, except that it may trade for liquidation only unless otherwise directed by the CFTC or its DSRO. A 10-day grace period for the transfer requirement may be provided under certain conditions. Rule 1.17(a)(4).

The CFTC has approved a National Futures Association rule effective January, 1991 that would require a higher capital amount ($250,000) and early warning amount ($375,000) for its FCM members. All FCMs must be members of NFA (see CFTC rule 170.15 and NFA Bylaw 1101).

An IB which is not in compliance with rule 1.17, or unable to demonstrate compliance, is required to immediately cease doing business as an IB until it can demonstrate compliance and must immediately notify each of its customers and FCMs carrying its customers' accounts that it has ceased business. A 10-day grace period may be provided under certain conditions.

CFTC rule 1.12 establishes an "early warning system" under which firms are required to notify the CFTC of certain adverse changes in the firm's financial condition so that remedial action may be taken to protect customers and the marketplace from potential injury.

SEC

The SEC requires registered B/Ds to have and maintain specified amounts of net capital. Net capital is a defined term. It is, in essence, the net worth of a B/D reduced by prescribed percentages of the market value of securities owned by the B/D and by other assets not readily convertible into cash.

There are two methods for determining the amount of net capital a B/D is required to have and maintain. One is a liability based test, and the other is an asset based test. If a B/D elects the basic aggregate indebtedness method of computing net capital, it currently is required to maintain a minimum net capital of $25,000 (if it engages in a general securities business) and may not allow its "aggregate indebtedness" to exceed 1500% of its net capital. A B/D electing to use the alternative method of computing its net capital requirement currently must maintain net capital equal to the greater of $100,000 or two percent of its customer related receivables computed in accordance with Exhibit A to Rule 15c3-3. The net capital rule also prescribes special capital requirements as to market markers in options listed on a national securities exchange.

SIB

Authorised persons which are non-clearing firms (i.e., firms which do not carry or clear customer accounts but which have entered into arrangements with a clearing firm for that purpose), for example, introducing brokers, are subject to capital-based requirements which are calculated in the same way as that for clearing members (see item II.A.1.(c) above). The "absolute minimum", however, is £5000 instead of £250,000 and the "expenditure based requirement" is one-twelfth of the last year's defined annual audited expenses.

With respect to those ordinary firms which are neither clearing nor non-clearing firms, the calculation is the same as for clearing members, except the "absolute minimum" is £10,000.

COB

The non clearing members of the French MATIF and OMF are required to maintain a minimum net capital of FF7,5 millions. On the commodities futures markets, brokers are required to maintain a minimum net capital of FF 7,5 million. Commodities brokers which do not satisfy that minimum capital requirement may supplement their capital by providing a bank guaranty in an amount at least equal to their deficiency and covering exclusively obligations incurred in connection with commodities futures trading activities.

On the MONEP, market-makers which are counterparty firms controlled by brokerage firms have to have a minimum capital of FF7,5 millions. When they are brokerage firms themselves, they have to affect FF3 millions of their own funds for two options classes, FF1,5 million for each new option class on stocks and FF3 millions for the CAC40 index option.

CONSOB

Regulatory capital-based qualifications for financial intermediaries exist for Commission Dealing Companies, Trust Companies, and Mutual Funds. The regulatory regime imposes liquidity and capital requirements which are based on position and credit risk.

MOF

In Japan capital based qualifications are imposed on securities companies by the Securities and Exchange Laws and the Finance Minister. Beginning in the Spring of 1990 new capital regulations will be enforced, and all securities companies able to take positions on their own accounts must meet the risk-based capital adequacy requirement.

1. Minimum capital requirement

Minimum levels of capitalization are required for securities companies according to the types of licenses they are granted and kinds of services they provide.

Examples:

The minimum level of capital for a securities company licensed to underwrite securities:

Managing underwriter	Yen 3 billion
Other underwriters	Yen 300 million
Member companies of Tokyo or Osaka Stock Exchange	Yen 300 million

2. Ratio of total liabilities to net worth: less than 10 times.

3. Prudence rules

The Law and Ministerial Ordinances impose certain position limits on classes of securities and assets that a securities company holds.

4. New risk-based capital requirement

The objective of risk management is to ensure that, through management of its liquid assets, a firm maintains sufficient net worth to meet the obligations which would accompany any losses, without having to suspend any operations or sell off any fixed assets.

The basic capital requirement is as follows:

(Net worth ----- illiquid assets/fixed assets) >

(market risk requirement+counterparty risk requirement + basic risk requirement)

The Minister of Finance may order a firm which fails to meet the capital-based qualification to change the method of its business operations, suspend its business or take such other measures as the Minister deems necessary for supervision.

The Securities and Exchange Law requires firms to report monthly on their capital situation.

Firms which do not trade for their own accounts will not be required to satisfy the risk based capital adequacy requirements.

NCSC

In Australia the Sydney Futures Exchange "SFE" (a co-regulatory organisation) provides under its Articles of Association [4.6(4)] that a Full Associate Member must ensure that its net tangible assets are not less than $A50,000, and in the case of an Introducing Broker Associate Member not less than $A20,000. Local Members must ensure [Art. 4A.7A(4)] that the value of its net tangible are not less than $A50,000.

The AFFM (a co-regulatory organisation) under regulation 101.5 requires that a Futures Organisation shall at the time of entering into an Approved Subordinated Loan Deed be required to have, in the case of a Member Organisation, a minimum paid up capital of $A250,000 and in the case of a Futures Organization which is constituted as a partnership of Futures Members who are natural persons capital of $A250,000 or where there is less than five partners $A250,000 per partner.

OSC

The JRFQR sets out the minimum capital requirements for dealers. Statement B at Part I of the JRFQR provides a liquid capital calculation by which total liabilities and net losses from future purchase and sales commitments are deducted from total active assets. Haircuts are then applied to liquid capital to arrive at net free capital. Minimum net free capital is than calculated by way of a formula contained in the JFQR at Statement D of Part I.

CVMQ

SFC

Non-exchange member-dealers as members of overseas exchanges are subject to financial requirements of exchanges to which they acquire memberships. They are not currently subject to any capital requirements under Hong Kong law, but the Commission is considering introducing financial requirements for commodity dealers.

2. Clearing facilities

(a) Organizational requirements

CFTC

Each commodity futures exchange in the United States is affiliated with a clearing house and requires that futures contracts made on the exchange be submitted to that clearing house for clearance. See, e.g., CBT Rule 700.00. At the CME, Minneapolis Grain Exchange (MGE) and NYMEX, the clearing houses are departments within the exchange. At the other exchanges, the

clearing houses are separate corporations. Compare CME Rule 800 and NYMEX Bylaw Sec. 600 with CBT Rule 911.00. On certain exchanges, however, trade matching is performed at the exchange rather than at the clearinghouse.

SEC

Under the SEC regulatory scheme, brokers, dealers and market makers clear and settle standardized options traded on securities exchanges or quoted on North American Securities Dealers Automated Quotation System facilities through the OCC. OCC is jointly owned by the New York Stock Exchange, the American Stock Exchange, the Chicago Board Option Exchange, the National Association of Securities Dealers, the Pacific Stock Exchange and the Philadelphia Stock Exchange. OCC is registered with the SEC as a clearing agency under Section 17A of the Act. Section 17A sets forth certain requirements for a clearing agency, including requirements that the clearing agency rules assure the fair representation of its participants and shareholders in the selection of its directors and administration of its affairs and provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation and the prohibition or limitation by the clearing agency of any person with respect to access of services offered by the clearing agency. OCC has rules and procedures in place to assure fair representation and due process.

SIB

The FSA provides that any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised clearing house for the purposes of the FSA (FSA, s.39). The authority to recognise domestic clearing houses has been delegated to SIB.

A RCH, once it has acquired that status, is an exempted person in respect of any activities undertaken by it in its capacity as a person providing clearing services for the transaction of investment business (FSA, s.38).

The Secretary of State has reserved the power to recognise overseas clearing houses (ROCHs), that is, those which have their head offices overseas (FSA, s.40).

Paragraph 4 of Schedule 4, in relation to the requirements imposed on recognised investment exchanges, stipulates that "[an] exchange must either have its own arrangements for ensuring performance of transactions effected on the exchange or ensure their performance by means of services provided under clearing arrangements made by it with a recognised clearing house". In practice, the arrangements of existing RIEs vary: the majority, however, have chosen to have clearing services provided by a separate corporate entity (e.g., International Commodities Clearing House Limited, "ICCH") rather than to integrate clearing arrangements within the exchange itself (an example of the latter is OM London Ltd).

Trade matching is, in respect of most exchanges, performed at the relevant exchange.

COB

The OMF and MATIF SA are independent entities which are both exchanges and clearing houses.

CONSOB

As a result of the series of changes from the original legislative scheme, the main features of the Italian settlement system are now as follows: The clearing house (called "Stanza di compensazione") is run by the Bank of Italy through its branches located at the six leading stock exchanges. Participation in the clearing system is open to Stockbrokers, Domestic banks and Commission Dealers companies as defined above.

The clearing system does not function as an intermediary so that the risk of any one member's default is shared by all members. According to the Italian law the Stanza di compensazione function is to ensure the payment versus delivery and the multilateral netting of transactions. There is no obligation for the participants to the clearing system to settle transactions through the Stanza di compensazione.

Securities can be traded for cash or forward settlement depending on their nature: Shares are usually traded forward for settlement at the end of each month, bonds and state issues are usually traded cash for settlement on the third working day after the trade.

Securities can be deposited with two Central depositories:

- shares and corporate bond, with the Nomte Titoli system;

- State securities with the Bank of Italy system called Gestione centralizzata (Centralized management).

Both depository systems are linked to the clearing system and cover net positions of securities to be delivered or received by each participant at the end of the clearing phase.

MOF

No independent clearing houses exist in Japan. Stock exchanges, however, have clearing capabilities.

NCSC

Australia has no specific organizational requirements for clearing facilities at the present time.

AFFM is a wholly-owned subsidiary of the Australian Stock Exchange (ASX). AFFM clearing is performed under contract by International Commodities Clearing Pty Ltd. (ICCH).

The Sydney Futures Exchange (SFE) uses ICCH for the clearing and guaranteeing of its contracts. The relationship between ICCH as the SFE's appointed Clearing House and the SFE is governed by an agreement between the SFE and ICCH under which ICCH is appointed to clear the SFE's contracts. The SFE is currently developing in conjunction with its Members a proposal for its own Clearing House, controlled and owned by the SFE and its members.

OSC

There are no set organizational requirements for clearing corporations.

The rules of clearing corporations must be approved by the OSC. Such rules must include reasonable assurances that all clearing member liabilities will be met and must include adequate record-keeping.

CVMQ

Clearing Members - TCO

Qualifications. - Clearing membership is restricted to members of the Participating Exchanges, members of the International Options Market (MIO) division of the ME and Members of the Toronto Futures Exchange (TFE). Every applicant to become a clearing member must meet such standards as may be adopted from time to time by the Board of TCO, including the following:

- the applicant must meet the initial clearing member capital requirements then in effect, the applicant must be engaged, or propose to engage, in the clearance of options or futures which are the subject of exchange transactions through the facilities of TCO, and

- the applicant shall maintain facilities and personnel adequate, in the judgment of the Board of TCO, for the expeditious and orderly transactions of business with TCO and other clearing members.

Conditions of admission. - No applicant shall be admitted as a clearing member until it has deposited with TCO its initial deposit with the relevant clearing fund in the amount and at the time required by the Rules and has signed and delivered to TCO an agreement in such form as the Board of TCO shall require, including agreements:

- to clearing through TCO, either directly or indirectly, all of its Exchange Transactions and all other transactions which the By-laws or the Rules may require to be cleared through TCO;

- to abide by all provisions of the By-laws and the Rules of TCO;

- that the By-laws and the Rules shall be a part of the terms and conditions of every Exchange Transaction or other contract or transaction which the applicant, while a clearing member, may make or have with the TCO, or with other clearing members in respect of options or futures, or which may be cleared or required to be cleared through TCO;

- to grant TCO all liens, rights and remedies set forth in the By-laws and the Rules;

- to pay to TCO all fees and other compensation provided by or pursuant to the By-laws and the Rules for clearance and for all other services rendered by TCO to the applicant while a clearing member;

- to pay such fines as may be imposed on it in accordance with the By-laws and the Rules;

- to permit inspection of its books and records at all times by the representatives of TCO;

- to make such payments to or in respect of the Clearing Funds as may be required from time to time;

- to fulfill such conditions regrading withdrawal from membership as may be imposed by TCO; and

to comply with the provisions of all laws applicable to TCO or the applicant.

Clearing Members C.D.S.

The Canadian Depository for Securities Limited (C.D.S.) is an inter-industry organization supported by the Toronto and Montreal Stock Exchanges, the Investment Dealer's Association of Canada. The Canadian Banker's Association and the major Trust Companies.

- Categories of applicants. An Applicant to become a participant shall be an entity belonging to one of the following categories:

-- The applicant shall be a "Regulated Financial Institution: which term shall mean a broker or dealer trading in securities, a bank or savings bank, a trust company or corporation, a loan company or corporation, an insurance company or corporation, or a securities clearing

corporation or depository, incorporated, established or formed pursuant to the laws of Canada or of any province or territory thereof;

-- The applicant shall be a "Government Body: which term shall mean the Government of Canada or the Government of any province or territory thereof of any municipal body therein, or any agency thereof;

-- The applicant shall be a "Canadian Investment Institution" which term shall mean any entity trading in securities which is incorporated or formed under the laws of Canada or of any province or territory thereof and which is not a Regular Financial Institution or a Government Body, and such term shall include, without limiting the generality thereof, a credit union, savings and credit union, credit union central, mutual fund, pension fund, trust fund, pooled fund, unit trusts, investment trust or investment counsellor; or

-- The applicant shall be a "foreign Institution" which term shall mean any entity of the type described in subclauses (1), (2) or (3) which is incorporated, established or formed under the laws of a jurisdiction situate outside Canada.

Qualifications of applicants

- An applicant which is a Regulated Financial Institution must satisfy the following qualifications:

-- the applicant must be in good standing under the laws pursuant to which such applicant is incorporated, established or formed;

-- the applicant must be duly registered with or licensed by and in good standing with each regulatory body having jurisdiction over the applicant; and

-- the applicant and each of its partners, directors and officers must be in compliance with all applicable regulations, rules, orders or directors of each Regulatory Body having jurisdiction over the applicant, including without limitation, such minimum capital requirements and financial stability standards as are applicable to the applicant.

- An applicant which is a Government Body must own, manage, control or have custody of a portfolio of Securities with a minimum fair market value (as determined to the satisfaction of the C.D.S. of such amount as the Board of Directors may from time to time determine.

- An applicant which is a Canadian Investment Institution must satisfy the following qualifications:

  -- the applicant must own, manage, control or have custody of a portfolio of Securities with a minimum fair market value (as determined to the satisfaction of C.D.S.) of such amount as the Board of Directors may from time to time determine; and

  -- the applicant shall either have a minimum capital of $1,000,000 or provide C.D.S. with a guarantee or irrevocable letter of credit of its obligations to C.D.S., in form, substance and amount satisfactory to C.D.S., from a Regulated Financial Institution which is a Participant.

- An applicant which is a Foreign Institution must satisfy the following qualifications:

  -- the applicant must own, manages control, or have custody of a portfolio of Securities of Canadian issuers with a minimum fair market value (as determined to the satisfaction of C.D.S.) of such amount as the Board of Directors may from time to time determine;

  -- the applicant shall either have a minimum capital equivalent to $1,000,000 or provide other evidence satisfactory to C.D.S. of its financial stability;

  -- the applicant shall provide C.D.S. with a guarantee or irrevocable letter of credit of its obligations to C.D.S., in form, substance and amount satisfactory to C.D.S., form a Regulated Financial Institution which is a Participant; and

  -- the applicant shall satisfy such other requirements as C.D.S. in its sole discretion deems appropriate for the protection of C.D.S. and other participants.

Clearing members (IOCC)

An IOCC clearing members must be firm with a minimum net worth and working capital of $500,000 which must be maintained at all times. The initial minimum contribution to the IOCC Clearing Fund is US $25,000 of which $10,000 must be in cash. The rest can consist of approved Canadian, Provincial or U.S. government securities.

SFC

There are no specific organizational or operational requirements for futures clearing facilities. The clearing organization, however, must obtain Commission approval of its rules and any rule changes.

(b) Operational requirements

CFTC

Under CFTC rules clearing houses accept contracts for clearance only for the accounts of their members. Each clearing member that handles customer business has at least two accounts at the clearing house -- a customer account and a proprietary account.

During each trading day the clearing house compares the reports of trades submitted to it and matches them against each other. If any reported trade does not match, the clearing house will not accept the trade for clearance. See, e.g., BTCC Bylaw 506; CME Rule 809; Comex Clearing Rule 32(b)(c)(i).

At the end of each trading day, the clearing house prepares reports to its members listing the trades submitted by or for them which have matched and cleared, and those which have not matched and therefore have been rejected. See BTCC Bylaws 506, 507; CME Rules 809(E), (I); Comex Clearing Rule 32(d). Each clearing member must attempt to resolve its outtrades and resubmit them for clearance. See e.g., CME Rules 809(E), (I).

SEC

With respect to the securities industry in the U.S., as a registered clearing agency, OCC is subject to certain requirements under Section 17A of the 34 Act, including safeguarding funds and securities and facilitating the prompt and accurate clearance and settlement of securities transactions. Under Section 19(b) of the 34 Act, OCC is required to file with the SEC for approval any proposed rule or procedural change, including the addition or deletion of services provided by OCC. In addition, the Division of Market Regulation has published guidelines to assist clearing agencies such as OCC to comply with Section 17A of the 34 Act. Those guidelines require OCC to conduct both internal and external audits and perform periodic risk assessments of its operations and its automatic data processing systems and facilities. Also, the SEC recently announced its Automation Review Policy, a voluntary program designed to assure that SROs such as OCC have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions. The Policy states that each SRO should: (1) establish current and future capacity estimates for their systems; (2) conduct stress tests of their automated systems; and (3) have an independent reviewer critique the capacity and integrity of its automated systems.

SIB

Section 39 of the FSA provides for the granting of recognition to a domestic clearing house if it appears, from the information provided by the applicant, that the clearing house

satisfies the requirements set out in that section (see item I.A.I.(c)).

The relevant recognising body for RCHs is SIB which undertakes the monitoring of the ongoing fulfilment of relevant FSA requirements.

In the UK, all trades must be matched on the day of the trade. The obligation to ensure that trades are matched falls to the members of the exchange who, ultimately, will be compelled to rationalise trades undertaken by them on or under the rules of the exchange. The relevant clearing house will only accept matched trades. The matching of trades occurs on an intra-day basis and matched and unmatched trades are reported back to clearing members on a continuous basis without delay during the day.

COB

See II.A.2.(c) below.

CONSOB

See II.A.2.(a) above.

MOF

In Japan, since the stock exchanges have clearing capabilities, specific operational requirements are set in the stock exchange rules.

NCSC

In Australia, prior to approval as a Clearing House, a body corporate must satisfy the Ministerial Council that:

- the business rules of the body corporate are satisfactory, in particular such of those business rules which relate to the registration of futures contracts made on a futures market of the futures exchange;

- the business rules of the body corporate make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules of the body corporate or for a contravention of the FIC; and

- that the interests of the public will be served by granting the application.

Further, the Ministerial Council may have regard to any business rules of the applicant that relate to the guaranteeing, to members of the applicant, of the performance of futures contracts made on a futures market on a futures exchange.

OSC

See II.A.2.(a) above.

CVMQ

SFC

See II.A.2.(a) above.

(c) Scope, nature and timing of clearing guarantees

CFTC

In the U.S., with regard to commodities transactions, the clearing house of an exchange guarantees the payment of variation margin to clearing members with net gains on positions in their accounts at the clearing house even if it is unable to collect the variation margin owed to it by clearing members with net losses on their positions. A clearing house, however, does not guarantee the obligations of clearing members to their customers, nor does it guarantee any obligations of brokers or traders who are not clearing members. At all U.S. futures clearing houses the clearing guarantee attaches when the trade matches and is accepted for clearance.

Most clearing houses do not guarantee delivery or acceptance of delivery on futures contracts that have reached the delivery stage, although some clearing houses do guarantee to their members payment of damages for default on deliveries. See, e.g., CME Rules 714, 715, 803; Comex Clearing Bylaw 8.1; NYMEX Rules 9.08.

The rules of most clearing houses provide that upon default of a clearing member, the clearing house must close out or transfer to other members all of the positions carried by the defaulting member. See, e.g., BTCC Bylaw 804, positions are immediately liquidated if they cannot be transferred.

If a member defaults and his margin deposits and available liquid assets are insufficient to cover the amounts owing to the clearing house, the deficit is covered first by available assets of the clearing member at the exchange and clearing house and then by the guaranty fund deposits of non-defaulting members. If there is still a deficiency, most clearing houses are then required by their rules to assess their members to cover the balance. See e.g., CME Rule 802(B); Comex Clearing Bylaw 9.4.

SEC

With respect to securities transactions in the U.S., OCC becomes a guarantor of a transaction upon payment of the premium by the OCC clearing member. OCC receives trade data

from options markets and settles premium payments between selling and purchasing clearing members on the business day after trade date in immediately available funds. Upon payment of the premium, OCC "accepts" the trade and becomes guarantor on the transaction, meaning that it becomes the buyer to every seller and the seller to every buyer, guaranteeing payment and delivery to all.

The guarantee that OCC gives on each trade only extends to OCC clearing members and not to clearing member customers or non-member brokers or market makers. Normally, on the morning after trade date OCC receives payment in immediately available funds (i.e., Fed funds) from members with net debit balances and then pays clearing members with net credit balances in immediately available funds. Under its rules, OCC is required to pay its members whether or not it has received sufficient funds from members that owe funds. If OCC does not receive sufficient funds (i.e., because a member is late in making payment), it will use margin previously collected from the non-paying member to complete payment. If this is not enough to complete payment, then OCC may draw upon the clearing fund to complete payment. The clearing fund consists of cash, securities and letters of credit deposited by members to provide OCC with a source of funds upon which it may draw in the event of a member default or insolvency.

SIB

RIEs are required, pursuant to Schedule 4 of the FSA, to have either their own arrangements or to have secured those of an RCH for ensuring the performance of transactions effected on the exchange.

In the UK, there are no specific requirements regarding the scope, nature and timing of clearing guarantees in the FSA. The arrangements are the subject of review prior to the conferral of the status of RCH; currently, the arrangements are in the form of capital and reserves, insurance and shareholder guarantees. The clearing house guarantees the payment of net gains on clearing members' positions even if it is unable to collect all net losses owed to it by other clearing members on their positions.

A clearing house does not guarantee obligations of clearing members nor does it guarantee any obligations of other non-clearing exchange members.

Where a clearing member of an exchange defaults, the clearing house has powers to immediately close out or transfer that member's positions. (See item II.A.6).

The clearing house may use any margin held to cover the amounts owing to it by a defaulting member. Margin may be in any form

which is acceptable to the exchange/clearing house as "approved collateral" pursuant to the applicable rules.

COB

In France, the MATIF clearing members maintain with MATIF SA a permanent clearing guarantee. The amount of this guarantee is independent from the margin requirements. It is paid in the form of a cash deposit and cannot produce any interest revenue. In the case of bankruptcy of the MATIF member the permanent guarantee has to be paid back but it can be sized in proportion of the member debts towards MATIF SA. The amount of the permanent clearing guarantee is FF 500,000. It is increased by FF 250,000 with respect to each GCM and FF 100,000 with respect to each local which the clearing member has designated.

CONSOB

See II.A.2.(a) above.

MOF

In Japan clearing is guaranteed by the default compensation reserve which is supported by the members' unlimited responsibility to replenish the reserve. In the case of the Tokyo Stock Exchange, the default compensation reserve is 10 billion yen.

The reserve is a fund reserved in the stock exchanges. It is allowed to draw on this reserve only when it is necessary to cover losses not secured by margins, etc.

NCSC

The scope, nature and timing of the clearing guarantee is not presently regulated in Australia.

Subject to its regulations, ICCH guarantees all contracts traded on the floor of the Exchange and registered by the Clearing House. The ICCH guarantee attaches only to registered contracts held in the name of its Clearing Members. Further, the guarantee will only operate after performance of the Member of all terms and conditions as set out in ICCH's General Regulations, particularly the payment of initial margin and variation margins.

With respect to specific points raised - the Clearing House does not guarantee the obligations of Clearing Members to their customers.

The Clearing House does not guarantee the obligations of brokers or traders who are not Clearing Members. All Floor Members are required to be Clearing Members. All local Members

must register all trades with a Floor Member which must guarantee its trade.

The Clearing House will close out the positions of a defaulting Member in accordance with its regulations generally through the market. The Exchange in conjunction with the Clearing House will if possible seek to have non defaulting client's positions transferred to another Member.

The Clearing House will use any original deposits and margins or security lodged with it in respect of futures trading by the defaulting member to meet obligations by the defaulting member. There is no access to the funds of other members and any deficit must be met from the funds of the Clearing House, either by way of capital or insurance.

OSC

At TCO the clearing guarantee becomes operative on settlement of trades at 8:00 a.m. the day after the trade. Upon default of a clearing member, TCO would close out or transfer to other members all of the positions carried by the defaulting member. If a member defaults and its margin deposits and available liquid assets are insufficient to cover the amounts owing to TCO, the deficit is covered first by available assets of the exchange and clearing house and then by the guaranty fund deposits of non-defaulting members.

CVMQ

SFC

The HSI and HIBOR contracts are traded via open outcry. In the open outcry system the seller completes a trading slip that includes the selling and buying clearing members, the number of contracts, the month and the price. The trading slip is then signed by the selling and buying brokers. A copy of the trading slip is provided to the HKFE and the HKCC. HKCC personnel on the HKFE floor then key the trade information into the clearing computer system.

After all trades are entered into the clearance system, the HKCC then provides each clearing member with a Daily Trade Summary (DTS). Each clearing member is then required to review the DTS and the trades he has made that day for accuracy and allocation to the appropriate accounts. Members must verify their trades after which the HKCC issues a registration statement to each member. Contracts are formally registered at the time the registration statement is issued and HKCC becomes counterparty to each trade at that time.

HKCC is obliged to meet its liabilities as counterparty out of:

-- margins deposited by HKCC members;

-- a Reserve Fund comprising deposits from HKCC members, insurance and bank guarantees; and

-- recoveries from defaulting members.

Although HKCC can call for additional deposits from members, it is not required to do so and its liability is limited to the above amounts.

(d) Relationship of clearing to payments system

CFTC

With respect to commodities transactions in the U.S., clearing houses route margin deposits of clearing members through banks which they choose as settlement banks. These banks make payments to members under the terms and conditions set forth in the clearing house's settlement instructions. All variation payments to clearing houses must be made in same day funds such as Fed wire transfers.

SEC

With respect to securities, OCC and its clearing members settle outstanding funds settlement obligations on a daily basis through the use of clearing banks. Clearing members are required to maintain an account at one of several clearing banks at which OCC maintains an account. Each day OCC combines all premium, margin and settlement obligations to arrive at a net money settlement amount for each account of each clearing member. The next morning OCC collects or pays out the net money settlement amount from or to each clearing member through the appropriate clearing bank. OCC has proposed to change from its current account-by-account netting and collection procedures to a member-by-member netting and collection process.

Under OCC's proposed member-by-member netting and collection system, cash settlement obligations of each of a clearing member's accounts would be netted into one pay or collect amount which the clearing member would pay or receive on the morning after trade date.

SIB

Under the UK exchange and clearing house rules, the positions of each clearing member are reviewed on a daily or intra-day basis to determine the amount of margin (initial and variation) which is to be called from the firm in relation to both its proprietary accounts and its customer accounts. The clearing house will determine the level of required margin and will either demand payment from the clearing member or proceed with a direct debit pursuant to a pre-existing agreement between the parties and relevant banks. There are no regulatory restrictions regarding the form of variation margin paid by clearing

members to the clearing house. Exchange/clearing house rules will permit the payment of variation margin in the form of cash or approved collateral. The latter will depend on relevant exchange/clearing house rules and it may include forms of security, guarantee or indemnity.

COB

In France, the clearing house routes margins and deposits of clearing members through clearing members. Each day, margin and deposit payments have to be realised through Banque de France wire transfers.

CONSOB

See II.A.2.(a) above.

MOF

On the Japanese exchanges payment is executed through stock exchange accounts, although it is not strictly a system of payment against delivery.

In Japan, almost all futures and options are matched by computers. Unmatched trades caused by operating mistakes are corrected through procedures set by stock exchanges.

Stock exchange accounts are bank accounts of stock exchanges. All payments between stock exchange members must be done through the accounts.

NCSC

In Australia a Marked-to-Market Payment System is in effect at the SFE. Payments are made daily. There is no formal relationship with banks except in relation to the Australian dollar contract.

Payment to the Clearing House must be by way of cheque except where electronic transfer arrangements have been made (Australian dollar contracts only). Payment for variation margin must be by way of cash; bank guarantees can be accepted for original margins.

OSC

An electronic banking network is utilized by TCO and its clearing members to enable new and variation margin to be met by 8:00 a.m. the next day. Intra-day margin calls are met by cheque or T-Bill within 60 minutes.

CVMQ

SFC

HKCC members authorize their clearing banks to accept direct debit instructions from HKCC. At 8:30 a.m. HKCC informs each member's bank of the member's net money settlement figures. The banks are to confirm payment to the HKCC by 9:30 a.m. The HKCC may also call for intra-day margin payments through direct debits.

HKCC calculates the level of original margin deposits in respect of each contract based on a number of factors, including historical price volatility, relative net and gross open interest and distribution among members, and the value of margin relative to the size of the futures contracts.

3. Margin and credit extension requirements

(a) Levels, limits and methodology for calculating.

CFTC

Absent an emergency, margin levels for futures contracts will be set by the U.S. exchanges without CFTC review. See §§5a(12) and 8a(9) of the CEA. With respect to options, the general practice, is that although the CFTC reviews the methodology for calculation of option margin, the actual margin levels are set by the U.S. exchanges.

Clearing houses generally use one of two methods for calculating original margin. The first method is to multiply the number of positions or contracts by a specific margin amount per contract. The second method is to use a portfolio-based simulation model, such as that of the CME (and adopted by the NYMEX and the Coffee, Sugar and Cocoa Exchange, Inc.) which combines all related positions into a portfolio. Price, volatility and other risk factors are simulated to determine their impact on profits and losses in the portfolio. The clearing house establishes parameters to collect original margins based on the simulated losses of portfolios under various scenarios. They are usually set to cover approximately 95% of potential one-day moves.

Clearing organizations collect "original" and "variation" margin from their members. In general, minimum original margin levels which a clearing member must deposit to carry a position at the clearing house are subject to change at any time. See BTCC Bylaw 604; CME Rule 815; Comex Clearing Rule 32(d),(i). The amount required to carry a position in a particular contract is based on the perceived risk associated with that contract and is the same for long and short positions.

FCMs collect "initial" margin from their customers. The initial margin is the exchange set minimum margin requirement for the contract. Generally different minimum initial margin

requirements are established for hedge and speculative positions. FCMs are free to impose higher customer margin requirements and, subject to exchange minimum requirements, may vary margin. When losses in a customer's account reduce margin below maintenance margin levels set by the FCM, the FCM will issue a "margin call" to the customer requiring the customer to deposit funds sufficient to restore margin on deposit with the FCM to 100% of the initial margin requirement. Capital charges are not required to be taken for margin deficiencies for 3 days; customer deficits, however, must be covered by the FCM the same day for segregation compliance.

The CME, CBT, BTCC, NYMEX, COMEX, COMEX Clearing, CSC Clearing and the KCBT use the SPAN margining system, which margins futures and option positions on a portfolio basis measuring the aggregate risk of the combined positions.

Options differ from futures in that long positions are not margined. Premiums must be paid in full. Short positions may be margined and are marked-to-market on a daily basis. Variation payments are not passed through to holders of long positions, however, who must exercise or offset their positions to realize any profits.

SEC

As with commodity futures and option transactions, with respect to securities transactions in the U.S. there are different margin requirements for customers and clearing members. With respect to customers, the Federal Reserve Board (FRB), pursuant to Regulation T (17 CFR §§220.1 - 220.18) has delegated the authority to establish and enforce margin standards for options to the options SROs, subject to SEC approval. Pursuant to the authority delegated to them by the FRB, the options SROs have adopted a uniform margin system applicable to index options.

Purchasers of index options must provide initial margin equal to 100% of the option's current market value (premium). The options SROs calculate margin requirements for each short put or call using a formula that requires initial and maintenance margin for short options positions equal to 100% of the option's premium plus a fixed percentage of the underlying product's value. The options SROs' rules provide for margin level reductions for out-of-the-money options. B/Ds may require higher margin payments than established by the options SROs.

Currently, the applicable initial margin for broad-based stock index options is 100% of the option's premium plus 15% of the underlying aggregate index value, minus the amount by which the option is out-of-the-money, with a minimum requirement of premium plus 10% of the underlying aggregate index value. The minimum amount of margin which must be maintained in margin accounts of customers having positions in index options is 25%

of the market value of all long positions and 130% of the value of all short positions held in the customer's account.

With respect to clearing members, OCC requires margin on all uncovered short positions and uncovered assigned positions carried in OCC accounts. OCC currently maintains two separate margin systems, one for equity options and another for non-equity options (NEOs). The methodologies are similar in that both require margin equal to the current market price of a short option plus a cushion to protect from the risk of a change in the current market price. Both also provide for offset of unsegregated long and short options within the same series. The equity margin system uses percentages of the daily mark-to-the-market to determine margin requirements. The NEO margin system uses options price theory to project the cost of liquidating a member's portfolio of positions in the event of an assumed "worst-case" change in the price of the underlying asset or index. OCC expects in the near future to change the equity margin system to be similar to the NEO margin system.

OCC can also issue intra-day margin calls for additional margin deposits. An intra-day margin call is made to protect OCC against extreme intra-day market volatility.

SIB

The UK regulatory authorities do not play a direct role in the determination of margin requirements. Initial margin levels are established by the clearing house in cooperation with the relevant exchange. The levels are determined with a view to the relative risk and volatility of the product. Appropriate margin limits are based on historical volatility studies and are designed to capture a single day's movement, based on probability analysis. The rules of the clearing house and the relevant exchange provide for the power to increase margin requirements either for specific derivative products or in respect of certain identified market participants. Margin requirements do not vary depending on the nature of the transaction, i.e., speculative or hedge transactions.

The clearing house will either notify the firm or arrange a direct debit to cover outstanding margin requirements. This will be done on a daily or intra-day basis.

As between the firm and its segregated customers, if at the close of business on any day, the amount of a customer's initial margin requirement at that time exceeds the aggregate of that customer's equity balance at that time and the amount of the value of that customer's approved collateral at that time held by the firm or an intermediate broker or an exchange, the firm shall require the customer to deposit with the firm, not later than the close of business on the next following business day, an amount in cash or approved collateral to a value not less than the amount of the excess (CBRs, 11.12(2)).

A firm may close out a customer position if these requirements are not met and, generally, must close out after five days (CBRs, 11.12(3)). The applicable amount of initial margin must be not less than the initial margin requirement imposed by the relevant exchange; in practice, the firm generally collects a greater amount.

Currently, London markets use Delta margining for options, however, the Span system of margining is currently under review and may be adopted in the future.

COB

In France, each person for whose account a position is opened must immediately pay an initial margin deposit. The level of the deposit depends on the volatility of the underlying instrument.

The clearing house fixes price limits. The initial margins (deposits) must permit to cover at least once a quote variation defined as price limit of the future contract or the underlying contract in case of a sale of traded options.

For French future products, the current initial margins are:

For the French notional government bond futures contract (nominal value: FF 500,000)

4% of the face value of the contract for a straight position (FF 20,000), 2% for a straddle,
6% once the contract gets near to maturity.

For the Pibor 3 months futures contract (nominal value: FF 5,000,000 - 0.3% of the face value (FF 15,000))

FF 7,500 for straddles, FF 22,500 once the contract gets nearer to maturity.

For the future on CAC40 Index (traded value: value of the index quoted in future - 1964 on the 20th of December 1989 FF 200)

FF 20,000,
FF 10,000 for straddles.

For the future on Eurodem 3 months (face value: 1,000,000 DEM)

0,1% of the face value (1,000 DEM in cash)
0,05% for straddles.

For the option on the government bond contract and the option on the PIBOR 3 months future contract

Deposit calculated on the liquidating value of the overall position (options plus futures).

The margin put up daily by the options' writer at the MATIF S.A. covers the maximum loss realised by a trader on two consecutive trading days given the limits fixed by MATIF S.A. The overall position (options and futures) of the portfolio is evaluated on the basis of the liquidating value at close.

On each maturity date, the overall value of the portfollio is revalued on the basis of a price range of plus or minus 5% (modifiable parameter) with respect to the closing price and for a given amount of fluctuation of volatility around the implicit volatilities observed at close. The deposit called by MATIF SA corresponds to the most unfavourable liquidating value from amongst a series of liquidating values generated by the Black-Scholes options valuation model.

For the MONEP stock option

The deposit is appreciated through the synthetic position of an investor, on each of the several traded options and as proportional as possible to the risk involved.

The amount of the deposit is calculated by finding the liquidating value of the option in case of the most unfavorable likelihood generated by options valuation model.

Additional variation margins must be paid daily for all opened positions:

Each trader's positions are marked-to-market daily on the basis of a daily "clearing price" calculated by the clearing house.

The resulting positive or negative variation margins are credited or debited to traders' accounts on a daily basis, giving rise respectively to cash withdrawals (if desired) or to additional cash payments (which must be met before the next day's business) in order to keep the initial margin intact.

CONSOB

The Italian CONSOB has set margin requirements for customers carrying on securities operations directly with stockbrokers or indirectly through banks or Commission dealers. Currently the applicable margin requirement is:

100% of the gross amount the customer has to pay at the settlement day for long position;

100% of the gross amount the customer will collect at the settlement day for short sales.

MOF

In Japan minimum margin levels for customers on domestic markets are stipulated in the stock exchange rules for brokerage contracts, which, in turn, shall not be lower than the levels stipulated by an order of the Ministry of Finance. For example:

JGB Futures: 3.0% of face value
T-bond futures: 4.5% of face value;
stock index futures: 9.0% of contract value;
stock index options: premium value plus 9.0% of strike price;

Minimum margin levels for stock exchange members are not regulated by MOF order. Current levels as set forth by the stock exchanges are described below.

JGB futures: 2.0% of face value
T-bond futures: 3.0% of face value
Stock index futures: 6.0% of contract value
Stock index options: premium value plus 6.0% of index value of the cash market

Minimum margin levels for domestic customers of foreign futures and options contracts are set by the Japan Securities Dealers Association in balance with those for similar domestic products.

1) Margins for Customers: These margins are cash collaterals or their substitutes that stock exchange members receive from their customers as a guarantee against default. These margin requirements are very important for preventing investors with modest funds from participating in overly speculative transactions, and their minimum levels are stipulated by an order of the Ministry of Finance. (Stock exchanges must set their margin requirements in their rules at levels not less than the minimum fixed by this order.)

In principle the MOF has set these minimum levels equal to three times the price limits, so as to cover maximum losses from the customer's transaction for a period of three days, since stock exchange members receive margin payments from the customer in three-days time, counting from the date of transaction.

2) Margins for Stock Exchange Members: These margins are cash collaterals or their substitutes that stock exchanges receive from their members as a guarantee against delivery and/or payment. The minimum levels for these margins are stipulated in the operating rules of the exchanges. In principle, the minimum levels are two-thirds of the margin requirements for customers, taking account of reduced risk through daily adjustment between members (called "marking to the market").

In Japan the exchanges draw a distinction between "initial" and "maintenance" margin requirements. There is no difference in the margin requirements for hedge and speculative positions.

NCSC

The SFE has the following rules:

- Floor and Associate Members shall call deposits from all clients upon execution of any instructions on behalf of clients unless the clients are Clearing Members and the contracts are registered with the Clearing House in the name of that Clearing Member and, except in relation to transactions executed by a Local Member on behalf of a Floor Member, Nominating Floor Members shall call deposits from Local Members and

  -- The minimum deposit to be called shall be the amount determined from time to time by the Clearing House.

  -- In calculating the amount of deposit there shall be no offset allowed by the Floor Member or Associate Member for deposits due by the client to the Nominating Floor Member unless that other contract is for the opposite position in the same delivery month and in respect of the same commodity. In the event that a Member holds on behalf of a client or Local Member a bought and sold contract for the same delivery month of a contract market the Member need only obtain from the client or Local Member the straddle deposit determined by the Clearing House for that contract market.

  -- Deposit requirements must be satisfied by payment unless the Floor Member or Associate Member agrees to access and receives cover by way of approved securities as described in Part A of the First Schedule.

  -- Credit margins may be applied against deposit liability at the discretion of the Member, having regard to all the circumstances including the financial position of the client.

  -- Liability of the client for the deposit shall arise upon execution of the instructions given by the client and irrespective of the time when the call is made and liability of the Local Member for the deposit shall arise when the Local Member trades irrespective of the time when the call is made.

  -- Payment of deposits or lodgement of cover must be effected within the earliest reasonable time and no Member shall provide credit or cover for a client or Local Member beyond that period. In determining whether payment of deposits or lodgement of cover has been effected within

the earliest reasonable time by a particular client or Local Member, the Committee for Inspection and Audit or the Board (as the case may be) shall take into account the circumstance of the client or Local Member at the time such obligation arose.

Payment of margins or lodgement of cover must be effected within the earliest reasonable time and no Member shall provide creditor cover for a client or Local Member beyond that period. In determining whether payment of margin or lodgement of cover has been effected within the earliest reasonable time by a particular client or Local Member the Committee for Inspection and Audit or the Board (as the case may be) shall take into account the circumstances of that client or Local Member at the time such obligation arose. Margins must be called when any one client's or Local Member's net margin position exceeds 25% of the total deposit liability as described within General By-Law G2(a); provided that where the amount of such a call would be A $1,000 or less, the making of such a call shall be at the discretion of the Member.

The Australian Financial Futures Market has the following requirements:

A Futures Organisation may call margins from the client unless the client is a member of the Clearing House and the Futures Contracts are registered with the Clearing House in the name of the relevant member of the Clearing House:

- In respect of any liability for margins, credit margins are not payable to the client by the Futures Organisation and may only be applied against the client's debit margins.

- Liability for margins shall arise at the same time as the margin comes into existence and irrespective of the time when any call is made.

Margins shall be called when a client's net margin position exceeds 50% of the total deposit liability.

OSC

Margin levels are set by exchanges for their members. Members are required to obtain from their clients margin in an amount not less than the levels set by the exchange. Clearing member firms of TCO must deposit acceptable margin with TCO (cash, government securities, letters of credit).

CVMQ

Options margin - General (ME)

The ME establishes margin requirements applicable to options positions held by clients and no member shall effect an options

transaction or carry an account for a client without proper and adequate margin, which shall be obtained as promptly as possible and maintained in conformity with the ME rules.

Charges against capital - General (options) (ME)

With respect to a firm account or to a specialist or market-maker account of a member, or of a permit holder for which a member (or a clearing firm) has issued a letter of authorization, the Exchange shall establish certain charges against capital.

Futures margin requirements - Bankers' acceptance (ME)

The minimum amount of margin a client must deposit and maintain with a member per bankers' acceptations futures contract shall be as follows:

a) for speculators	$1,500 CDN
b) for hedgers	$1,000 CDN
c) for spreads	$ 625 CDN

Positions carried by members shall be subject to the amounts mentioned above.

The ME may change the margin requirements which shall be effective on all positions whenever it determines that market conditions so warrant.

Changes made by the ME in margin requirements may be made applicable to one or more rather than all, members or clients if deemed necessary by the ME.

Futures margin requirements - Canadian Government bond futures (ME)

The minimum amount of margin a client must deposit and maintain with a member per Canadian Government Bond futures contract shall be as follows:

a) for speculations:	CAN $1,500
b) for hedges:	CAN $1,000
c) for spreads:	CAN $ 300
d) spreads 5 years vs 10 years	CAN $ 725

Positions carried by members shall be subject to the amounts mentioned above.

The ME may change the margin requirements which shall be effective on all positions whenever it determines that market conditions so warrant.

Changes made by the ME in margin requirements may be made applicable to one or more rather than all members or client if deemed necessary by the Exchange.

Acceptable margin (TCO)

Prior to settlement time on every business day, every clearing member who has not deposited the underlying interest or underlying interest equivalent shall be obligated to deposit with TCO acceptable margin, to meet its margin requirements.

Forms of margin:

- Cash or cheque
- Government securities
- Letters of credit
- Valued securities

In addition to the underlying interest and underlying interest equivalent which may be deposited under TCO rules clearing members may deposit any security listed on an exchange.

No value will be given for any valued security on any one day when the closing price thereof or, if there was no trading in such Valued Security on such day on any Exchange, the previous closing price is less than $10 on any Exchange.

Valued securities so deposited will be marked-to-market daily and 50% of this daily value applied against the total margin required against all accounts combined.

No more than 10% of the total margin required against all accounts combined may be covered by any one valued security.

Additional margin (TCO)

TCO is authorized to require the deposit of additional margin by any clearing member in any account at any time during any business day which TCO may deem advisable to reflect changes during such day in the market price of the underlying interest, or changes in the financial position of the clearing member or to protect TCO, the other clearing members or the public.

Such additional margin shall be deposited by the clearing member within one hour of the time the clearing member is notified of the requirement or such time as may be prescribed by TCO. Credit shall be given for all such additional margin deposits in the Clearing Balance Statement on the following business day.

SFC

HKCC calculates the level of original margin deposits in respect of each contract based on a number of factors,

including historical price volatility, relative net and gross open interest and distribution among members, and the value of margin relative to the size of the futures contracts.

(b) Means of collection - gross or net

CFTC

All FCMs collect margins for customers on a gross margin basis. Rule 1.56 states that an FCM cannot represent that it will not collect margin.

CFTC rule 1.58(a) also requires the gross collection of margins on omnibus accounts which an FCM carries for another FCM. This rule does not apply to omnibus accounts of foreign brokers carried at an FCM, although the CBT requires gross margin by exchange rules.

Further, the CME and NYMEX have a gross margining clearing system. See CME Rule 8.06; NYMEX Rules 4.00 to 4.01. All other exchanges, on contrast, have net margining clearing systems. See e.g., CBT Rule 706.00(b). There is no set off between segregated and non-segregated accounts.

SEC

With respect to transactions subject to SEC jurisdiction, B/Ds collect margin for stock index options positions from their customers on a gross basis, and submit their margin requirements to the OCC on a net basis.

For clearing members, OCC collects margin from each member on a daily basis. Within each member's accounts, OCC totals margin for each position (or net amounts for spread positions) into one single figure, which is added to any amounts for premium and settlement payments to arrive at one amount for payment or receipt the next morning.

SIB

In the UK, margin is collected by the clearing house on a net basis but there is no set-off between segregated and non-segregated accounts.

COB

The French OMF market and the commodities market collect margins on a gross basis.

On the MATIF margins are paid by the clearing members to MATIF-SA on a net basis. But when the margins are collected by a non-clearing member these margins have to be paid immediately to a clearing member, on a gross basis.

On the MONEP, deposits are paid by option sellers on a net basis.

CONSOB

MOF

Margins for customers on Japanese markets are collected on a gross basis and margins for stock exchange members on a net basis.

NCSC

On the SFE, margins must be called when any one client or local member's net margin position exceeds 25% of the total deposit liability.

Margins are collected on a net basis. Members may elect to call margins from their clients on a gross basis if they so wish.

OSC

TFE Margin collection from each client is on a net basis, i.e. a shortfall in one position can be offset by equity in another position or account. However, dealers carrying omnibus accounts must ensure that each client stands alone, i.e. one client's shortfall can not be offset by equity in another client's account.

CVMQ

SFC

HKCC uses gross positions for calculating original margin deposits.

(c) Permitted collateral

CFTC

The CFTC does not have any regulations regarding permitted collateral. CFTC rule 1.25, however, restricts FCMs and clearing organizations' investment of customer funds to obligations of the United States, any State or political subdivision, or to obligations fully guaranteed by the United States.

The majority of the exchange clearing houses accept as margin cash and U.S. Treasury Securities. Some clearing houses also accept letters of credit under the terms and conditions that they prescribe. The CME accepts securities haircut at 50% in a cross-margined account.

A customer may deposit as margin funds with an FCM cash, securities or any other property which the FCM will accept. Generally, only highly liquid assets such as government debt instruments will be accepted.

SEC

Under SEC rules, when a customer wishes to effect new securities transactions in a margin account, the customer must deposit margin in cash and/or securities in the account. The collateral deposited must be at least the greater of: (1) the amount specified in Regulation T; (2) the amount specified in SRO rules; or (3) an amount specified by the SRO from time to time. No margin is required in respect of a stock index option contract carried short in a customer's account where the customer has delivered to his B/D a Market Index Option Escrow Receipt (MIOER). The collateral permitted to underlie a MIOER may be: (1) cash; (2) cash equivalents; (3) one or more qualified securities; or (4) a combination of the foregoing.

MIOERs are issued by banks and trust companies approved by the OCC. MIOERs can be submitted by OCC clearing members to cover short call positions in broad-based stock index options held in a clearing member customer's account, in lieu of margin. Banks issuing MIOERs are required under OCC rules to, among other things, certify that the deposited collateral for the MIOER is of sufficient market value.

With respect to clearing members, OCC accepts cash, government securities, letters of credit, and valued securities (certain common stocks) to satisfy margin requirements. OCC values all securities based on closing market prices and deducts a percentage from that value to reflect market price volatility.

SIB

The CBRs provide that "approved collateral" means such collateral as, under the rules of an exchange, is acceptable as an alternative to a deposit in cash (CBR 11.02(1)). This will include any form of security, guarantee or indemnity provided by way of security for the discharge of liabilities arising from trades in margined transactions which have been approved by the relevant exchange/clearing house as "approved collateral". The most common form of approved collateral is in the form of bank guarantees. UK Treasury bills are also used but with much less frequency.

COB

On the French MATIF, assets obtained by the clearing house from the clearing members to satisfy their margin requirements are French (and German for the EURODEM contract) cash and French Treasury bills.

Assets admitted from the clients to satisfy their margin requirements can also be unit trust shares (SICAV, FCP), CD's, Treasury bills and U.S. dollar cash. Specific haircuts are applied to these assets.

On the MONEP, assets admitted by the SBF from the clearing members (brokerage firms and credit firms) are cash and French Treasury bills. Assets admitted from non-clearing members are cash, French Treasury bills and underlying stocks deposited at the intermediary through whom the orders are transmitted. The intermediaries who do not have any securities account in a brokerage firm have to cover their position only with cash and French Treasury bills.

CONSOB

In Italy, financial intermediaries must require the customer to deposit margin in cash and/or securities in an account opened in the customer's name.

MOF

Permitted collateral in Japan includes government securities, municipal bonds, and listed stocks. In the case of customer margins, one-third of the required total must be cash.

NCSC

In Australia, on the SFE, calls for margins must be satisfied by payment unless the Floor Member or Associate Member agrees to accept and receive approved securities. The following is the list of approved securities:

- Registered mortgages of real property
- Stock mortgage.
- Wool lien.
- A guarantee in favor of the Member issued by an Australian trading bank or a member of the Australian Merchant Bankers Association (provided that neither is the client) or such other guarantee as may be approved by the Committee for Inspection and Audit.
- Guarantee issued by a Member of the National Council of Wool Selling Brokers for a client.
- Shares or debentures listed on any prescribed Stock Exchange in Australia held under a letter of hypothecation.
- Government securities.
- Taken options but only for opposite traded futures contracts for the same month of delivery.
- Gold bearing an approved assay mark and gold coins.
- Silver bearing an approved assay mark.

- Bank accepted Bills of Exchange.
- Such other credit facility as may be approved by the Committee for Inspection and Audit from time to time.

On the AFFM, deposit requirements and Calls for Margins shall be satisfied by payment unless the Futures Organisation agrees to accept and receives property in satisfaction for or to provide security for such liability. Payment of Deposits and Margins or lodgement of such property is for prompt payment, or as the case may be delivery.

Only cash or approved securities may be received for margins.

OSC

TFE initial margin may be in cash or treasury bills, while maintenance margin must be in cash.

CVMQ

SFC

HKCC's rules allow margin in forms other than cash, but only cash is currently accepted.

(d) Frequency of settlement and collection

CFTC

The CFTC has no specific rules regarding frequency of settlement and collection of margin. However, firms are required to take a capital charge with respect to customer accounts which remain undermargined for 3 consecutive days.

The clearing houses conduct settlement and margin collection at least once a day. In general, margins are collected from clearing members prior to the beginning of the trading day. The BTCC and the CME receive bank confirmations by 6:40 a.m.

The BTCC and the CME conduct routine intra-day pay and collects.

SEC

SEC regulations require initial margin to be deposited within seven business days after a margin transaction is executed. The required margin level in a customer's account is marked-to-market daily. If the amount of margin on deposit in a customer's account falls below the maintenance level established by SRO rules, a B/D must require a customer to make additional deposits as promptly as possible, and in any event within seven business days from the date such deficiency occurs.

With respect to clearing members, OCC collects margin each morning on a daily basis. Intra-day margin calls are made on an infrequent basis and only when there is extreme intra-day market volatility.

SIB

In the UK, the Exchange and clearing house rules may vary with respect to specific provisions regarding settlement and collection. The settlement price which is calculated daily by the clearing house is used as the reference for purposes of determining margin calls. Amounts which are owed to the clearing house are immediately due and payable in accordance with the terms of the arrangements established between the clearing member firm and the clearing house.

As between firms and customers, the CBRs establish that segregated customer accounts must be fully margined, either by the customer or by loan from the firm, on a daily basis and firms must cover, forthwith, any shortfall with their own funds. The applicable calculation (CBRs, 11.11) applies to relevant balances on the preceding business day. Firms generally must close out segregated customers positions after five days in the event of a failure to pay margin calls. The CBRs do not preclude the granting of credit.

COB

In France, margins are collected daily on the financial future market and on the MONEP.

On the commodities markets, margins are called on a daily basis. Positive variation margins are not credited to traders' accounts on a daily basis but only at the end of the contract. These margins are potential profits but the trader can always realize them by a simultaneous purchase and sale (operation d'achete-vendu).

CONSOB

MOF

In Japan customer margins are collected on the 3rd day counting from the date of contract, and margins for members are collected on the 4th day.

NCSC

Where a client is in default by failing to pay a call (or lodge approved securities in lieu thereof) a Floor Member or Associate Member shall have the right to close out all or any existing futures positions in any market held by the Member on account of the client or Local Member without further notice.

The time within which that right is exercised is at the discretion of the Member as is the extent to which it is exercised; the Member shall not be liable to the client or Local Member for any failure or delay in exercising that right.

Any adjustment by way of profit or loss arising from such closing out together with interest and all charges incurred shall be settled between the Member and the client or Local Member.

On the SFE where a call is made for deposits or margins the Floor or Associate Member shall stipulate the time for payment (or lodgement of approved securities) and unless stipulated such payment or lodgement shall be within twenty-four hours of the call. The time so stipulated shall not exceed the earliest reasonable time. Time shall be of the essence in respect of any calls made.

On the AFFM, where a call is made for deposits or margins the Futures Organisation shall stipulate the time for payment (or lodgement of property). Time shall be of the essence in respect of any Call made.

OSC

Positions are marked-to-market daily, and maintenance margin calls are made and must be met daily.

CVMQ

SFC

See II.A.2.(d) above.

4. Financial compliance programs

(a) Continuous surveillance

CFTC

The CEA and regulations thereunder mandate CFTC protection of funds committed by the public to commodity futures and options trading. This is accomplished primarily through rules regarding segregation and minimum capitalization requirements. Enforcement of these rules is done through a program of CFTC oversight of SRO financial surveillance programs.

The surveillance program should include procedures for assessing adverse trends in the financial condition of members and assessment of the markets which could affect the condition of and pose potential financial risks to its members. This includes daily analysis of the effect of market price movements on firm capital, review of clearing house pay and collect data and intensified surveillance of firms considered high risk

(such as daily calls for segregation and net capital data). Ongoing surveillance should include thorough reviews of all financial reports filed by member-FCMs and member-IBs and any follow-up work required as a result of the review.

SEC

The SEC regulatory scheme is an oversight structure, i.e., the primary regulatory responsibility lies with the SROs under the supervision of the SEC. Each SRO monitors B/D compliance with the financial responsibility rules by reviewing the reports and notices filed by, and by conducting periodic on-site inspections of, the B/Ds for which the SRO is the designated examining authority. (These filings are discussed at 4(b) and 7(a) below.) In turn, the SEC supervises the SRO through periodic on-site inspections to ensure that the SRO is providing adequate supervision of the B/Ds for which the SRO is the designated examining authority.

With respect to clearing members, OCC's continuous monitoring of its members provides OCC with protection against the risk of loss in the event of member default or insolvency. OCC's membership standards are designed to assure OCC that its members have sufficient financial wherewithal to be an OCC member. OCC requires each member to file an annual audited report and monthly financial reports and to notify OCC if certain financial parameters are broken. OCC performs financial surveillance activities designed to identify clearing members whose financial or operational condition has been deteriorating over time and identify options related positions that pose unwarranted levels of risk to the clearing member and OCC. Based upon the information gathered, OCC may require more frequent reporting, higher margin levels or some other action by the clearing member.

SIB

In the UK, in the context of Financial Compliance, there are no minimums imposed in respect of financial resources for RIEs and RCHs. They must ensure that they have financial resources sufficient for the proper performance of their functions. With respect to this and other Schedule 4 requirements, the recognising body (SIB) must be satisfied that they are met. Under the Notification Regulations, these bodies must submit to SIB their quarterly management accounts, annual audited report and accounts, and annual budget.

ROIEs and ROCHs must be subject to supervision in the country in which their head offices are situated which is such that UK investors are afforded protection at least equivalent to that provided by the FSA in relation to RIEs (FSA, s.40 (2)). Reliance is, therefore, placed on the overseas supervisors to ensure that all of the components of the regulatory regime in that jurisdiction, including the adequacy of financial

resources to properly perform ROIE or ROCH functions, are addressed and where requirements are imposed, that these are respected.

In relation to the financial supervision of firms and consistent with the new approach to rulebooks (see I.A.2(a), above), SIB has implemented a set of five "designated" or core rules which, with some exceptions, apply to all authorised firms from 1 August 1990. The designated rules are: -

A. **Financial resources.** A firm must at all times have available the amount and type of financial resources required by the rules of its regulator.

B. **Records and reporting.** A firm must ensure that it maintains adequate accounting records and must prepare and submit such reports as are required by its regulator in a timely manner. A firm's records:

a) must be up to date and must disclose, with reasonable accuracy, at any time, the firm's financial position at that time;

b) must enable the firm to demonstrate its continuing compliance with its financial resources requirements, and;

c) must provide the information:

(i) which the firm needs to prepare such financial statements and periodical reports as may be required by its regulator; and

(ii) which the firm's auditor (where the regulator requires one to be appointed) needs to form an opinion on any statements of the firm on which the auditor is required to report.

C. **Internal controls and systems.** A firm must, for the purpose of its compliance with rules on financial supervision, ensure that its internal controls and systems are adequate for the size, nature and complexity of its activities.

D. **Ad hoc reporting.** A firm must notify its regulator immediately if it becomes aware that it is in breach of, or that it expects shortly to be in breach of, the core rules on financial resources (A), records and reporting (B) or internal controls and systems (C).

E. **Auditors.** A firm shall appoint an auditor where required to do so by its regulator. A firm shall make available to its auditor the information and explanations he needs to discharge his responsibilities as required by the firm's regulator.

A third tier of rules, which flesh out these core rules, have also been introduced. Firms which were directly authorised by SIB before 1 August 1990 may choose to comply with either the rules which were implemented before 1 August 1990 or the new third tier which was introduced on that date. The transitional period will extend until 1 August 1991 at which time all those

firms which are directly authorised by SIB, and which are not exempted from compliance, must comply with the new third tier rules. For simplicity, the references throughout this document to rules relating to the financial supervision of firms are to those which were implemented before 1 August 1990.

Clearing firms are required to submit monthly financial returns to SIB or the relevant SRO; ordinary and non-clearing firms submit financial returns on a quarterly basis. All firms submit annual audited reports. The information is analysed and trends or unusual items are identified; if there is concern, a visit to the firm will be undertaken. Firms also provide information regarding commission/equity ratios and the amount of segregated funds which are held. This information is gathered for purposes of, inter alia, identifying indications of churning or other improprieties.

Where it appears to the relevant regulator that an authorised person is not a fit and proper person to carry on the investment business which he is undertaking, or proposing to undertake, he may withdraw or suspend authorisation (FSA, s.28(1)). Authorisation may also be withdrawn or suspended in circumstances where, inter alia the rules and/or regulations of SIB or the SRO, as the case may be, have been contravened (FSA s.28(3)).

COB

In France, Financial Compliance programs have been made up by the clearing houses, which have a risk exposure vis-a-vis any failure of a market member.

MATIF S.A.'s risk management Department centralizes all open positions of all the clients and intermediaries. To achieve this purpose, the market members have to communicate to MATIF S.A. the name of all account holders. MATIF knows all the open positions of a client even if the client holds different accounts by different intermediaries.

The risk management Department monitors all traders and firms for compliance with the prudential rules. A score system facilitates the detection of any "high risk" situation which could threaten the firm's solvency.

In the case of high losses by a customer, MATIF S.A. immediately informs the customer's member. The latter also receives a monthly summarized report on its risk exposure.

MATIF S.A. is also in charge of the market surveillance on commodities market.

On the OMF market, the electronic system includes clearing operations. OMF deals with each customer and house account in real time. Thus it can easily monitor firms and traders for

compliance with the prudential rules. Any customer can also ask that OMF be directly informed at the highest level of management if losses exceed a certain level.

CONSOB

In Italy, Commission dealers companies are subject to monthly surveillance exercised by the CONSOB.

MOF

Every securities company is required to prepare a regular report for each month, and a business report for each business year. The monthly report shows the state of the firms business operation and property, and it must be submitted to the Securities Bureau, Ministry of Finance.

The annual business report contains not only the state of the business operation and property of the firm but contains its state of income and outgo.

NCSC

Release 148 Programme - No change to 1989 Programme

The Release 148 programme itself is not focused on any particular class of licensee - all dealers whose licenses are subject to financial conditions (except ASX, SFE and AFFM members) are to be required under section 48 of the Code to provide audited pro-forma financial condition calculations. However the programme of scrutinising the returns received is focused on those licensees that have a level of surplus liquid funds or tangible assets which is low relative to the amount they are required to hold.

The procedures required for this programme are:

- initial examination of all returns - this is anticipated to detect:

    -- all cases of non-compliance and all cases where there are qualified audit certificates;

    -- any apparently anomalous data; and

    -- all licensees that have low levels of surplus liquid funds (as a rough guide less than 10% SLF or 110% NTA would prompt more detailed examination, depending on the nature of the licensee's business); and

- detailed examination and further monitoring of each return in these three categories.

It is expected that 15% of returns will be examined in detail.

Non-Lodgement of Annual Returns Programme: (Suspension subject to hearing not revocations).

The aim of this programme is to encourage timely lodgement of annual returns and to remove from the register persons who are no longer in the business of dealing/advising.

The programme of revocation of licences for non-lodgement of annual returns is not aimed at any particular type of licensee. In 1989, however, investigations have focused on principal licences.

The procedures adopted for this programme are:

- dispatch of warning letters before returns are due (with annual return documentation);

- prompt reconciliation of returns received so as to identify non-lodgements; and

- suspension within 14 days of non-lodgement.

The exchanges are responsible, as co-regulators, for the monitoring of their members' financial compliance. However, on an annual basis the exchange must provide to the Corporate Affairs Commissions, delegates of the NCSC, its pro forma financial condition form for all of its members.

In relation to the AFFM the examining Accountant's Department of the ASX performs the same function for the AFFM as it does for the ASX. Coordination of audits is thorough. No formal procedure exists between the AFFM and the SFE for the auditing of common members however informal discussions are held on matters of common concern.

The principal Exchanges in Australia are the ASX and the SFE. Whilst the two exchanges share information and co-operate on an informal basis, there is no formal arrangements concerning audits for Members where a Member is a member of both of these exchanges. The SFE will direct a trade practices audit of the futures activities of the Member. Generally, futures business handled by the SFE and securities business handled by the ASX are conducted separately even where the same legal entity is involved.

The NCSC has no oversight responsibility but it does have ultimate power as it may request of the Courts pursuant to section 58 of the FIC that rules of the exchanges, clearing house or futures association be enforced or be given effect.

OSC

Continuous surveillance is carried out by the TFE and the IDA.

Panel auditors appointed by the dealer are required to make an examination of the financial affairs of OSC, the dealer and related corporations.

The TFE and the IDA may require any panel auditor to make a special examination of the affairs of the dealer, report upon the whole or any aspect of the business or affairs of the dealer or to regulate and generally supervise the operations of any member.

TCO may also require its auditor to examine the affairs of a clearing member.

CVMQ

Securities Act (Quebec)

Every dealer shall keep the books, records and other documents required by the regulation respecting securities.

Within 90 days after the end of his financial year, he shall furnish to the Commission the financial statements, the auditor's report, and any other information, in accordance with the requirements fixed by the policy statements of the Commission (i.e. a statement of assets, a statement of liabilities and capital, a statement of net free capital, a statement of adjusted liabilities, an analysis of secured loans, an inventory of securities owned by the dealer, an analysis of clients accounts, etc.).

The Commission may require any document or information it considers expedient for the discharge of its functions. The Commission may also order an investigation to aid it in the due administration of the Quebec Securities Act.

ME

- Audit and investigation

The Governing Committee or the President may in its or his absolute discretion at any time direct an audit or investigation to be made in respect of the business or affairs of a member of the ME an approved person or a permit holder.

- Books, record, papers and information

Upon the request of the ME or a committee or person authorized by the ME, a member, approved person or permit holder must provide [without] reasonable delay any books, records and papers that the ME or authorized committee or person determines are relevant to the matter under investigation.

Every member of the ME shall comply with the provisions of the Securities Act relating to regulation of brokerage and

accounts, examination and information and shall give or make available to the responsible officer of the Exchange all information which he may request for the purpose of any examination or investigation being made by him of the business or affairs of such member.

TCO

- Audits

Unless otherwise agreed to by TCO, the audit of a clearing member will take place on the fiscal year-end of such clearing member.

The audit shall be conducted in accordance with generally accepted auditing standards and shall include a review of the accounting system, the international accounting control and procedures for safeguarding securities. It shall include all audit procedures necessary under the circumstances to support the opinions which must be expressed in the clearing member's auditor's report.

- Special examinations

TCO may at any time require TCO's auditor to make any general or special examination of the financial affairs of any clearing member or to report upon the whole or any aspect of the business or affairs thereof.

TCO's auditor for the purpose of this special examination shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence, and records of every description of the clearing member whose financial affairs are being examined and no person or clearing member shall withhold, conceal, destroy or refuse to give any information or thing reasonably required by TCO's auditors for the purpose of this examination.

- Early warning notice

Every clearing member shall meet at all times the minimum capital requirements adopted from time to time by the Board of TCO. No Exchange Transaction shall be cleared by or through any clearing member at any time when such clearing member does not meet the minimum capital requirement. A clearing member shall notify TCO immediately if it has any indication or suspicion that it may not meet the minimum capital requirements.

C.D.S.

Every member of C.D.S. shall furnish to C.D.S. forthwith upon request all information in respect of services rendered to the clearing member as may be required by C.D.C. which information

shall be in a form certified by the external auditors of the clearing member or certified by a senior officer of the clearing member or by a person acceptable to C.D.S.

SFC

HKFE has a number of procedures in place to ensure compliance with its rules and regulations. The compliance systems focus on minimum capital requirements, appropriate segregation of customer funds, and compliance with collecting customer margins. HKFE's Compliance Department determines whether firms are in compliance by conducting a series of on-site audits of clearing members on a routine basis.

HKFE rules also permit the Compliance Department to conduct surprise audits. The HKCC does not have its own separate auditing function, but relies on the HKFE Compliance Department.

All HKFE members are required to submit monthly financial returns to HKFE for review.

(b) Periodic audits (by regulatory and self-regulatory organizations and/or by 3rd party experts).

CFTC

Rule 1.52(c) allows an SRO to delegate audit and financial surveillance responsibility to a DSRO for any member-FCM which is a member of more than one SRO.

Under the rule, commodity exchanges may establish joint audit plans pursuant to which a single exchange may become the DSRO responsible for auditing the financial compliance of an FCM which is a member of more than one exchange. The Joint Audit Committee consists of representatives of all U.S. SROs established to coordinate audit and financial surveillance plans, policies and procedures, particularly with respect to FCMs that are members of more than one U.S. SRO. An FCM's DSRO must monitor and audit compliance with the minimum financial and related reporting requirements for that FCM and receive from the FCM the financial reports necessitated by the minimum financial and related reporting requirements.

Generally an SRO must conduct full scope audits of FCMs for which it is the DSRO once every two years, and a limited scope recordkeeping examination during the year a full scope examination is not conducted. Audits must be started within two months of the "as of" date of the financial report being audited. Preliminary audit work is done on a surprise basis to assess the currency of the firm's recordkeeping and to assist in the scope-setting process.

The Division of Trading and Markets conducts periodic reviews of an SRO's programs and work product to evaluate the scheduling, quality, and disposition of an SRO's audit of member-FCMs and on-going surveillance work.

SEC

Compliance with the SEC financial responsibility rules as they relate to B/Ds is monitored through the FOCUS reporting system which consists of monthly, quarterly, and annual financial reports; the annual report is audited. In addition, each B/D is subject to inspection by the SRO designated as its examining authority for financial responsibility purposes and by the SEC (although the SEC generally engages only in oversight inspections).

With respect to clearing members, the SEC in its oversight role, performs periodic inspections of OCC. In addition, OCC is required to engage outside auditors to perform a yearly audit of its financial condition and systems of internal accounting control, for the period since the last report, the results of which OCC files with the SEC and makes available to its members.

SIB

Formal periodic audits of recognised bodies are not currently undertaken by the SIB, but rules, procedures and systems are subject to ongoing review. Through the Notification Regulations, and in accordance with provisions of Memoranda of Understanding, SIB maintains regulatory oversight of these bodies with a view to determining continued satisfaction of recognition requirements.

The frequency with which periodic audits of firms are undertaken is at the discretion of the organisation granting authorisation, i.e., either SIB or the relevant SRO. In practice, firms will generally be subject to routine annual visits and may be subject to additional spot checks.

Schedule 2 to the FSA specifies that an SRO must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and with any rules or regulations to which its members are subject under Chapter V of Part I of the FSA (including, inter alia, Clients' Money Rules (CMRs)) (FSA, Schedule 2, paragraph 4(1)).

COB

See II.A.4.(a) above.

CONSOB

Banks are subject to specific controls exercised by the Bank of Italy. Mutual funds and Trust companies are subject to supervision by Bank of Italy and Ministry of Industry, respectively. The CONSOB is entrusted with the task of controlling the financing regularity of trading operations performed by dealers and intermediaries.

MOF

In Japan the Ministry of Finance periodically inspects the state of the business operations of securities companies.

The periodic audits seek to ascertain, among others, the degree of compliance with the Securities and Exchange Law and ministerial orders, of the documents, which are filed at the Ministry of Finance, furnishing information as to the method of providing business.

The periodic audits including the examination of futures and option transactions are usually conducted in every two to five years.

NCSC

A futures broker (other than a banking corporation) must appoint an auditor to audit the broker's accounts. The auditor is under a statutory obligation to report to the Commission within 7 days of becoming aware of any matter which:

- has adversely affected, is adversely affecting or may adversely affect the ability of the futures broker to meet the broker's obligations as a broker;

- constitutes or may constitute a contravention of section 86 (segregation of client money and property), section 90 (accounts to be kept by futures brokers) or section 91 (safe custody of property); or

- constitutes or may constitute a breach of a condition of a licence issued to the futures broker.

Futures exchanges are under a similar obligation to report to the Commission any of the above matters of which they are aware and in addition any matter which constitutes a failure to make contributions to a fidelity fund.

A futures broker (other than a banking corporation) must submit on a yearly basis a true and fair profit and loss account and balance sheet containing prescribed matters together with an auditor's report containing prescribed information and any other information and matters the auditor thinks fit to include in the report.

The SFE (a co-regulatory organisation) has appointed a Committee for Inspection and Audit (CIA). The CIA is responsible (inter alia) for:

- authorising random inspections and audits of records and procedures maintained by Floor, Associate and Local Members and by the Clearing House on behalf of Members and in particular for ascertaining whether deposits and margins are being paid or cover provided within the minimum time necessary; and

- ensuring that Members lodge with it the statements of net tangible assets, liquid assets and secured creditors on the due dates (and verifying such where believed necessary).

The CIA receives a statement of net tangible assets liquid assets and secured creditors and a summary of net tangible assets, including client funds in a form approved by that Committee on a quarterly basis.

The AFFM has a Board which has absolute power to call upon any Futures Member or Futures Organisation to produce, without delay, for inspection, all books, letters, telexes or copies thereof, and other documents relating to the business of the Members of the Futures Organisation. The Chairman may direct any Futures Organisation at any time to supply a report of an Accountant who shall be approved by the Board in such form and within such time as the Board may prescribe.

OSC

Periodic audits are carried out by auditors appointed by the TFE and the IDA and approved by the OSC.

CVMQ

SFC

HKFE's rules require members to submit audited accounts within four months after the end of the financial year. These must be accompanied by the auditor's declaration that the member has complied with the financial requirements of the CTO.

Under the CTO, all dealers, whether they are trading on HKFE or on overseas exchanges, are required to submit audited accounts to the Commission within four months from the end of the financial year.

All members of HKFE are audited by HKFE at least once every two years.

The Commission inspects approximately five percent of HKFE members every year as routine audit function is placed on HKFE. All other registered dealers are inspected at least once in every three years by the Commission.

5. **Customer funds protection**

(a) Measures to protect from creditors of carrying intermediary (e.g., separate account, segregation, trust fund, other).

CFTC

§4d(2) of the CEA and rule 1.20 thereunder state that an FCM and clearing organization must separately account for customer funds on their books and records, and segregate such customer funds from their own funds and funds of other persons. However, an FCM may pool all customer funds in a single account which must be clearly identified as belonging to customers. To be in compliance with the segregation requirement, an FCM must always have in segregation, free from claims, sufficient money to completely liquidate all commodity accounts which would have equities if the accounts were closed out at the market price at any point in time.

When customer funds are deposited in a bank, trust company, clearing organizations or another FCM, rules 1.20(a) and (c) require that the funds be deposited under an account name that identifies the account as containing segregated customer funds. Those provisions also require that the depository organization sign an acknowledgement that it was informed that the funds deposited therein are held in accordance with the CEA and regulations thereunder. The FCM and clearing organization must obtain and retain in its files for the period provided in rule 1.31 each such acknowledgement.

The effect of the acknowledgement is that when the funds are deposited in a bank, for example, the bank cannot exercise its traditional right of setoff against those funds for the obligations of the FCM or any other person nor can it recognize the assertion of any claim, lien, or security interest against the customer funds for obligations of other persons.

Rule 1.22 provides that an FCM may not use the funds of one customer to purchase, margin, secure or extend the credit of any person other than that customer. Each FCM and clearing organization which invests customer funds must keep records of such investment in compliance with rule 1.27.

In contrast to funds required to be segregated under §4d(2) of the CEA, the Part 30 rules which govern transactions for or on behalf of U.S. customers on foreign markets provide for the protection of the "secured amount," which is defined generally in Commission rule 1.3(rr) to include the initial margin required in connection with a contract plus unrealized profits and less unrealized losses. (See CFTC rule 30.7.)

SEC

Rule 15c3-3 under the 34 Act protects customer funds and securities held by the B/D. A "customer" is defined for purposes of Rule 15c3-3 as any person from whom or on whose behalf a B/D has received, acquired, or holds funds or securities for the person's account. The term does not include, among other persons, general partners, directors, or principal officers of the B/D or any other person who has contributed funds or property which are either part of the B/D's capital or subordinated to the claims of the B/D's creditors.

Rule 15c3-3 under the 34 Act protects customer funds and securities held by the B/D. Rule 15c3-3 has two parts. The first part, the requirement that the B/D have possession or control of all fully paid and excess margin securities of customers, is discussed at II.A. 5(d) below.

The second part of Rule 15c3-3 covers customer funds, and requires the B/D to make a periodic computation (in accordance with a formula) to determine how much money it is holding which is either customer money or money obtained from the use of customer securities ("credits"). From that the B/D subtracts the amount of money which it is owed by customers or by other B/Ds relating to customer transactions ("debits"). If the credits exceed the debits, the B/D must deposit the excess in a Special Reserve Bank Account. If the debits exceed the credits, no deposit is necessary.

SIB

THE CMRs only apply to authorised firms. Where they do apply, they apply equally regardless of the place of incorporation or location of the firm and regardless of whether the business has been solicited or unsolicited. For example, if a foreign firm is exempted from the need to be authorised by virtue of paragraphs 26 and 27 of Schedule I to the FSA, the CMRs will not apply. If the firm is authorised, the CMRs will apply without variation.

The effect of the CMRs is to impose an express statutory trust on funds covered by the regulations (CMRs, 2.2). The purpose of these regulations is to ensure that in the event of the insolvency of an authorised person, client money is protected from the claims of general creditors and from any right of set-off by the depository where the money is held.

"Client money" is defined in CMR 2.1 as money of any currency which a firm holds or receives in respect of any investment agreement entered into, or to be entered into, with or for a client and which is not immediately due and payable on demand to the firm for its own account, or which a firm pays into a client bank account pursuant to an obligation to do so under SIB regulations or, where applicable, the rules of a recognised SRO. CMR 1.3 defines the term "client" as a person for whom a firm undertakes investment business.

All authorised persons must comply with the CMRs which generally require a firm which holds or receives client money in the UK or which is payable as client money, to hold that money at an "approved bank" in a client bank account either in the UK or, with the consent of the client, outside the UK (but at an approved bank). Restrictions are imposed on the firm's ability to withdraw funds from the client bank account(s).

In the context of margined transactions which are effected for a customer whose funds are segregated, funds may be withdrawn from the client bank account and paid to an intermediate broker or to an exchange in order to effect transactions. An "intermediate broker" is defined in CBR 11.02 as "any person through whom the firm undertakes a specific transaction". The intermediate broker or exchange must be notified by the firm that it is the firm's client money and should be credited to the firm's customer account, as opposed to the firm's proprietary account with the exchange (CBRs, 11.07).

With respect to margined transactions, CBR 11.09 and CMR 3.7 require firms to open separate client bank accounts to hold funds in respect of such transactions (as distinct from other investments) and to operate each such account in accordance with the CMRs and CBR 11.11, which specifies the daily segregation requirement. Additionally, funds in respect of on-exchange transactions must be segregated separately from those for off-exchange transactions.

In relation to margined transactions undertaken for customers who have not opted out of segregation, the firm must ensure that the <u>total</u> of:

- funds held in the firm's client bank account;

- equity balances with exchanges and intermediate brokers; and

- the value of approved collateral deposited with the firm

is not less than the greater of:

- the amount of the customer's initial margin requirement; and

- the aggregate of the customer's equity balance and the value of approved collateral deposited with the firms (CBR, 11.11).

The firm must use its own funds to "top up" any shortfall. Business, professional and experienced investors may agree to opt out of the segregation provisions of Clients' Money Regulations (CMRs). In practice, therefore, these rules apply to business done for private customers, who are not able to opt

out, and to those others who have accepted the extra protection offered by segregation.

COB

CONSOB

MOF

NCSC

Legislation provides that a futures broker must maintain a client's segregated account wherein monies received from a client (some or all of which is attributable to dealings in futures contracts) is to be deposited on the next day on which the amount can be deposited. Withdrawal of these funds can only take place for prescribed purposes. This provision is duplicated in the Articles of the SFE.

Although there is not a statutory definition of "monies" section 86 of the legislation gives some idea of the scope of a clients' segregated account.

Sub-section 86(5) of the legislation indicates the purposes for which withdrawals may be made.

Section 86 of the legislation restricts the types of institutions in which the money can be deposited. The legislation defines "banking corporation" as:

- "a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth; or

- a bank constituted under a law in force in a State or in a Territory."

OSC

Dealers which are not members of the Canadian Investor Protection Fund (CIPF), previously known as the National Contingency Fund, must segregate customer funds. While the CFA mandates segregation for all dealers, the OSC has exempted all but those dealers who are not members of the CIPF (by way of membership in a participating SRO) from the need to segregate customer funds.

All customers are unsecured creditors of their Ontario dealer.

Trades in foreign contracts by Ontario residents must be transacted through Ontario registered dealers (unless the trades have not resulted from solicitation by the dealer), and therefore such trades are covered by the same protections as trades in Ontario contracts. The TFE has its own contingency fund which is available to customers of TFE member firms.

CVMQ

Securities Act (Quebec)

The dealer/broker has to participate in a contingency fund approved by the Commission. It must also subscribe for insurance or bonding giving it a coverage considered adequate by the Commission (minimum $1,000,000).

The dealer/broker must maintain a minimum insurance coverage of $200,000 on each of the following categories:

- misappropriation of funds by employees;
- losses inside the premises;
- losses outside the premises;
- counterfeit money orders and bank notes;
- forgeries which are prejudicial to clients.

ME

- National Contingency Funds

The Members must participate in the National Contingency Fund. (see above).

- Insurance

The Members have to subscribe for insurance or bonding.

- Mail Insurance

Every Member shall effect, employ and keep in force mail insurance against loss arising by reason of any outgoing shipments of money or securities, negotiable or non-negotiable, by first class mail, registered mail, registered air mail, express or air express, such insurance to provide at least 100% cover.

- Brokers' Blanket Bond

Every Member shall by means of a brokers' blanket bond or bonds effect and keep in force insurance against losses arising as follows:

- Fidelity
- Trading
- On premises
- In transit
- Forgery, alterations.

TCO

- Clearing Fund Deposits

The TCO may establish a separate clearing fund for each class of options or futures or group of classes of options or futures cleared by TCO. Each clearing member admitted to clear a class of options or futures or group of classes of options or futures shall maintain a deposit in the appropriate clearing fund of the amounts from time to time required by the Rules. Each clearing fund shall be used solely to make good losses suffered by the TCO as a result of the failure of any clearing member to perform its obligations under any instrument covered by that clearing fund or as a result of any liquidation of a clearing member's position with TCO in relation to the instruments covered by that clearing fund.

- The options clearing fund shall have the following specifications:

  -- Currency: Canadian Funds

  -- Base Deposit: $25,000 cash or $27,000 in acceptable short term Government securities.

  -- Deposit multiplier: $5

  -- Additional Deposit: $5,000

  -- Classes covered: All options issued by TCO

- The futures clearing fund shall have the following specifications:

  -- Currency: Canadian Funds

  -- Base Deposit: $75,000 cash or $79,000 in acceptable short term government securities

  -- Deposit multiplier: $5

  -- Additional deposit: $5,000

  -- Classes covered: All futures issued by TCO.

IOCC

In order to secure the performance of any obligation to the IOCC every clearing member shall pay to and maintain with the IOCC a contribution in an amount determined in accordance with the general conditions of IOCC.

SFC

Members of HKFE are required by the CTO and by HKFE's rules to keep clients' money in segregated accounts. The CTO specifies that all registered dealers must deposit clients' monies (less brokerage and other proper charges relating to the requirements

of a clearing house) within four days after receipt into segregated accounts kept with registered deposit-taking companies or licensed banks. Such monies in segregated accounts shall not be available for payment of debts of dealers. HKFE's rules require members of HKFE to deposit the monies into segregated accounts within two days after receipt.

(b) Insurance, self-insurance, bonding, other.

CFTC

There is no central insurance program for the commodity futures industry governed either by the CFTC or any self-regulatory organization.

SEC

With respect to securities in the U.S., the Securities Investor Protection Corporation (SIPC) was created by Congress pursuant to the Securities Investor Protestion Act of 1970 (SIPA) to provide protection to customers of B/Ds and, thereby, promote investor confidence in the nation's securities markets. SIPC accomplishes this goal by providing specific, limited protection to customers of securities firms which are forced to liquidate. In the event of the financial failure of a SIPC member, SIPC protects each customer up to $500,000 for claims for cash and securities, except that claims for cash are limited to $100,000 per customer.

SIPC is a non-profit membership corporation of which all B/Ds registered under Section 15(b) of the 34 Act, with some minor exceptions, are members. If a member fails financially, SIPC may ask a federal court to appoint a trustee to liquidate the firm and protect its customers, or, in limited situations involving small firms, SIPC may protect the customers directly. In both cases, protection of securities customers is similar. In addition, the rules of the SROs require their members doing business with the public to have fidelity bond coverage. (See, e.g., New York Stock Exchange Rule 319).

SIB

The concept of segregation in the UK is supplemented by the existence of a compensation fund which was established pursuant to Section 54 of the FSA. In accordance with its responsibilities under that Section, SIB has promulgated rules, Financial Services (Compensation of Investors) Rules 1990 (Compensation Rules), establishing the Investors' Compensation Scheme. The objective of the Scheme is to provide an additional "safety net" for purposes of compensating investors whose funds were treated as client money in instances where, as a result of a default, an authorised business is unable to satisfy its

obligations to all of its customers. The Scheme will compensate customers ("eligible investors," as defined) who have suffered loss resulting from the default in connection with investment business conducted on or after August 27, 1988. Generally, eligible investors are those investors who are not business or professional investors.

The administration of the Scheme is conducted by an independent management company (Compensation Rules, 1.03). The Scheme is intended to fund valid claims as follows: 100% of the first £30,000 plus 90% of the next £20,000 (maximum £48,000 per investor claim) up to £100 million in the aggregate for all claims annually. The compensation costs will be recovered primarily by a levy on the members of the SRO in which the default occurred (Compensation Rules, 2.07).

COB

CONSOB

Under the Italian regulatory system, stockbrokers are required to contribute to a mandatory insurance scheme ("Fondo di Garanzia") which operates in favor both of clients and other intermediaries in case of insolvency of one of the stockbrokers. In addition, Italian stockbrokers have set up, on a voluntary basis, an additional insurance scheme.

MOF

NCSC

In Australia there does not exist a requirement to be insured. There is, however, a statutory requirement for the establishment and maintenance by a futures exchange or a futures association of a Fidelity Fund. An organisation may be exempted from the requirement to provide the basic amount necessary for the establishment of the Fund if it has entered into a contract in a form approved by the Ministerial Council with an insurer approved by the Ministerial Council under which the insurer undertakes to supplement the Fund in the event of a claim being made on the Fund.

The SFE, AFFM and the ASX all have Fidelity Funds. The current value of the SFE Fidelity Fund is approximately $A7,000,000.

The AFFM Fidelity Fund is currently at $A904,000. Members pay an annual contribution of $A1,000 per member and $A1,000 on joining. It is intended, by the AFFM, to convert to fee per transaction when turnover is at a higher level. The current value of the ASX Fidelity Fund is approximately $A72,000,000.

OSC

Dealers must belong to the TFE, which has its own contingency fund. Most dealers also belong to the CIPF. The CIPF has $70,000,000 Cdn for customer losses. In addition, the TFE and the OSC require dealers to maintain insurance to cover misappropriation and fraud.

CVMQ

SFC

The HKFE is required to contribute to a Compensation Fund in respect of each shareholder. The Compensation Fund is available to meet claims of clients in the event of defaults of HKFE members. The maximum payment out of the Compensation Fund in respect of each defaulting shareholder is HKD2 million.

(c) Investment requirements and restrictions

CFTC

§4d(2) of the CEA and rule 1.25 permit FCMs and clearing organizations to invest customer funds in obligations of the U.S., general obligations of any State or of any political subdivision thereof, and obligations fully guaranteed as to principal and interest (i.e., backed by full faith and credit) by the U.S. Such investments must be made through an account or accounts used for the deposit of customer funds. Proceeds from any sale of such obligations must be redeposited in such account or accounts.

An investment of customer funds in municipal securities must be highly liquid and readily marketable to be consistent with §4d(2) of the CEA.

FCMs or clearing organizations that invest customer funds must, according to rule 1.27, keep a record showing, among other things, the date on which investments were made and liquidated or otherwise disposed of and the amount thereof, the identity of the depositories or other places where such obligations are segregated, and the names of the persons through whom the investments were made or liquidated.

CFTC rule 1.23 provides that §4d(2) and rule 1.20 thereunder which prohibit commingling of customer funds with those of an FCM should not be construed to prevent an FCM from having a residual financial interest in customer funds. (For example, an FCM may deposit its own money into the segregated customer account to provide a cushion.) Moreover, rule 1.29 provides that interest or any increment resulting from an investment of customer funds may be retained by the FCM or clearing organization that invested those funds.

SEC

Rule 15c3-3 prevents a B/D from using customer money to finance its business, except as related to customer transactions, since customer monies (the credits) can be offset only by customer related transactions (the debits). The balance must be deposited with a bank or banks in a special reserve bank account for the exclusive benefit of customers and may not be used by the B/D to finance the remainder of its business. (The B/D may keep interest earned on the special reserve bank account.) The B/D must therefore provide the capital to finance its firm activities and assets and may not rely upon customers' monies left with the firm for such purposes.

SIB

In the UK, client money is held in trust on behalf of those customers who have not opted out of segregation (where permitted) (CMRs, 2.2). Client money must be held in an approved bank account.

COB

CONSOB

MOF

The Japan Securities Dealers Association prohibits the trading of securities for the account of customers under a discretionary authority.

NCSC

In Australia, in relation to segregated accounts, the futures broker may only invest the funds:

- in any manner that trustees are for the time being authorised by law to invest in trust funds;

- on deposit with a corporation that is declared by the Commission to be an authorised dealer in the short term money market;

- on deposit at interest with a banking corporation;

- on deposit with a clearing house for a futures exchange; or

- in the purchase of eligible prescribed interests.

In relation to the Fidelity Fund, any monies that are not immediately required for the purposes of the fund may be

invested in any manner in which trustees are for the time being authorised by law to invest trust funds or on deposit with a corporation declared by the Commission to be an authorised dealer in the short term money market.

OSC

Dealers are subject to minimum capital requirements and certain other capital rules prescribed by regulation, the SROs, TCO and the TFE. Pursuant to subsection 33(3) of the Regulations made under the CFA futures commission merchants shall invest money, proceeds or funds segregated for the benefit of customers in bonds, debentures and other evidences of indebtedness:

(a) of or generated by the Government of Canada or any province of Canada, the Government of the United States or any state thereof;

(b) of or guaranteed by a bank to which the Bank Act applies or a loan or trust company to which the Loan and Trust Companies Act applies or an insurance company to which the Insurance Act applies; or

(c) of or guaranteed by a bank which is a member of the Federal Reserve Board in the United States of America, maturing not more than 2 years from the date of purchase.

As indicated above, the segregation rules apply to only those dealers not otherwise members of the CIPF.

CVMQ

SFC

The CTO and HKFE rules require all dealers to keep clients' money in a licensed bank or deposit-taking company in Hong Kong or with an organization approved by the Commission. No other investment requirements and restrictions in respect of clients' funds have been stipulated either in the CTO or HKFE rules.

(d) Good depositories

CFTC

§4d(2) of the CEA and rule 1.20 identify banks, trust companies, clearing organizations or another FCM as good depositories. The CFTC has generally required that segregated funds be maintained at a domestic bank or at a U.S. branch of a foreign bank. However, Financial and Segregation Interpretation No. 12, 1 Comm. Fut. L. Rep. (CCH) ¶ 7,122, permits FCMs to deposit segregated funds in banks located outside the U.S. if the customer is trading a U.S. contract denominated and cleared in a foreign currency. Among other things, such a customer must enter into an agreement subordinating his claim attributable to funds held offshore to the claims of customers whose funds are held in U.S. segregated accounts.

SEC

The first part of Rule 15c3-3 requires the B/D to have possession or control of all fully paid and excess margin securities of customers. The customer securities that are not within a B/D's physical possession must be at one of seven control locations specified in the rule, which under certain circumstances may include: a clearing corporation; a special omnibus account; bona fide items of transfer; a foreign depository, clearing agency, or custodian bank; a bank (as defined under the rule); items in transit between B/Ds, clearing corporations, or other offices of a single B/D; and locations designated by the SEC. The B/D must make a daily determination to ensure that it is complying with this aspect of the rule.

SIB

For purposes of the CMRs, an "approved bank" includes the Bank of England, the central bank of another member state of the European Economic Community (EEC), any institution authorised under either the UK Banking Act 1987 or Building Societies Act 1986, any overseas banking subsidiary or parent of an approved bank, or an authorised credit institution in another member state of the EEC (CMRs, 1.3(1)). This will include, for example, United States banks which are authorised to conduct banking business in the UK or which have subsidiaries or parents who are authorised to conduct banking business in the UK. Pursuant to CMR 3.1, firms must also obtain written acknowledgement from such depositories that funds held in these accounts are funds of customers and that interest payable will be credited to the customer's account. Under CMR 2.3, unless the client expressly agrees otherwise, clients are entitled to receive interest on excess funds held by firms. Funds held for margined transactions do not attract interest to the client.

Although the rules permit client money to be maintained in offshore depositories, CMR 2.2(2) provides that to the extent client funds are held in an overseas client bank account, in the event of a shortfall in that account resulting from the insolvency of that bank or the refusal by the bank to recognise such funds as funds of customers, the claims of clients whose client money was held in that overseas account will be subordinated to the valid claims of all other clients.

COB

CONSOB

MOF

NCSC

Prior to the introduction of the Segregated Accounts requirements the approved depositories of client funds were Corporations approved by the SFE. Subsequent to the introduction of

the (FIC) those requirements were determined by the list of approved investments set out in Section 86(5)(d) of the FIC. The main effect was to disqualify a number of merchant banks as approved depositories and to permit investments in certain authorised trustee investments.

A deposit institution for the purposes of the CFA refers to

1. a chartered bank of Canada;
2. a loan or trust company to which the Loan and Trust Companies Act applies;
3. a credit union or caisse populaire to which the Credit Union or Caisse Populaire Act applies; and
4. a member commercial bank of the Federal Reserve System of the United States.

CVMQ

SFC

See II.A.5.(c) above.

6. Default, insolvency or bankruptcy provisions

(a) Priorities - (clearing, customers)

CFTC

In the case of an FCM bankruptcy, Chapter 7, Subchapter IV of the Bankruptcy Code, §20 of the CEA and part 190 of the CFTC regulations provide for pro rata distribution of customer segregated funds among the public customers of the FCM in priority to all other claims except costs of administration. "Public customers" does not include the FCM with respect to its own trading account and its officers, directors or other affiliates with respect to their personal trading accounts.

For purposes of determining this pro rata distribution, all property segregated on behalf of or otherwise traceable to, a particular account class is to be allocated to that class in conformity with rule 190.08(c)(1). All other property is allocated among all account classes using a formula intended to equalize the percentage of each claim for each class of accounts. See rule 190.08(c)(2). Specifically identifiable property may be returned or transferred on behalf of the customer, rather than liquidated, under certain circumstances. See rule 190.08(a)(1)(ii)(C).

If funds in the public customers' segregated accounts are insufficient to satisfy customer claims the FCM's remaining assets will be used to satisfy the claims of public customers. Rule 190.08(a)(1)(ii)(J). The FCM's remaining assets are then available for distribution to the FCM's general creditors.

SEC

With respect to securities B/Ds, SIPC protects the cash and securities of the customers of member B/Ds that fail financially. Customers are persons with claims for securities received, acquired or held by the firm from or for the securities accounts of such persons for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting a transfer. Persons who have cash on deposit with a firm for the purpose of purchasing securities or as a result of sales thereof also are considered customers.

SIB

Generally, in the event of an insolvent default by a firm, those customers who have not opted out of segregation, by virtue of their funds being held for them in trust by the firm, will receive priority for their claims, that is, before other customers and general creditors of the firm. In circumstances where funds in the segregated accounts of a defaulting firm are insufficient to cover customer claims, recourse may be had by qualifying customers to the Compensation Scheme (see item II.A.5.(b) above. The FSA contemplates in specific circumstances, an application by the Secretary of State to the court for an order requiring the person (i.e., defaulting firm) concerned to pay such sum as appears to the court to be just having regard to accrued profits, extent of loss or other adverse effect (FSA, s.61).

In circumstances where customer funds are not segregated, those customers rank pari passu with other general unsecured creditors.

The Companies Act 1989 was recently enacted in the UK; Part VII specifically addresses the question of insolvency in relation to financial markets. While Part VII is not yet in force in the UK, it is expected to become effective in the autumn of 1990.

The provisions of Part VII of the Companies Act 1989 (Companies Act) are principally intended to protect the integrity of the market place; the legislation does not seek to protect individual brokers from the consequences of insolvent default of customers nor does it seek to protect customers in the event of insolvent default by their broker. The latter, in respect of customers who are not business, experienced or professional investors, is provided for in the Compensation Scheme (see item II.A.5(b), above).

Where a firm is a member of an exchange and that firm defaults or appears to be unable to meet its obligations, the operation of the new provisions regarding financial markets and

insolvency in respect of market contracts serves to modify the general law of insolvency.

The provisions of the Companies Act may, at the option of the exchange, also apply to market contracts of participants in the market, other than members of an exchange, in relation to whom a failure to meet obligations in respect of those contracts would likely adversely affect the operation of the market (Companies Act, Schedule 21, paragraph 4). These significant participants in the market are referred to as designated non-members.

The risk to the market, in the absence of provisions modifying the application of the general law of insolvency, flows from the powers of a "Relevant Office-Holder" (including, inter alia, the official receiver, a liquidator, trustee in bankruptcy or any person acting as administrator of an insolvent estate of a deceased person) to rely on the insolvency rules to "cherry-pick" in relation to the insolvent's market contracts, enforcing those which are profitable and leaving those which are not.

Part VII requires RIEs and RCHs to implement default rules which, in the event of a member of the exchange (and a designated non-member) appearing to be unable to meet his obligations in respect of market contracts, enable action to be taken in respect of unsettled market contracts to which he is party (Companies Act, Schedule 21, paragraph 1). Under the default rules, an exchange or clearing house may arrange for the immediate closing out of open positions held by the defaulter and proceed with the netting down of profits and losses so as to produce a single net sum to be paid by or to the defaulter. The general law of insolvency does not apply to restrict the actions of the exchange or to render unenforceable those contracts which are entered into to close out positions.

The rules must provide for all rights and liabilities, between those parties as principals (one of the parties being the defaulter), to be discharged and for there to be paid by one party to the other such sum of money (if any) which is determined in accordance with the rules. This net sum is certified by the exchange or clearing house upon the completion of proceedings under the default rules.

COB

The French FM law, and for the MONEP, the law of the 22nd of January, provide that the full performance of all contracts recorded with the clearing house will be guaranteed by the clearing house. That means that the customers have an absolute priority. In the case of any market member's insolvency, initial and variation margin paid by its customers are repaid by the clearing house. Furthermore, as clearing houses, MATIF S.A., OMF and SCMC are substituted as parties to all

transactions. Therefore, the market member's "insolvency" has no effect on the other market members or on their customers. The practical effect of this guarantee is exactly the same as segregation of funds. The customers are sure to get back their funds and securities, even in the event of a firm failure. Funds received by commodities intermediaries are kept in a specific account in a bank. There is one account per intermediary. Commodities and valuables are transmitted to the bank where this account is opened. There cannot be any fusion of this account with any other account of the intermediary in this bank.

CONSOB

Under Italian law, if a financial intermediary fails to pay or deliver securities, the Stockbroker's Council is entitled to sell all the intermediary's securities and the proceeds are distributed among all the market creditors. Stockbrokers have a special compensation scheme to cover such losses. See II.A.5.(b) above.

MOF

In Japan every securities company is required to set aside in reserve an amount of money which is used to offset losses incurred as a result of accidents relating to securities trading and other transactions. The amount of money required to be set aside is related to the volume of trading the firm does.

NCSC

In Australia segregated accounts protect customers in the event that liquidation proceedings or bankruptcy occurs. There is no segregation of funds at the Clearing house level.

There are no special insolvency provisions, because the segregated account provisions are intended to achieve the same result. A segregated account is a trust account in all but name, the broker having no right to mix the client's money with his own money or to use it, except as authorized by the client, to meet the client's margin calls or to deposit it on the short-term money market or in a cash trust on the client's account.

Generally in Australian insolvency law, a trust fund is not available to the creditors of the trustee. The provisions requiring futures broker to hold client money and property apart from their own assets and to deal with it only on the client's account appear to have been intended to attract this principle.

It is relevant to this point of construction and directly relevant to the protection of the client that the fidelity fund

provisions provide for compensation to be paid to clients who "entrusted" money or other property to a broker, by whose fault the money or other property is lost.

The non-existence of segregation at clearing house level could in a worse case situation result in a lower level of safety for client funds in the event of a default of a Member firm. Segregation is an important feature of the SFE's proposed clearing house arrangements.

OSC

Customers are unsecured creditors and are treated as such in bankruptcy proceedings. Customers may be compensated from the CIPF or the TFE Contingency Fund for any shortfall.

CVMQ

National Contingency Funds

See II.A.1.(a) above.

TCO

No Exchange transaction shall be cleared by TCO for any clearing member at any time when such clearing member does not meet the minimum capital requirements prescribed by the TCO rules.

If the Board shall at any time determine that the financial or operational condition of a clearing member makes it necessary or advisable, for the protection of TCO, other clearing members or the general public, to impose restrictions on such clearing member's positions with TCO, the Board shall have the authority:

- to prohibit or to impose limitations on the clearance of opening purchase transactions or opening writing transactions by such clearing member;

- to require such clearing member to reduce or eliminate existing long positions or short positions in such clearing member's accounts with TCO; and/or

- to require such clearing member to transfer any account maintained by such clearing member with TCO, any position maintained in any such account, or any account carried by such clearing member, to another clearing member.

A clearing member that is unable to meet its obligations or is insolvent shall immediately notify TCO.

Upon receipt from a clearing member of the notice, or upon the suspension or expulsion of a clearing member from membership in an Exchange, or whenever it shall appear to the Board or to the

chairman of the Board together with any two directors of TCO that a clearing member has failed to perform its obligations or is insolvent or is in such financial or operating condition that it cannot be permitted to continue in business with safety to its creditors, the Board, or the chairman of the Board together with any two directors of TCO, shall suspend the clearing member and TCO shall cease to act for it except as specified in Section A-403 to A-409 of the TCO rules.

Measures taken by TCO

Creation of Liquidating Settlement Account (Section A-404)

Pending Transactions (A-405)

- with respect to open positions and accepted transactions in futures;

- with respect to options;

  -- Open positions (A-406)
  -- Exercised options and tender notices (A-407)
  -- Amounts payable to the TCO (A-408)
  -- Member claims (A-409)

SFC

There are no specific priorities given to HKCC or customers under insolvency legislation.

(b) Position treatment

CFTC

Under CFTC regulations the trustee in bankruptcy has the authority to, among other things, close out futures and option positions (rule 190.03(b)), to make margin payments and calls (rule 190.02(g)), to make or accept delivery on commodity contracts (rule 190.05) and to deposit additional margin up to the amount of a customer's pro rata share of segregated property (rule 190.02(g)).

SEC

Under SEC rules, if a transfer of customer accounts, as discussed below, is not feasible, protection will be afforded customers in the following manner: customers are entitled first to a return of all securities registered in their own names. If securities registered in customer name are not present in sufficient quantity to satisfy customer claims, customers are then entitled to their pro rata share of customer cash and securities held by the firm. To the extent that the foregoing is insufficient to satisfy customer claims, SIPC is authorized to make advances to the limits afforded by SIPA,

currently $500,000 (including no more than $100,000 for cash claims). Finally, if a customer's claim still is not satisfied, the customer will become a general creditor of the estate.

SIB

The powers of Relevant Office Holders (ROHs) shall not be exercised in such a way as to prevent or interfere with any action taken under the default rules of an exchange or clearing house (Companies Act, s.159(2)). The exchange and clearing house will, upon the triggering of the relevant default rules, commence the closing out of positions held by a defaulting member or designated non-member to discharge the rights and liabilities between those party as principal to unsettled market contracts and for there to be paid by one party to the other a net sum. The default rules may vary as between exchanges (and clearing houses). While these rules have not yet been submitted for review, it is unlikely that they would contemplate the making or taking of delivery of commodity contracts. While futures contracts (being principal/principal) will be closed out, it may, in given circumstances, be appropriate to transfer customer accounts in respect of any dealings by the firm as agent.

COB

In France the clearing house guarantees the customer's position in the case of a market member's insolvency.

CONSOB

MOF

NCSC

In the event of a Member default either a receiver or Manager or liquidator would be appointed. The SFE under its rules also has power to appoint a member to manage client positions and to enable their transfer to another Member and the Chairman and Deputy Chairman of the SFE have power of attorney for this purpose. Otherwise a receiver and manager or liquidator appointed to a Company would have all of the powers that the Member previously had, subject always to the segregated accounts requirements of the FIC which protect client funds from the general creditors of the broker and subject to the right of clients to arrange for the transfer of positions. Subject to law as mentioned the SFE does have power to appoint a Member to manage the transfer of client positions.

The powers of the AFFM in the event of Member failure are specified at AFFM Article 77 and 78. The NCSC has power to apply to the Court under Section 101 of the FIC to restrain dealings in the accounts of a bankrupt futures broker.

ICCH has no specific rules dealing with the transferability of positions although the Exchanges would in such circumstances seek the co-operation of the Clearing House in transferring non-defaulting client positions to another Member. This has operated satisfactorily in two recent cases which did not involve a clearing house default, but did involve the appointment of liquidators.

OSC

A trustee in bankruptcy may close out futures and options positions. Recent case law suggests a margin payment may be a fraudulent preference and hence may be attached by creditors. A trustee in bankruptcy may make or accept delivery on futures contracts.

CMVQ

SFC

HKCC rules authorize it to close out a defaulting member's position through new contracts with other members. Where a defaulting HKCC member has registered in his name HKCC contracts for purchase and sale of an equal number of lots of a particular deliverable item for the same delivery month, HKCC is entitled to treat each of those contracts as if it had been closed out at the Official Quotation price on the day of default.

(c) Position transferability

CFTC

The trustee in bankruptcy is required under rule 190.02(e) to use his best efforts to transfer all customer accounts to another FCM.

Transfers of positions within four days of bankruptcy are protected from avoidance except for fraud. Bankruptcy Code §764.

Rule 190.06(e) provides that generally, all accounts are eligible for transfer except, among other accounts, house accounts, or if a partnership, the accounts of general partners, accounts which contain no open commodity contracts and accounts which are in deficit.

SEC

The trustee may arrange to have customer accounts of a failed firm transferred in bulk to another SIPC member. Customers whose accounts are transferred are notified promptly and permitted to deal with the new firm or subsequently transfer their accounts to firms of their own choosing.

In a SIPA liquidation, all exchange-traded securities option positions of customers will be closed with the exception of covered short positions when the customer's broker has caused the cover to be deposited with either its correspondent broker or the Options Clearing Corporation. The account of the customer shall be credited or debited, as appropriate, based upon the nature of the options position on the filing date of the SIPA proceeding (See SIPC Rule 400).

SIB

See II.A.6.(b) above.

COB

In the event of default, the clearing house transfers all opened positions to another market member's books. It repays the initial and variation margin to the credit of the customer's account by this new market member. The customer may designate the new market member which will hold its account. Otherwise the clearing house designates itself the new account holder among the market members.

CONSOB

MOF

NCSC

Arrangements can be made under the ICCH rules for transferability on contracts traded on the SFE.

OSC

CVMQ

SFC

HKCC can transfer any open contract registered in the name of a defaulting HKCC member into the name of another HKCC member who agrees to accept such transfer together with any initial or variation margin held by the Clearing House in respect of such contracts.

7. Market disruptions; firm financial problems

(a) Early warning or increased reporting requirements

CFTC

The "early" warning provisions in rule 1.12(b) require that each FCM who knows or should have known that its adjusted net capital was less than 150% of the minimum amount required must

file written notice with the CFTC within 5 days. See II.A.1.(d) above.

Rule 1.12(d) requires that whenever an FCM discovers or is notified by an independent public accountant of a material inadequacy in its accounting system or procedures it must notify the CFTC within 3 days.

The Intermarket Communications Group (ICG), which consists of both securities and commodities exchanges, has established a system called INFOE by which the exchanges may transmit price information during market declines. For example, the ICG's procedures, as of October 13, 1989, required the CME to notify the exchanges when the S&P 500 index had fallen eight points.

SEC

Rule 17a-11 under the 34 Act sets forth the SEC early warning system. The early warning system provides mechanisms by which the SEC's and the SROs are made aware of those B/Ds experiencing financial or operational difficulties. When a firm crosses one of the parameters of the rule, it is required to immediately notify the SEC and its designated SRO and the (CFTC) if the B/D is registered with the CFTC. This notification is followed by appropriate reporting.

Several occurrences trigger the requirements of Rule 17a-11. For instance, when a B/D: (1) has failed to maintain its minimum required net capital; (2) has "satisfactory subordination agreements" in excess of the maximum allowable amount; (3) has aggregate indebtedness in excess of 1200 percent of the firm's net capital; (4) has total net capital less than 120 percent of the firm's minimum net capital; (5) has net capital less than five percent of aggregate debit items, it is responsible for complying with the provisions of Rule 17a-11. Other events which implicate the provisions of Rule 17a-11 are a dealer's failure to deposit collateral in a specialist or market maker account; a B/D's failure to make and keep current its books and records specified in Rule 17a-3; and the existence of a material inadequacy in the B/D's accounting system, internal audit controls, or procedures for safeguarding securities. Additionally, Rules 15c3-1 and 17a-11 are applicable to a B/D that carries options specialists' accounts or whose net capital will reach the above parameters due to the expiration of certain subordination agreements.

SIB

The clearing houses and exchanges monitor members' overall positions on a daily basis; this assessment includes a review of the potential risks associated with each firm's exposure.

The principal UK clearing house uses a direct debit system in respect of clearing members' accounts. Where the direct debit

order cannot be satisfied, the firm is deemed to be in default and, pursuant to clearing house rules, and with the cooperation and agreement of the relevant exchanges, action may be undertaken to close out or transfer those members' positions to other clearing members.

The Financial Services Regulations 1987 (Financial Notification Regulations) require a firm to notify SIB or the relevant SRO, as the case may be, where the firm has reason to believe that it is or will be in breach of the Financial Resources Rules (Financial Notification Regulations, 2.01(1)). The firm shall, upon giving notice, specify the steps which the firm is taking or has taken to remedy the breach (Financial Notification Regulations, 2.01(2)).

A firm which is a Category 4 firm (see item II.A.1(c), above) must notify SIB, or the relevant SRO, if the firm has reason to believe that its liability in respect of unsecured loans exceeds ten times its net assets (for these purposes, unsecured loans do not include long term and short term eligible subordinated loans or liabilities to repay money borrowed to finance the purchase of investments to the extent that the firm's position in those investments is a long position) (Financial Notification Regulations, 2.04(1)).

A firm is required to notify SIB or the relevant SRO if it has not carried out the reconciliations required by rule 7 of the Financial Services (Financial Records) Rules 1987 (i.e., the reconciliation of client money) or, if having done so, it is unable to correct any difference as required by that rule (Financial Notification Regulations, 2.11(1)).

COB

Routine and permanent control is exercised on all members by the appropriate regulatory agency (Banking Commission, Societes des Bourses Francaises on behalf of the CBV, Bank of France).

Each market participant on the financial futures market must inform the clearing house promptly of any circumstance or event regarding its financial condition which may affect its solvency. It must also consent in advance to the disclosure of such information to the clearing house by all relevant supervisory or regulatory agencies (Banking Commission, Banque de France and CBV).

Each commodities broker is required to notify the CMT immediately if its net capital no longer meets the capital requirements. Members send their books and balance sheet to the clearing house. Every note establishing external guarantees and modification in a member's financial situation will be sent to the clearing house.

CONSOB

MOF

Stock exchanges can suspend a member if the member has become insolvent or is deemed likely to become insolvent.

NCSC

Daily position reporting of significant client positions is reported to the SFE.

AFFM Regulation 101.3 requires that "Each Futures Organisation shall promptly notify the Board if its Adjusted Liquid Capital is at any time less than the minimum amount . . . . ".

SFE Members are required to make a report to the SFE if their NTA requirements fall below 150% of the minimum requirement. SFE monitors positions and undertakes investigations where necessary. SFE has wide powers to take action if any undesirable market situation arises. AFFM insures that its rules and regulations are abided.

OSC

The TFE, IDA and the OSC require dealers to maintain and file detailed financial records (see II.A.(8)(a) below). In addition, the TFE is required by its rules and the OSC to maintain detailed trade records. Both the TFE and the OSC have jurisdiction to increase reporting requirements.

Members may be suspended if a panel auditor, exchange auditor, the IDA or the exchange determines that the member is insolvent, undercapitalized or that its financial or operational condition is such that its confined operation would be prejudicial to the public. An early warning system has been instituted by the TFE and the IDA.

CVMQ

ME

- Notice of noncompliance

Immediate notice shall be given to the ME by a member, permit holder or approved person in the event that:

-- such member, permit holder or approved person has failed to comply or no longer complies with an Exchange Regulation,

-- such member, permit holder or approved person is no longer able to meet its engagements or becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy Act, or

-- early warning notice.

- Price limits.

SFC

HKFE members are required to report to the HKFE the names of clients holding "Large Open Positions." HKFE analyzes these positions to determine if they pose significant risk to HKFE/HKCC. The HKFE can exercise its discretionary power to direct the clearing member to reduce such positions or to require "super margins."

As noted above, HKCC imposes and monitors position limits for each member based on capital. HKCC also monitors each member's open positions (including intra-day changes in position) and projected liquidation value.

(b) Price limits, circuit breakers

CFTC

In general, each exchange determines the price limits for a particular contract traded at that exchange. At CME and NYMEX, for example, the daily price limits are contained in each contract and vary contract by contract. In most contracts, however, the limits do not apply on the final day of trading. Certain contracts do not have price limits, however, most agricultural soft commodities have such price limits.

Most exchanges have rules permitting the limits to increase should there be successive days of trading at the limit. CBT Rule 1008.01(B) provides, for example, that if three or more contracts within a contract year close on the limit for three successive days, then the limit would be raised to 150% of its current level, where it would remain until contracts stopped trading at the limit on any one day.

Subsequent to the market crash of October 1987, all commodity exchanges trading securities derivative products have adopted coordinated circuit breaker rules which are designed to become effective when stock indices fall by specified amounts. The circuit breaker mechanisms include price limits and trading halts of specified durations followed by coordinated reopening procedures across markets.

In response to the extreme volatility in the markets on October 13-16, 1989, the CME, CBT and KCBT each has submitted proposed amendments to its circuit breaker rules. The CME's proposals would impose a new interim circuit breaker at 20, instead of 30, S&P 500 index points that would last for one hour, unless this limit were hit after 1:30pm CT in which case the limit would apply for the remainder of the day. The CME would eliminate the current 50 point maximum allowable daily move in

the S&P 500 index futures contract and establish 30 points as the daily limit move. KCBT and CBT have made proposals that are in conformance with those of the CME. There is regulatory interest in assuring futures circuit breakers are appropriately coordinated with "halts" in the underlying markets.

SEC

Neither the SEC nor the securities or options SROs have imposed limits on the amount by which the price of an individual stock or option may fluctuate in any given day. The SEC, however, has approved procedures (called "circuit breakers") by which options trading as well as securities and futures trading will halt when the Dow Jones Industrial Average ("DJIA") declines below certain pre-set limits.

Specifically, pursuant to rules of stock, options and commodities SROs, equities, options, and stock index futures will halt trading for one hour if the DJIA declines 250 points below the previous day's closing value. Trading will resume at the conclusion of the one hour halt. If the DJIA subsequently declines 150 additional points (total of 400 point decline) in the same trading day a two hour trading halt is called. In addition, the options exchanges have rules permitting the exchange to halt trading in other circumstances. For example, when the CME S&P 500 futures reach their 12 point price limit.

SIB

Whilst exchange rules vary, some provide for the temporary cessation of trading on a specified price limit move whereafter trading is resumed generally without limit. The length of time during which trading may cease will vary according to the exchange. Price limits will vary according to the contract being traded. At the discretion of the exchange, these may be altered.

Exchange rules also provide for emergency measures including cessation of trading with a view to maintaining orderly conduct of business. In the context of exchanges and clearing houses, the FSA imposes strict requirements of cooperation through the sharing of information and otherwise with any authorities, bodies or persons having responsibility for the supervision or regulation of investment business or other financial services (FSA, Schedule 4, and s.39).

COB

For each contract price, limits are determined. There may be no price limit for the nearest maturity of the contract in order to facilitate the convergence of cash and future prices. If the price limit is reached trading is stopped. If the price limit is reached again after reopening the market, the clearing house calls complementary margins. Trading can be stopped by

the clearing house for more than one hour. If necessary the chairman of the CMT can stop the trading for a longer time. Complementary margins are calculated as being the difference between the price at the limit and the price at the last margin calls. In practice, the clearing house can modulate to take account of an emergency situation.

CONSOB

The CONSOB has established an intervention group (Gruppo di intervento) which is entrusted with the task of postponing or suspending the trading on a security when the price fluctuates more than some imposed limit. Regulations also provide for emergency measures, including cessation of trading, with a view to maintaining orderly conduct of business.

MOF

Stock exchanges have price limits as shown below:

- JGB futures: approximately 2.0% of last closing price

- T-bond futures: approximately 3.0% of last closing price of CBOT

- Stock index futures: approximately 3.0% of last closing price

- Stock index options: approximately 3.0% of last index value of the cash market

Trading by prices over or under the price limit is not allowed till closing time.

When stock index futures of one exchange reaches the price limit and another similar product of another exchange doesn't, one may increase the price limit of the former one, in order to coordinate the operations of the two markets.

Implementation or exercise of the emergency measures depends on the judgement of the market situation by the MOF and the stock exchanges.

NCSC

There are no price limits or circuit breakers.

OSC

OSC regulation requires the TFE to have price limits on its contracts. The daily price limit on the TSE 35 contract is 9 index points or $4500.00/contract. The expanded price limit is 13.50 index points or $6,750/contract. In addition, the TFE has circuit breakers on stock index futures which track circuit breakers on the Toronto and New York stock exchanges.

CVMQ

SFC

Trading in HIBOR contracts is conducted within a daily fluctuation limit (currently at 125 basis points above or below the settlement price of the previous day) and within an expanded fluctuation limit (i.e. 200% of the daily fluctuation limit) for 3 business days following the day whenever the market closes limit up or down. There are no trading limits on the last five business days of a HIBOR contract.

The daily price fluctuation limit in respect of HSI futures contracts is 100 index points. On reaching the trading limits, the market is closed for 30 minutes. There is no trading limit for the spot month.

(c) Super margins

CFTC

Some exchanges have established rules for calling additional margins when market conditions and price fluctuations cause the responsible official to conclude that additional margins are required to maintain an orderly market or to preserve fiscal integrity. See, e.g., CME Rule 828A.

NYMEX Rule 9.20(C) permits a clearing member to have a position in excess of its aggregate position limits provided that the clearing member deposits with the clearing house two times the original margin or straddle margin required for a futures contract at the highest rate of original margin for any futures contract. CSC has a similar rule for expanding capital based position limits.

SEC

B/Ds and OCC have the authority to request the payment of increased margins on an intraday basis on a firm-by-firm basis as conditions warrant. Generally, OCC will make an intra-day margin call to protect against extreme intra-day market volatility.

SIB

Additional margin requirements may be imposed across the board at the discretion of the exchange during, for example, times of particularly high volatility.

An exchange/clearing house may determine that an individual clearing member firm is particularly at risk and may impose on that clearing member additional margin requirements in excess of those imposed on other clearing members.

COB

CONSOB

The CONSOB can take measures for interrupting the trading of a specific security and/or adjourning the trading session. It has the authority to modify the margin percentage. The financial intermediary must request the customer to deposit when, under particular market conditions or other circumstances, the Commission considers this measure necessary.

MOF

In case of emergency, stock exchanges can increase margin levels.

NCSC

This is at the discretion of the Clearing House (ICCH) and the members of the SFE.

Margining is the responsibility of ICCH. Any change to margining procedure is only implemented after full consultation with the Exchange.

In relation to the AFFM the financial status of Members is principally assessed on the basis of capital liquidity rather than an asset calculation.

For Member Corporations AFFM Regulation 101.1(ii) specifies that Adjusted Liquid Capital should be not less than $A250,000 or 5% of Aggregate Indebtedness which is the greater. Regulation 106 requires all Members to lodge Annual Accounts with the Exchange not later than 31 August in each year.

In addition Regulation 107 provides the Examining Accountant with considerable authority for investigation at other times. It has been standard practice for the Examining Accountant to require the quarterly submission of "Liquid Capital Calculations" by all Member firms. This accords with policy adhered to by the Australian Stock Exchange.

OSC

The TFE and TCO each have rules which enable them to increase margins as necessary in emergency situations. The OSC, pursuant to subsection 19(2) of the CFA may, where it appears to it to be in the public interest, set higher margin levels.

CVMQ

SFC

HKCC rules allow for additional margins or intra-day variation margin calls to be made. Members are required to meet these calls within one hour.

8. Recordkeeping (specify types and manner of financial records to be maintained (e.g., accounting records using GAAP)); retention period, availability, and confidentiality.

(a) Who maintains, and where

(b) Who has access, and when

CFTC

Rule 1.31 requires all books and records to be kept for a period of five years and to be readily accessible during the first 2 years of the 5-year period. All books and records must be open to inspection by any representative of the CFTC or the U.S. Department of Justice.

Under rule 1.31(b) and (c), computer, accounting machine, or business machine generated records may be immediately produced or reproduced on microfilm and kept in that form. For all other books and records, microfilm copies may be substituted for the hard copy for the final three years of the 5-year period. Such microfilm records must be arranged and indexed and must be easily accessible.

Pursuant to rule 1.18, FCMs and IBs (except for IBs operating pursuant to a guarantee agreement, unless also a B/D) must prepare and keep current ledgers which show each transaction affecting asset, liability, income, expense and capital accounts consistently with the form 1-FR (or the FOCUS Report if a B/D), and make a formal computation of their adjusted net capital and their minimum financial requirements as of the close of business each month.

Pursuant to rule 1.27 each FCM which invests customer funds must keep a record which shows the details of the investment, including the size and type of investment, the date of the investment, and any disposition made of the investment.

Rule 1.32 requires an FCM to compute each day the customer funds in segregated accounts and the FCM's residual interest in those funds.

Under rule 1.34 each FCM is to prepare a monthly balance of all open positions which brings to the closing or settlement price all open futures and option positions.

Rule 1.35(a) contains the general recordkeeping requirements for FCMs and IBs with respect to futures, commodity options,

and cash commodity transactions. FCMs and IBs must keep full, complete, and systematic records, together with all pertinent data and memoranda. Records to be kept include all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of its business.

Rule 1.35(a-1)(1)-(4) requires FCMs and IBs to prepare written records of a customer order immediately upon receipt. The records must include the customer identification and order number, and must be time stamped to the nearest minute from the time the order is received. For option customers the record shall record to the nearest minute the time the order is transmitted for execution.

Rule 1.35(b) requires FCMs and IBs to regularly prepare and maintain account ledgers and transaction journals which record, for each customer, charges and credits to an account, and detailed information about futures and option transactions.

Rule 1.36(a) requires FCMs to maintain records of all securities and property received from customers to margin, purchase, guarantee, or secure a futures or exchange option transaction. The records must show where the property is deposited and any other disposition of the property.

Rule 1.37(a) requires FCMs and IBs to keep a record of each account carried, the name and address of the customer, and the customer's principal occupation or business. The record must also show the name of any person guaranteeing the account or exercising any control over it.

Rule 1.37(b) requires each FCM carrying a futures or option omnibus account for another FCM, foreign broker, or other person to maintain a daily record of the positions in each such account. See also records required by exchanges of large traders' gross positions which are used for financial as well as market surveillance, as discussed in II.B.5.(d) below.

SEC

Rule 17a-3 under the 34 Act requires B/Ds to keep records relating to, among other things: (1) daily transactions and receipts and disbursements of money; (2) the firm's assets and liabilities, income and expense, and capital accounts; (3) each cash and margin account of every customer and each account of the firm and its partners that reflects all purchases, sales, receipts, and deliveries of securities and commodities for such accounts; and (4) the location of various securities for which the firm is responsible.

Rule 17a-4 under the Act, contains the preservation requirements for the B/Ds records. Generally, records must be

preserved for three or six years with the first two years in an easily accessible place. Some records, however, have longer retention periods. Rule 17a-4 permits a B/D to substitute, in place of hard copy versions, microfiched or microfilmed copies of the records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4.

The SEC and the SROs have access to registered B/Ds books and records. These books and records, which are treated as confidential, must be available for immediate examination on the firms' premises. Public access to such information is limited by Regulation §200.80(b) (17 C.F.R. §200.80(b)) adopted by the SEC under the Freedom of Information Act (FOIA) (5 USC §552 (1989)).

SIB

The financial records which a firm is required to maintain are identified in Rule 6 of Section 1 of the Financial Services (Financial Records) Rules 1987 (Records Rules). The essential requirement relating to financial records is that such records must be sufficient to document the firm's transactions, whether as agent or principal, and to:

- disclose the financial position of the firm at that time;

- demonstrate whether or not the firm is in compliance with the requirements of the Financial Resources Rules; and

- enable the firm to prepare a balance sheet, a profit and loss account, a statement of financial resources and the answers to a mid-year and end-year questionnaire in accordance with the requirements of the Financial Statements Rules and within a reasonable time.

Firms are required to maintain all records required pursuant to the Records Rules for a period of six years after the date upon which they are made or prepared and such records must be readily accessible (i.e., within twenty-four hours) for inspection by SIB or any person acting under the authority of SIB (Records Rules, 12 and 13).

The rules relating to the preparation of periodic financial reports and annual audit reports are set forth in the Financial Services (Financial Statements) Rules 1987 (Financial Statements Rules). Details of the form and content of financial statements are contained in Financial Statements Rule 13, the content of the auditor's report is set forth in Rule 14 and applicable accounting principles and rules are set forth in a schedule attached to the Financial Statements Rules.

All firms are required to prepare and submit annual audited financial statements within four months of the date as at which

they are prepared, together with unaudited financial returns for that quarter (Financial Statements Rules, 6 and 7). Firms engaged in futures and options transactions must also show a reconciliation of the amounts shown in the annual balance sheet and profit and loss accounts with the amounts shown in the quarterly balance sheet and profit and loss accounts (Financial Statements Rules, 6 and 7). Unaudited monthly and quarterly financial returns must be filed within two weeks and one month, respectively, of the applicable reporting period (Financial Statements Rules, 7 and 8). Non-clearing firms are only required to submit quarterly statements.

The Financial Services (Financial Notification) Regulations 1987 (Financial Notification Regulations) require that firms promptly notify SIB by telephone, telex or other means of, inter alia: any change in reported information with respect to guarantees, indemnities and other commitments given by the firm and, where the firm is affiliated with other firms, guarantees and other financial support given to the firm by such affiliates; misleading financial statements submitted to SIB; any auditor's report to management in respect of internal controls; any change, resignation or removal of auditors; and any failure to comply with Financial Records Rules concerning reconciliation of client money (Financial Notification Regulations, 2.03 and 2.05).

Pursuant to Rule 8 of the Financial Services (Appointment of Auditors) Rules 1987 (Auditors Rules), the auditor must have a right of access at all times to the accounting and other records of the firm and all other documents relating to such firm's business, and a right to require from the firm such information and explanation as he thinks is necessary for the performance of his duties as an auditor. An auditor must submit a report annually to SIB making specific reference to, among other things, the firm's annual financial statement, financial resources requirement, whether or not the firm was in compliance with the CMRs at the date the balance sheet was completed and whether or not a firm maintained adequate systems throughout the time to which the report relates to enable it to, among other things, comply with the CMRs (Financial Statements Rules, 14).

Appointment of Auditors Rule 9 requires a firm to give notice within fourteen days to SIB of the appointment, removal or resignation of an auditor. Rule 10 requires that such notice must contain a statement signed by the auditor stating whether or not the circumstances connected with his resignation or removal should be brought to the attention of SIB. The auditor is also subject to certain duties imposed by the FSA to communicate with supervisory authorities such as SIB (FSA, s.109).

In the specific context of margined transactions undertaken for segregated customers, firms are required to ensure that those customers deposit an amount in cash (or approved collateral) to

cover their margin requirement (CBR 11.12). Where the customer does not provide sufficient funds to cover any shortfall, this will be required to be paid by the firm. Records must be maintained of all sums of money received and expended by the firm, and the matters in respect of which the receipt and expenditure takes place (Records Rules, 6(3)(a)). In addition, records must be maintained from day to day of all money which is paid into or out of a client bank account containing segregated client money (Records Rules, 6(3)(g)(i)). Records of receipts and payments of client money which is not segregated must also be kept, identifying the persons to whom each such receipt or payment relates (Records Rules, 6(3)(g)(ii).

In addition to the foregoing, a firm also must keep records of:

- any arrangements for indirect payment for services (CBRs, 16.04);

- information relating to and fulfilling the "know your customer" requirement and the suitability of investments (CBRs, 16.05);

- a copy of each customer agreement and of any amendment (CBRs, 16.07);

- copies of all advertisements and the identity of the person approving the advertisement (CBRs, 16.08);

- copies of all published recommendations (CBRs, 16.09);

- investments dealings by officers and employees (CBRs, 16.13);

- any disciplinary action taken (CBRs, 16.14);

- copies of all complaints and the action taken in response (CBRs, 16.16); and

- all compliance procedures (CBRs, 16.15).

All records required to be maintained pursuant to CBRs 16.02 must be kept for at least three years from the date when they were created (CBRs, 16.02(9)).

With respect to access to records, see item II.B.5(a).

COB

The following records and documents relating to a market member's business on the French futures market must be kept on a daily basis:

- Transactions for each customer's account (deposits and margins);

- Open positions by customers, for each contract's maturity; and

- Business day commissions and premiums

Monitoring of the compliance with financial rules also has to be available as does every statement relating to relationships with customers. Market participants are required to maintain complete and accurate information about funds and transactions on a daily basis.

MATIF's Inspection Department and, for the MONEP, SBF's Inspection Department have access to these records. COB's enforcement Department has access to such documents if necessary during an inquiry. Professional authorities (Banking Commission and Conseil de Bourse de Valeurs) also have access to the financial documents.

Specific derivative markets' records are required to be kept for a period of two years. General financial information has to be kept for a period of ten years, as required by the "Code de Commerce".

CONSOB

Royal decree N. 376 of 1925 requires all stockbrokers to document transactions made in specific records which must be kept and be readily accessible for a period of time in accordance to the common law provisions for financial records. All books and records must be open to inspections by any representative of the CONSOB and, as far as stockbrokers are concerned, to inspections by any representative of the self-regulatory organization.

MOF

NCSC

A futures broker shall:

- keep such accounting records as correctly record and explain the transactions and financial position of the business of dealing in futures contracts carried on by the broker;

- keep accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

- keep accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in futures contracts carried on by the broker to be conveniently and properly audited.

Without limiting the generality of sub-section (1), a futures broker shall be deemed not to have compiled with that sub-section in relation to records if those records:

- are not kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;

- are not kept in sufficient detail to show particulars of:

  -- all money received or paid by the broker, including money paid to, or disbursed from a segregated account;

  -- all dealings in futures contracts made by the broker, the charges and credits arising from them, and the name of the person on whose behalf each dealing was effected;

  -- all income received from commissions, interest and other sources, and all expenses, commissions and interest paid by the broker;

  -- all the assets and liabilities (including contingent liabilities) of the broker;

  -- all futures contracts to which the broker has become a party as a result of trading on the broker's own account;

  -- all futures contracts dealt with by the broker pursuant to instructions given by another person, showing who gave the instructions;

  -- all property that is property of the broker and in respect of which the business rules of a futures exchange authorise the making of a futures contract in the futures market of the futures exchange, showing by whom the property is held and, if held by some other person, whether or not the property is so held as security against loans or advances; and

  -- all such property that is not property of the broker and for which the broker or any nominee controlled by the broker is accountable, showing by whom, and for whom, the property is held and the extent to which the property is either held for safe custody or deposited with a third party as security for loans or advances made to the broker;

- are not kept in sufficient detail to show separately particulars of every transaction by the broker;

- do not specify the day on which or the period during which each transaction by the broker took place; or

- do not contain copies of acknowledgements of the receipts of property received by the broker from clients.

Without affecting the operation of the above paragraphs, a futures broker shall be deemed not to have complied with sub-section (1) in relation to records if, in respect of a discretionary account on which the broker operates, those records are not kept in sufficient detail to show the particulars that the broker is required to furnish to clients in order to comply with sub-section 84(3). Sub-section 84(3) requires the broker within seven days after the end of the month to send a written statement to the person(s) who gave instruction to the broker authorising the broker to operate a discretionary account. The statement might set out:

- the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

- the opening cash balance for that month in the account (in this sub-section referred to as the "account") maintained by the broker in respect of the discretionary account;

- all deposits, credits, withdrawals and debits affecting the account during that month;

- the cash balance in the account at the end of that month;

-- that the broker has acquired before or during that month;

-- the acquisition of which was an operation by the broker on the discretionary account;

-- that, as at the end of that month, has not been disposed of,

[xxxxxx]

-- particulars of the futures contract, including the particulars required by virtue of paragraph 83(4)(d), or paragraphs 83(5)(b), (e) and (f) or (6)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition or the futures contract; and

-- details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.

- without affecting the operation of sub-section (2) or (3), a futures broker shall keep records in sufficient detail to show separately particulars of all transactions by the broker:

- with, on behalf of, or on the account of, clients of the broker, excluding, in a case where the broker carries on business in partnership, the partners in the firm;

- in a case where the broker carries on business in partnership on the broker's own account or with, on behalf of, or on the account of, the partners in the firm;

- in a case where the broker does not carry on business in partnership - on the broker's own account;

- with, on behalf of, or on the account of, futures broker's carrying on business within or outside [name of State];

- with, on behalf of, or on the account of, other futures brokers representatives employed by, or acting for or by arrangement with, the broker; and

- with, on behalf of, or on the account of, employees of the broker.

An entry in the accounting and other records of a futures broker required to be kept in accordance with this section, and any matter recorded by a futures exchange in relation to a member pursuant to a contract note or a copy of a contract note, shall be deemed to have been made by, or with the authority of, the broker or member.

Where a record required by this section to be kept is not kept in writing in the English language, the futures broker shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

Notwithstanding any other provision of this section, a futures broker shall not be deemed to have failed to keep a record referred to in sub-section (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in futures contracts that is carried on by the broker.

If accounting or other records are kept by a futures broker at a place outside [name of State], the broker shall cause to be sent to and kept at a place in [name of State] such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

If any accounting records of a futures broker are kept at a place outside [name of State], the broker shall, if required by

the Commission to produce those records at a place in [name of State], comply with the requirement not later than 14 days after the requirement is made.

A person who is required to maintain, make or keep a register or any accounting or other record shall preserve that register or record other than an accounting record for a period of 5 years next after the day on which the last entry was made in the register or record. In relation to an accounting record the person must preserve the record for a period of 7 years next after the last day of the accounting period to which the record relates.

The holder of a futures broker's license shall furnish to the Commission such information in writing, or statements, in respect of the business of dealing in futures contracts carried on by the holder of the license, as the Commission from time to time direct.

An auditor of a futures broker has a right of access at all reasonable times to the accounting records and other records, including any register, of the broker, and is entitled to require from the broker or, in the case of a broker that is a body corporate, from any executive officer of the body corporate, such information and explanations as the auditor desires for the purposes of audit.

Every securities company shall prepare and maintain such documents relating to its business as may be prescribed by Ordinance of the Ministry of Finance, including: (1) the voucher of orders, (2) the daybook of trading, (3) the bill of delivery, (4) the original register of accounts, (5) the daybook of accounts, (6) the account book of cash, (7) the original register of customer accounts, (8) the receipt of securities, (9) the book of the number of delivered securities, and (10) the detailed book of securities received in deposit from customers. Every securities company shall maintain those documents for ten years from the time of closing them.

OSC

The TFE and the IDA receive audited financial statements annually from their members. In addition, each dealer is required to file regular financial statements with the OSC. The key financial filing is the monthly Joint Regulatory Financial Questionnaire and Report (the "JRFQR"), which includes a balance sheet (including categorization of assets as active or non-active), a net free capital calculation, a calculation of adjusted liabilities and a calculation of excess net free capital or capital deficiency. Dealers must notify the TFE if their net free capital falls below TFE requirements. Exchange auditors, appointed by the TFE and approved by the OSC, have unconditional access to all books and records of each dealer.

In addition, futures commission merchants and advisers must maintain books and records necessary to record properly their business and financial affairs. Records may be kept by mechanical or electronic devices provided that the registrant takes adequate precaution to guard against the risk of falsification and provided that the registrant provides a means for making the information available in an accurate and intelligible form to any person lawfully entitled to examine the records.

Futures commission merchants must maintain an itemized daily record of all trades in contracts, all receipts and disbursements of cash, all other debits and credits, the account for which each transaction was effected, the date of the transaction, the commodity futures exchange, the name of the dealer, if any, used by the registrant to effect the trade, the commodity and quantity bought or sold, the delivery month and year, the price at which the contract was entered into, and, in the case of commodity futures options, the type and number bought or sold, the premium, the underlying interest, the delivery month and year of the commodity futures contract forming the underlying interest, the declaration date and the strike price.

Futures commission merchants must also maintain a ledger for each customer setting out the property received from the customer and detailing all transactions involving such property. Futures commission merchants must also compile a commodity record showing separately for each commodity all long or short positions carried for the registrant's accounts or for the account of customers.

Records showing each order or instruction received respecting trades in contracts (whether executed or unexecuted) must also be maintained as must copies of all statements sent to customers.

Documents relating to unexecuted orders or instructions, confirmations of trade, statements of purchase and sale and monthly statements must be maintained for a period of at least 2 years. Documents and instructions relating to executed orders or instructions must be maintained for 6 years.

CVMQ

Securities Act (Quebec)

A dealer/broker must keep the accounting books and registers necessary to its activities and must retain them for a period of at least five years.

The accounting books and registers that a dealer must keep include:

- a register for primary registration in which are entered in chronological order purchases and sales of securities allocated according to the markets on which the transactions were effected, securities received and delivered, cash receipts and disbursements;

- a customer's ledger in which, for each separate account, are entered the buy and sell transactions, the securities received and delivered, and all the other transactions entered as debits or credits in the account;

- the books in which are entered;

  -- the securities being transferred;
  -- dividends and interests received;
  -- securities borrowed or loaned;
  -- sums borrowed or loaned, with identification of the security attached;
  -- securities not received or not delivered by settlement date;
  -- long and short positions for each security, both in customers' accounts and in those of the registered person, with identification of the account and the place in which the securities are kept or the position taken in compensation for the securities sold short;

- a register of buy and sell orders and the related instructions, in which are entered:

  -- the description of the order;
  -- the account to which it refers;
  -- the name of the person who placed the order;
  -- the date and the time of the order;
  -- where applicable, the fact that the order was placed under a management contract;
  -- the price at which the order was executed;
  -- the date;

- a register containing the copies of the confirmation slips and the statements sent to customers;

- a file for each customer containing:

  -- the name and address of the account holder and, where applicable, of his guarantor;
  -- any proxy by which the account holder grants to another person power to place orders for him, with the address of that person;
  -- in the case of a joint account or an account opened in the name of a company, the name and address of the person authorized to place orders, with the document granting him such power;

-- where appropriate, a contract for a margin account, signed by the holder of the account, and, where applicable, by his guarantor;

- a register in which are entered the options bought, sold or underwritten by the dealer, with the value and number of the securities to which those options refer;

- books and registers showing in detail all the assets and liabilities, proceeds and expenses as well as capital;

- a monthly trial balance and a monthly computation of adjusted liabilities and net free or working capital;

- a register in which are entered details of the daily commissions of the representatives.

ME

Every member of the ME must comply with the provisions of the Securities Act.

TCO

Every clearing member shall keep records showing with respect to each exchange transaction:

- the names of the clearing members who are parties to the transaction;

- the trade date;

- the name of the client;

- if in respect of a future, the class and series of futures, the underlying interest, the number of contracts, the contract price, the delivery month and year, whether the transaction was a buy or sell transaction and whether it was an opening or closing transaction;

- if in respect of an option, the class and series of options, the underlying interest, the number of contracts, the premium, the exercise price, the expiry month, whether the transaction was a purchasing or a writing transaction and whether it was an opening or a closing transaction; and

- such other information as may from time to time be required by law, regulation, and Exchange or TCO.

- Such records and all other records required by these Rules of TCO, shall be retained readily accessible for at least 6 years from the end of the calendar year to which such records related in such form as TCO may authorize. TCO shall be

entitled to inspect or take temporary possession of any such records at any time upon demand.

TCO shall issue to each clearing member who engaged in one or more exchange transactions in options as reported to TCO by an exchange a report covering each exchange transaction made on that exchange during each business day and cleared through a clearing member. It is the responsibility of each clearing member to ensure that the report is correct.

IOCC

Each business day, the IOCC issues to every clearing member daily reports. Daily reports include:

- Daily position Reports
- Daily margin Reports
- Daily deposit statements
- Daily settlement statements

SFC

The CTO requires registered dealers to keep accounting and other records to sufficiently explain their business and to properly reflect their financial position. Dealers are required to retain the financial records for a period of not less than 7 years.

HKFE's rules require the accounts to be drawn up in conformity with accounting standards approved by the Hong Kong Society of Accountants.

Neither the CTO nor the HKFE Rules have specified where the records shall be kept. However, the Securities & Futures Commission Ordinance requires all registered persons to inform the Commission of the location where their records are kept. They may not keep records at a location which the Commission considers unsuitable.

The HKFE and Commission have access to the records of members/dealers during normal business hours. All information relating to a member or client in possession of the HKFE is required to be kept confidential. The Commission is bound by the secrecy provisions contained in the Securities and Futures Commission Ordinance.

B. Fairness

1. Authorization, qualification and good standing requirements other than capital adequacy (e.g., probity, competency) for:

(a) Exchange members; governing members.

Exchange members and governing members: - CFTC rule 1.63 prohibits persons with the following disciplinary histories from serving on any SRO's disciplinary committees, arbitration panels or governing board:

- any violation of the rules of an SRO except rules related to decorum and attire, financial requirements, or recordkeeping or reporting requirements which result in fines aggregating not more than $5000 in any calendar year;

- any SRO rule violation which involves fraud, deceit or conversion, or results in suspension or expulsion;

- any violation of the CEA or regulations promulgated thereunder; or

- failure to exercise supervisory responsibility when such failure is itself a violation of the SRO's rules, or the CEA and the rules promulgated thereunder.

Exchange rules generally do not set out specific criteria with which prospective members must comply. For example, the CBT requires only that a member must be 21 years old, of good character, reputation, financial responsibility and credit. Moreover, the CME permits membership to any adult "of good moral character, reputation and business integrity".

Exchange rules do not specify competency criteria for their governing members.

House of Representatives ("House") and Senate versions of legislation to amend the CEA contain provisions which would affect the qualification of exchange members and governing members of exchanges.

The House bill, which passed the House on September 13, 1989 (Commodity Futures Improvement Act of 1989, H.R. 2869, 101st Cong., 1st Sess. (1989), see 135 CONG. REC. H5603-H5630 (September 13, 1989)) would require the CFTC to issue rules requiring each contract market and registered futures association ("RFA") to establish a schedule of major rule violations of any rule within the disciplinary jurisdiction of such contract market or RFA and to prohibit any individual who violates a major rule from serving on an exchange or RFA governing board or disciplinary committee for a fixed time.

The Senate bill, which has not yet passed the Senate (see S. Rep. No. 101-191, Futures Trading Practices Act of 1989, S. 1729, 101st Cong., 1st Sess. (November 6, 1989)) would require the governing boards of the exchanges to represent a diversity

of interests, including FCMs, floor brokers and traders, and non-members with futures expertise.

Floor brokers:

See II.B.1.(c), below.

Floor traders ("Locals")

Currently, a person trading solely for his own account, a "local," does not have to be registered with the CFTC; however, the proposed reauthorization legislation would require those persons, defined as "floor traders" in the legislation, to register with the CFTC.

SEC

Registration as a B/D generally is the only category of registration available to a person acting as a financial intermediary in derivative securities products. Persons limiting their activities to investment advice, however, may be required to register only as an investment adviser.

To register as a B/D with the SEC, an applicant must complete and file an application form that specifies the applicant's proposed business activities, lists its officers, directors, control persons, and owners, and discloses the disciplinary history of the applicant and its control persons. This application must be accompanied by a statement of financial condition that includes representations as to the capital, financing, and facilities required to carry on the applicant's proposed business. Non-resident applicants must submit an irrevocable appointment of the SEC as agent for service of process. Within 45 days after a complete application has been accepted for filing, the SEC either will grant registration or institute proceedings on whether registration should be denied.

In addition to registering with the SEC, a B/D must become a member of one or more appropriate self-regulatory organizations (SRO). If a B/D effects transactions solely on a national securities exchange, that exchange is the appropriate SRO. All other B/Ds must become members of the National Association of Securities Dealers, Inc. ("NASD"). Every registered B/D doing business in derivative securities products also must become a member of the Securities Investor Protection Corporation, unless the B/D's principal business is conducted outside the United States.

Associated persons of a B/D, such as partners, officers, directors, branch managers, and employees, must meet certain qualification requirements if their functions are not solely clerical or ministerial. These requirements include filing an application that discloses the person's employment, personal, and disciplinary history, and passing an SRO securities

examination. In addition, associated persons of a B/D generally must be fingerprinted, and these fingerprints must be submitted to the Attorney General of the United States.

As indicated above, non-resident applicants for B/D registration must submit an irrevocable appointment of the SEC as agent for service of process. In addition, non-resident B/Ds must either maintain copies of all required records in the United States or agree to furnish such records in the United States upon demand.

B/Ds can be barred from registration if the SEC finds that the B/D or an associated person of the B/D:

(1) has been convicted within the previous ten years of felony or misdemeanor that (a) involves the purchase or sale of a security, making false statements, bribery, burglary, or conspiracy to commit any such offense; (b) arises out of the conduct of business of a financial intermediary; or (c) involves the misappropriation or forgery of funds or securities; or (d) involves financial fraud or extortion.

(2) has willfully violated, been enjoined from violating, or aided and abetted a violation of various investment-related laws.

Probity Any B/D or associated person of a B/D who is adjudged guilty of a specified list of criminal and civil violations ("statutory disqualifications") is prohibited from entering or staying in the business. In addition, if an SRO adjudges a member guilty of violations of its rules or the Act, it may bar, suspend, fine, censure, or limit the activities of the member.

Competency The options SROs require that all registered representatives pass a general securities examination that includes options questions. Options supervisors must pass a general principal examination plus a separate options principal examination.

SIB

The FSA does not set qualification standards for exchange members, clearing members or governing members of exchanges or clearing houses. Exchange rules vary and may establish qualification criteria for members.

The FSA contemplates two main categories of persons engaged in investment business, these are: authorised persons and exempted persons. Examples of the latter include: Bank of England, RIEs, ROIEs, RCHs, ROCHs, Lloyd's, listed money market institutions, appointed representatives and certain officers of the court acting in specified circumstances (FSA, ss. 42 to 45).

Those persons who carry on investment business in the UK must be authorised persons unless exempted (FSA, s.3).

Authorisation may be obtained from SIB or through membership of the relevant SRO. Pursuant to Section 27(2) of the FSA, applicants for authorisation must satisfy SIB, or the relevant SRO, as the case may be, that the firm is a "fit and proper" person to carry on investment business and to provide the investment services described in the application. This is the primary safeguard for investors and other users of financial services against fraud and malpractice, that is by the application of the "fit and proper" test to all investment businesses.

There is no definition of "fit and proper" in the FSA. In determining whether an applicant satisfies the "fit and proper" test, SIB considers, among other things, information which will assist in evaluating three main areas: honesty, competence and solvency.

SIB may take into account all the information furnished by the applicant together with any relevant information which may be in, or come into, SIB's possession. SIB may also take into account any matter relating to any person who is employed by, or associated with, the applicant.

The application form which the applicant is required to complete consists of four sections:

Section A: Applicant's Profile - The information required in this section allows SIB to assess the applicant's structure and organisation and its financial position.

Section B: Applicant's Record - The information in this section (to the extent that it is relevant), will allow SIB to determine whether there is any reason to believe that the applicant will not conduct itself in relation to its proposed activities in a competent, honest and fair manner. Specifically, Section B requires the disclosure of, among other things: any past or pending actions in bankruptcy; receiverships; refusal or revocation of licenses in the past ten years under, inter alia, legislation intended to prevent fraud in connection with investment business; refusal or revocation of membership in any association of dealers in securities or in any organisation or body recognised or designated under the FSA; any refusal or revocation in the past ten years of a license to carry on an investment, banking or insurance business in countries outside the UK; disciplinary measures imposed or investigations by any regulatory body in the UK in relating to investment business; any seizures of applicant's books and records by a regulatory body in the last ten years; any successful legal proceedings involving applicant's investment business in the past three years or any pending proceedings; and convictions for any offense involving fraud or other

dishonesty under legislation, whether or not of the UK, relating to, inter alia, insurance, banking or other financial services, insolvency, consumer credit or consumer protection.

Section C: Compliance Arrangements - The information required in this section permits SIB to assess whether the applicant is able to ensure compliance with SIB's rules and regulations. SIB also requests, where applicable, information concerning complaints made against the applicant and the previous record of the applicant's company representatives.

Section D: Individuals - Information and disclosures similar to that required of the applicant under Section B must be submitted by the applicant to the SIB with respect to all key personnel of the applicant. Such information permits SIB to assess the competence and character of these individuals.

The applicant must also complete a business plan questionnaire which provides information on the investment business (or proposed investment business) with respect to which the firm has requested authorisation by SIB and information relating to the applicant's other activities (CBRs, 2.01). Subject to limited exceptions, authorised persons may provide investment business or hold themselves out as able to provide services only in accordance with the business plan submitted as part of the authorisation procedure (CBRs, 2.01).

Notwithstanding the fact that a complete fitness check is required only of directors, partners, senior officers, managers, agents and other key personnel of the applicant, and is not required of persons who solely advise clients or solicit orders, the fit and proper test applies to the firm as a whole and in determining whether a firm is fit and proper, SIB may consider any matter relating to any person who is employed by, or associated with, the applicant for authorisation. In that connection, SIB's Notification Rules require the disclosure of any material changes, including information such as the conviction of any employee for any offense involving, for example, fraud.

The FSA does not impose a testing requirement but see Section D of the SIB Application Form mentioned in this item.

The Secretary of State may withdraw or suspend authorisation (FSA, s.29). In such circumstances, the authorised person will be given notice, with reasons for such withdrawal or suspension. The notice shall state the date on which it is to take effect and, in the case of suspension, the proposed duration.

Where it appears to the Secretary of State that any individual is not a fit and proper person to be employed in connection with investment business or investment business of a particular kind, he may direct that that person shall not, without the written consent of the Secretary of State, be employed by

authorised, exempted or specified persons in connection with investment business or, as the case may be, investment business of a particular kind (FSA, s.59). These directions are referred to as "disqualification directions" (FSA, s.59(2)). It is the duty of an authorised person and an appointed representative to take reasonable care not to employ, or continue to employ, a person in contravention of a disqualification direction (FSA, s.59(6)).

The "fit and proper" test applies to all firms requiring authorisation to carry on investment business in the UK. (See item I.B.1).

COB

On the financial futures market the employees of market participants designated by their employers as floor traders must be approved by MATIF SA after completion of an investigation regarding their integrity and moral character. All traders are required to pass a qualifying examination demonstrating their ability in trading practices.

On the commodities market, members must be at least 25 years old and must have at least three years' experience in futures markets.

On the MONEP, traders and market-makers must hold a professional card delivered by the SBF after examination. Candidates are presented by brokerage firms.

CONSOB

The appointment of an exchange member follows a public competition.

MOF

Stock exchanges review the overall business results and competency of persons applying for membership.

NCSC

In determining whether to approve an applicant the Board of the SFE is entitled to consider the character, business integrity, financial probity and standard of training and experience of the applicant. Prior to election the Board uses its best endeavors to ensure that the applicant is of good character and high business integrity and, where the applicant is a corporation, that its directors, those concerned in its management and those who have control or substantial control over the corporation are of high business integrity.

OSC

No person may be granted registration as a partner or officer of a registered futures commission merchant unless such person has successfully completed the Canadian Futures Examination administered by the Canadian Securities Institute. Applicants must also meet minimum work experience requirements, disclose prior criminal conviction, suspensions or refusals of exchange membership, bankruptcy and litigation proceedings and work history of the previous 15 years. The OSC typically conducts police checks of individuals applying for registration. Registration will be granted except where the applicant's financial position suggests that he or she will not be financially responsible, the past conduct of the applicant affords reasonable grounds for belief that his or her business will not be carried on in accordance with the law or with integrity and honesty, or the applicant is or will be carrying on activities that are in contravention of the Act or the regulations.

Futures commission merchants must be members of the TFE in order to be registered in Ontario. The TFE requires that directors and officers of dealer members of the TFE may not be a member, officer, employee or shareholder of any other members. No undischarged bankrupt may be a director or officer of a dealer member of the TFE.

CVMQ

Securities Act (Quebec)

An individual who intends to act as a senior executive, other than in the capacity of director, for a dealer with an unrestricted practice (full service) or a discount broker must have passed the examination for partners/directors/senior executives given by the Canadian Securities Institute and have at least three years' experience in the securities field.

ME

- The Governing Committee

The Governing Committee consists of the President, six Public Governors and eleven Member Governors.

- Public Governors

At the time of his election and throughout his term of office, a public governor:

-- shall not be a member, shareholder, partner, director or officer of a member nor be engaged in the securities business;

-- shall not own directly or indirectly more than 1% of the voting securities of an affiliated company of a member

and the entirety of his voting securities of affiliated companies of members must represent less than 10% of his portfolio, and

-- shall not be an officer of an affiliated company of a member;

-- may be an outside director of an affiliated company of a member. However, the number of such governors shall not exceed 50% of the total number of public governors on the Governing Committee.

A Public Governor must disclose his interests in an affiliated company of a member at the time of his election to the Governing Committee.

Qualification of Member Governors

Each member governor at the time of his election and throughout his term of office shall be either a member or a membership representative of a member, or a partner in a member firm, or a director of a member corporation, or any employee of a member.

Each director of a member corporation at the time he first becomes a director of such member corporation and throughout his term of office:

- shall have been approved as such by the ME, which such approval may be revoked by the Governing Committee;

- shall not be in a position where he should make an assignment under the Bankruptcy Act and shall not have a receiving order made against him; and

- shall not be engaged in any business which has been disapproved by the ME.

TCO

The affairs of TCO are managed by its Board. The number of directors is twelve (12) of whom seven (7) constitute a quorum for the transaction of business.

Qualification - No person shall be qualified as a director if he is less than 18 years of age; if he is of unsound mind and has been so found by a court in Canada or elsewhere; if he is not an individual; or if he has the status of a bankrupt. A director need not be a shareholder. A majority of the directors shall be resident Canadians, and at least two directors shall not be officers of employees of the Corporation or its affiliates.

SFC

HKFE can only admit "fit and proper" persons to be members, as described further below.

(b) Clearing members; governing members

CFTC

CFTC rules do not set qualification requirements for clearing members and governing members. There are not exchange rules which establish any requirements other than financial competency for clearing members and the governing members of clearing houses.

SEC

In addition to minimum financial requirements (See Section II.A.1.(c), above), OCC requires clearing members to meet standards of operational capability, experience and competence. A clearing member must maintain books and records in accordance with the Act, demonstrate the ability to reconcile unmatched and advisory trades on a timely and efficient basis (if it is a member of an exchange), and be able to discharge its clearing member functions in a timely and efficient manner at current and anticipated volume levels. In addition, a clearing member, or any person associated with it must have substantial experience in clearing securities transactions, not engage in acts or practices inconsistent with just and equitable principles of trade, and not be subject to a statutory disqualification as defined in Section 3 of the 34 Act.

SIB

See II.B.1.(a) above.

COB

See II.B.1.(a) above.

CONSOB

See II.B.1.(a) above.

MOF

NCSC

All clearing members must be a member of the SFE. This ensures that these members are of good standing.

In addition to meeting any applicable SFE rules Clearing Members are required to meet minimum NTA's of $A100,000 and in the case of a corporation a minimum paid up capital of $A100,000. Additional requirements are imposed on a case-by-case basis.

OSC

The CFA does not establish requirements for clearing members.

CVMQ

SFC

There are no special requirements for membership of HKCC other than the requirement of being an HKFE member. General Clearing Members must deposit HKD7.5 million and Clearing Members HKD1.5 million to the HKCC Reserve Fund.

(c) Other financial intermediaries -- principals, employees

CFTC

Categories of Registrants

§2(a)(1)(A) of the CEA describes, among other things, the following categories of registrants: Futures Commission Merchants ("FCMs"), Introducing Brokers ("IBs"), Commodity Pool Operators ("CPOs"), Commodity Trading Advisors ("CTAs") and Floor Brokers ("FBs").

- A "futures commission merchant" is defined as any person who solicits or accepts orders to buy or sell futures or option contracts, and who, in connection with the order, accepts any money or other property (or extends credit) to margin, guarantee, or secure the contracts resulting from the order.

- An "introducing broker" is any person who solicits or accepts orders to buy or sell futures or option contracts, but who does not accept any money or property (or extend credit) to margin, guarantee or secure the contracts.

- A "commodity pool operator" is any person who solicits funds from others for the purposes of pooling the funds for use in investing in commodity interests.

  -- CFTC rule 4.5, however, excludes from the definition of "commodity pool operator" certain "otherwise regulated persons" such as an investment company registered under the Investment Company Act of 1940, or an insurance company subject to regulation by any state. The entity seeking the exemption must generally represent that it will use the futures or option contracts for hedging purposes, that the initial aggregate margin and premiums do not exceed 5 percent of the fair market value of the entity's assets, and that the entity will not market participations to the public.

- A "commodity trading advisor" is any person who, for compensation or profit, is engaged in the business of providing commodity interest advisory services to others.

- A "floor broker" is any person who on the floor of an exchange buys or sells futures or option contracts for any other person. At a minimum, an FB must have trading privileges on the floor of the exchange in order to be and remain registered as such.

Any person associated with, among other registrants, an FCM, IB, CPO or CTA who solicits or accepts customer orders or who supervises persons who do so is required under §4k of the CEA to register as an "Associated Person" ("AP"). The AP is the person who solicits business from, and deals directly with, the customer with respect to his account.

Registration Under the CFTC Rules

Part 3 of the CFTC's rules contain the general registration requirements and procedures for FCMs, IBs, CPOs, CTAs, and their APs and FBs. The CFTC has delegated to NFA a majority of the registration processing function.

- A person registered as an FCM, IB, CPO or CTA will continue to be registered until the registration is suspended, revoked, terminated or withdrawn. See CFTC rules 3.10, 3.13, 3.14 and 3.15. In the case of an FB, in addition to the foregoing, registration will terminate if the FB no longer has trading privileges on any exchange. See CFTC rule 3.11.

- A person registered as an AP and whose registration has neither been suspended or revoked will continue to be so registered until the cessation of the association of the registrant with, or the revocation, suspension, lapse or withdrawal of the registration of, the AP's sponsor. Specifically, an AP must be sponsored by an FCM, IB, CPO or CTA. Registration as an AP will cease upon the termination of the registration of the sponsor. See CFTC rules 3.12 and 3.16.

- The basic registration application form required of FCMs, IBs, CPOs, and CTAs is the Form 7R. The Form 7R requires disclosure of the applicant's name, address, branch offices, and principals, as well as detailed information about the disciplinary and criminal history of the firm.

- Each application must be accompanied by a Form 8R executed by each natural person who is a principal of the applicant, along with the fingerprints of each principal on a card provided by NFA. The Form 8R requires disclosure of information on the employment, residential, and educational history of the applicant, and requests detailed information about the disciplinary and criminal history of the principal. A "principal" is defined under rule 3.1 as any officer, director or general partner or any person occupying a similar position who exercises a controlling influence over the regulated activities of the firm, any holder or beneficial owner of 10% or more of the

outstanding shares of stock in the firm, or any person who has contributed 10% or more of the firm's capital.

- The basic registration application form required of FBs is the Form 8R, which also includes the fingerprint requirement.

- APs also are required to file a Form 8R and fingerprint card. The NFA also requires that all APs pass a proficiency examination administered by the National Association of Securities Dealers.

Requirements applicable to transactions on non-U.S. exchanges for U.S. customers

Rule 30.4(a) requires that persons who act in the capacity of an FCM with respect to a foreign futures or option customer must register as an FCM.

Rule 30.4(b) requires that persons who act in the capacity of an IB with respect to a foreign futures or options customer must register as an IB.

Rule 30.4(c) requires that persons who act in the capacity of a CPO with respect to a foreign futures or option customer must register as a CPO. However, rule 30.4(c) permits an exemption from CPO registration for an investment trust or similar form of enterprise located outside the U.S. which is registered as an investment company under the Investment Advisers Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is exempt from such registration requirement. The exemption is only available if no more than 10% of the participants in, and the value of the assets of, such investment trust or similar form of enterprise are held by or on behalf of foreign futures or options customers.

Rule 30.4(d) requires that only those CTAs who solicit or enter into an agreement to direct or to guide a foreign futures or foreign option customer's account by means of a systematic program that recommends specific transactions in any foreign option or foreign futures contract register with the CFTC as a CTA. Thus, the scope of who is required to register as a CTA for purposes of foreign futures and option transactions is more narrow than for transactions on U.S. exchanges.

Persons who act in the capacity of an AP with an FCM, IB, CPO or CTA in connection with foreign futures or option customers are required to register as APs. See CEA §4k.

Pursuant to rule 30.5(a), persons located outside the U.S. who act in the capacity of an IB, CPO or CTA solely with respect to foreign products are exempt from having to register in the appropriate capacity if such persons otherwise qualify to do business by entering into an agreement, filed with NFA, with an appropriate agent for the purpose of receiving communications

from the CFTC, the Department of Justice and their customers. Under rule 30.5(c), IBs, CPOs and CTAs exempted under rule 30.5 must still comply with the disclosure provisions of rule 30.6 which also includes the requirement to provide customers with the options risk disclosure statement in rule 33.7 in connection with foreign option transactions. See II.B.3.(c), below. Under rule 30.5(d) such persons are required to provide their books and records to any representative of the CFTC or the Department of Justice within 72 hours of receipt of notice of the request. Under rule 30.3(b), such persons must carry all accounts of foreign futures and option customers by or through an FCM on a fully-disclosed basis.

Rule 30.10 contains an exemptive provision which permits persons located outside the U.S. who solicit or accept orders from foreign futures and option customers, and who are subject to a comparable regulatory scheme in the jurisdiction in which they are situated, to apply for an exemption from the application of certain of the Part 30 rules. The CFTC would accept, for example, an appropriate offshore registration or capital requirement, enforced by the offshore jurisdiction, together with information exchange with respect to the status of an offshore firm's compliance therewith, as "substituted compliance" for the comparable CFTC requirement. At a minimum, a condition of such an exemption would be consensual submission to the CFTC's jurisdiction via appointment of an agent in the U.S. for service of process, notification to the NFA of the commencement of activities here and the existence of mechanisms for information sharing between appropriate regulatory authorities.

The CFTC's Part 30 rules do not require that the foreign regulatory regime be identical to the United States regime. The CFTC expects to determine whether, as a whole, the foreign regulatory regime adequately addresses the concerns reflected in the CFTC's regulatory regime. In issuing exemptive relief, the CFTC has on a case-by-case basis imposed additional requirements in the areas of:

- status of firm personnel, including required representations that neither the principals nor the sales personnel would be disqualified under §8a(2) of the CEA;

- additional capital requirements, for example, where the foreign regulator permits the use of letters of credit to satisfy capital requirements; and

- protection of customer funds where the foreign regulator does not impose such a requirement.

Statutory Disqualification Provisions

§§8a(2) and (3) of the CEA provide objective criteria for making determinations regarding registration, such as refusal

to register, conditional registration, suspension or restrictions on registration (without a hearing), or revocation (with an appropriate hearing). (See also CFTC rules 3.50-3.63). The objective criteria upon which such determinations may be made include:

- suspension or revocation of a prior registration;

- prior registration refusal within the past five years;

- applicant enjoined by court from acting as an FCM, IB, FB, CTA, CPO or AP or as a securities dealer or investment dealer;

- applicant convicted within the past ten years of a violation of the Securities Acts or Foreign Corrupt Practices Act involving embezzlement, theft, extortion, fraud, etc.;

- applicant subject to a CFTC order denying trading privileges or revoking membership in any U.S. exchange or futures association;

- applicant made a false statement in his application; or

- where refusal, suspension or revocation of the registration of any principal of such a person would be warranted.

SEC

See II.B.1(a) above.

SIB

See II.B.1.(a) above

COB

See II.B.1.(a) above

CONSOB

See II.B.1.(a) above

MOF

No securities company, its officers or employees shall induce a customer by offering a definitive prediction, or by promising to compensate for any loss.

NCSC

In order to qualify for a futures broker's license or futures adviser's license the Commission must be satisfied:

- as to the educational qualifications or experience of the applicant;

- that it does not have any reason to believe that the applicant is not of good fame and character; and

- that it does not have reason to believe that the applicant will not perform the duties of a holder of a futures broker's license or of a futures adviser's license, as the case may be, efficiently honestly and fairly.

The Futures Industries Act 1986 and Codes (FIC) and the Co-operative Scheme Amendment Act 1989 provides for two categories of licensees; futures brokers and futures advisers.

Futures brokers includes a person who carries on, or 2 or more persons who together carry on, a futures broking business, whether or not the person, or any of the persons, also deals in futures contracts on the person's own account. S4 FIC.

Futures adviser means a person who carries on, or 2 or more persons who together carry on, a futures advice business. S4 FIC.

Principals acting as future brokers or advisers must be licensed. Employees and agents, as representatives of principals, since 1 November 1989 are required to be "properly authorised" by their principals. Although a private function, principals must satisfy minimum legislative requirements when issuing such authorisations. Sections 4,7 and 10A FIA refer to principals. Representatives are defined at S11A FIC.

Applicants must not be insolvents under administration, must be members of relevant futures organisation, have adequate qualifications and experience for the duties, be of good fame and character and there must be no reason to believe that the person will not perform efficiently, honestly and fairly. Section 66 FIC applies for natural person license applicants and Section 66A FIC for body corporate applicants.

Principal licensees may authorise representatives.

Principals are liable for the conduct of their representatives. Conditions in all licensees ensure their representatives are properly qualified, experienced and supervised for the duties they are to perform.

Licensees are at liberty to set the requirements for their own representatives subject to the above. To be licensed applicants are obliged to be members of a recognised futures association. Exchanges set further criteria for membership and allow only competent, honest and financially sound entities to gain membership.

The only approved futures association, the Sydney Futures Exchange Limited ("SFE") also has rules which require representatives to be registered with it.

A key requirement for registration as a futures broker is be accepted as a member of a recognised futures association. Application forms detailing all the information sought of license candidates are attached.

As noted earlier to be licensed, futures brokers are required to hold membership of a class which the Exchanges authorises to deal with the public; which means either Floor Membership, Full Associate Membership with an authorisation to deal with the public, or Introducing Broker Associate Membership. Representatives are also to be registered with the SFE and are required to have passed the Exchanges own examinations.

OSC

Employees of dealers who wish to be registered under Ontario legislation are required to successfully complete Canadian and U.S. proficiency examinations, meet minimum work experience requirements and disclose prior criminal convictions, suspensions or refusals of exchange membership, bankruptcy and litigation proceedings and a work history for the previous 15 years. In addition, three personal references are required.

CVMQ

SFC

To become registered as a dealer or dealer representative, a person has to satisfy the Commission that he is fit and proper. This essentially involves satisfying the Commission on the following elements:

- Financial Status: The person is not a bankrupt, not been subject to any bankruptcy proceeding nor failed to meet any judgment debt. (For a corporation, the company should not be in liquidation, in the hands of a receiver or administrator, or have failed to meet any judgment debt).

- Educational or other qualifications or experience: The person has to have a relevant degree or professional qualifications and three years' directly relevant experience; or, five years' directly relevant experience.

- Ability to perform functions efficiently, honestly and fairly: The person has to have adequate business systems and personnel to ensure that relevant laws, regulations and rules applicable to his business can be conformed with and that unacceptable conflicts of interests do not arise.

- Reputation, character, financial integrity and reliability: The person must be of sound mental health; not have a previous criminal record of direct relevance to the person's fitness and properness; not been found guilty of fraud; not been censured or reprimanded by, or denied/disqualified from membership of a professional or trade body; not had a regulatory licence, registration or similar approval refused or revoked; not been disqualified by a Court from being a director; not been found guilty or culpable of insider dealing or failed to abide by any Code of Conduct or guidelines promulgated by a relevant regulator; be able to comply with any financial resources requirements on an on-going basis; and not considered as having committed incompetence, negligence or mismanagement (indicated by any censure or reprimand by a professional, trade or regulatory body or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement).

In addition, the person, if a business entity, must be a member of a specified exchange.

With the exception of the education/experience qualification, the above applies to both principals and employees. (Employees are required to be registered as representatives but do not have to meet the education/experience qualification set out above.)

2. **Order execution requirements**

(a) Competitive execution requirements/priorities

CFTC

Competitive execution

Rule 1.38(a) mandates that all futures and option contracts which are subject to the rules of an exchange shall be executed openly and competitively by open outcry or other methods, such as posting of bids and offers, which are open and competitive.

Rule 1.38(b) requires that every person handling any non-competitive transaction clearly identify such transaction on every record pertaining thereto.

The open outcry system is used at most exchanges; however, the CFTC has approved trading systems which differ from this system. The ACC and PBOT conduct trading through a Board Broker system. In sum, the Board Broker is an individual member or nominee of a member who is registered with the exchange for the purposes of (1) maintaining the book with respect to orders left with him for execution by other members on the floor, (2) effecting proper executions for such orders, (3) announcing bids and offers having priority on his book, (4) providing quotations for dissemination over the market

information network and (5) ensuring that trades are executed openly and competitively.

The CFTC is also considering a CME rule establishing a category of market makers with affirmative responsibilities to post both a bid and an offer in specified contracts for a specified percentage of a Globex session.

Priorities

Rule 155.2(g) requires exchanges to adopt rules which prohibit FBs from allocating trades among accounts except in accordance with exchange rules.

Exchanges set forth priority rules with varying degrees of specificity. For example, CBT Rule 350.05(k) requires only that trades be allocated in an equitable manner. CME Rule 548 requires that non-discretionary customer orders be filled in the order received by a broker. ACC Rule 615 gives priority to public customer market orders over all other types of orders.

Rule 155.3(a) is referred to as the "customer first rule." Under this rule each FCM is required to ensure that customer orders which are executable at or near the market price are transmitted to the floor of the exchange before any order in the same commodity for the FCM's account or for the account of any person affiliated with the FCM. See also, rule 155.4(a) with respect to IBs and rule 155.2(a) and (b) with respect to FBs.

In addition, each FCM is required to prevent APs from placing orders with another FCM in a manner designed to circumvent the "customer first rule."

SEC

In general, Section 11(a) of the SEC Act prohibits members of a national securities exchange from effecting any transaction on an exchange unless the transaction: (1) is effected in compliance with the rules of the SEC; (2) is consistent with the maintenance of fair and orderly markets; and (3) yields priority, parity, and precedence in execution to orders for the accounts of non-exchange members. In addition, the rules of the options exchanges generally require that the highest bid and lowest offer for a security shall have priority. Brokers also have an obligation to obtain best execution of orders entrusted to them.

SIB

The FSA does not mandate the method by which exchange-traded futures and option contracts are executed.

Generally, with respect to effecting a transaction for a customer who is not a business, experienced or professional investor, the CBRs require a firm to take all reasonable steps to ensure that the transaction is effected on the best terms available for transactions of the same size and nature with reliable counterparties (CBRs 5.04).

In determining whether a proposed manner of effecting a transaction is one which will produce the best terms available, SIB accepts that it may not be possible for a firm to survey the entire market. Where this is so, SIB accepts that a firm which surveys a representative sample of available sources will have made sufficient effort to survey the market generally so long as the sample is reasonably wide (CBRs, Practice Note to 5.04).

With respect to rules regarding the priority of execution of orders, see items II.B.2(d) and II.B.2.(b).

COB

For two orders transmitted at the same time on behalf of a customer and on behalf of the firm, the customer's order gets priority.

CONSOB

In view of the new screen based trading system to be introduced at the beginning of 1991, new rules for the execution of orders have been drafted.

MOF

Price priority and time priority are ensured under the so-called "auction system".

NCSC

A reference to the transmission by a futures broker of instructions to deal in a class of futures contracts is a reference:

- where the broker has direct access to the futures market on which the instructions are to be executed - to the transmission of the instructions to that futures market; or
- where the broker has access to the futures market on which the instructions are to be executed - to the transmission of the instructions to that other futures broker.

A futures broker is required to transmit in the sequence in which they are received by the broker all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.

Where a futures broker proposes to deal in a class of futures contracts on the broker's own account and the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the broker to deal in that class of futures contracts at or near the market price for a futures contract of the class prevailing at that time (being instructions that have not been transmitted), that person is prevented from transmitting, giving instructions to any other person to transmit, the instructions to give effect to the proposal of the broker to deal in that class of futures contracts before the instructions of the client are transmitted.

A member of a futures exchange who is concerned in the execution, on a trading floor of the futures exchange, of instructions to deal in futures contracts is required to execute in the order in which they are received by the member all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.

[Sequence in which dealings to be allocated] Where:

- during a particular period, a futures broker transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the broker to deal in the class of contracts concerned on the broker's own account) to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions; and

- dealings in that class of futures contracts are effected pursuant to those instructions, the broker is required, except so far as the business rules of a relevant organisation of which the broker is a member otherwise provide, to allocate the dealings to those instructions:

- in the sequence in which the dealings were effected, and

- in the sequence in which the broker transmitted those instructions.

OSC

The CFA applies to contracts traded on commodity futures exchanges. The term "commodity futures exchange" is defined to refer to "an association or organization . . . operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction."

In registering a commodity futures exchange pursuant to section 19 of the CFA the OSC is required to determine that "floor trading practices are fair and properly supervised." A similar

provision applies to the recognition of foreign commodity futures exchanges. Foreign commodity futures exchanges have, however, been exempted from the need to be recognized by way of a blanket order of the OSC.

CVMQ

Options

- Priority of Orders for Execution

A client order entered in the Book is always executed before an order at the same price which is represented in the trading crowd.

Orders are filed according to price and time of acceptance in the Book.

Priority of bids and offers shall be determined by price and if two or more orders for customers are at the same price, then priority shall be by time of acceptance; unless the Retail Order Policy provides otherwise.

Orders for professional accounts shall stand behind orders for customers at the same price, but priority as between professional orders at the same price shall also be accorded by time of acceptance.

- Priority at the Opening

The priority sequence, top priority first, is as follows at the opening of the market:

-- client market orders in the Book;

-- client market orders in the crowd;

-- client limit orders in the Book;

-- client limit orders in the crowd.

Futures

- Execution of Orders

All orders must be executed by "open outcry" in the appropriate trading pit. Traders may not execute transactions by any other means nor in any other place.

- Priority to client orders

Each member is responsible for insuring that, at the same price and time-stamp, it gives priority to client orders over its own professional orders. In the pit however, client orders of one

member do not have priority over professional orders of another member.

Quebec Securities Act

With respect to the Regulation respecting securities, the registered representative of a dealer must see that orders are executed at the best price available on Canadian Exchanges, unless he is instructed otherwise.

SFC

HKFE's trading rules provide that all transactions shall be conducted in a publicly competitive auction manner. All bids and offers have to be made openly and competitively. HKFE rules prohibit members trading for their own account if a client order remains unfilled.

A member is also not allowed to withdraw or withhold orders for his own convenience or for the convenience of any other person.

(b) Capacity restrictions (e.g., restrictions on dual trading or insider trading)

CFTC

Insider trading

Except for the exemptions stated below, there is no specific prohibition against insider trading.

CEA §9(d) states that it shall be a felony for any Commissioner of the CFTC or any employee or agent thereof to participate in an investment transaction for a commodity if any non-public information is used in the investment decision.

CEA §13 mandates that any person who willfully aids, abets or controls a violator of the CEA shall be liable to the same degree as the principal violator.

Rule 1.59 governs activities of employees of SROs and governing members who possess material, non-public information. Generally, an employee is proscribed from divulging any information obtained as the result of employment where there is a reasonable expectation that the information disclosed "may assist another person in trading any commodity interest." Rule 1.59(b)(2) requires that each SRO promulgate rules which prohibit employees from trading or assisting another in trading a commodity interest. Rule 1.59(c) requires that each SRO promulgate rules which provide that no governing member divulge any material, non-public information other than for the official governance of the organization.

Dual Trading

CEA §4(j)(1) and (2) require the CFTC to evaluate periodically whether an FB and an FCM may engage in dual trading. In making its determination, the CFTC is required to assess the impact of dual trading regulation on market liquidity. Although CFTC regulations do not prohibit dual trading, certain regulations exist which reduce the potential of dual trading abuse by floor brokers. For example, rule 155.2 requires each exchange to adopt and to submit to the CFTC a set of rules which, among other things, prohibit an FB from trading ahead of a customer.

At present, three futures exchanges restrict dual trading. ACC Rule 641(a) prohibits, with certain limited exceptions, an FB from executing a trade for an account in which he or his firm has an interest and from executing an order received from off the floor or an order received from an FB in the same commodity interest during the same session. PBOT Rule 342(a) contains identical rules prohibiting dual trading. The CME has a rule which limits access to the top step of its S&P 500 futures pit to FBs and prohibits those brokers who are standing on the top step from trading for their own accounts.

The House and Senate versions of the proposed CFTC reauthorization bill contain language which would restrict dual trading.

The CFTC has proposed a rule which would restrict dual trading by floor brokers in selected contracts on a pilot basis. The rule, if adopted as proposed, would be phased in on an incremental basis in accordance with a 12-month plan. 55 Fed. Reg. 1047 (January 11, 1990).

Other

Under rule 155.3(b)(1) an FCM and any of its affiliated persons are generally prohibited from disclosing that they are holding an order of another person. Disclosure may be made if necessary to effectively execute the order, or if made at the request of the CFTC, the exchange, or the NFA. See also, rule 155.4(b) with respect to IBs.

Under rule 155.3(b)(2) an FCM is prohibited from knowingly taking the other side of an order of another person revealed to the FCM or any of its affiliated persons as a result of their relationship with the other person without that person's consent. The FCM may take the other side of an order if it has the other person's prior consent, and if it does so in conformity with exchange rules approved by the CFTC. See also, rule 155.4(b)(2) with respect to introducing brokers.

SEC

The options exchanges prohibit floor traders (with the exception of the specialist on the options exchanges employing a

specialist system) from acting as both broker and dealer in the same options class on the same day.

Trading options on the basis of material non-public information obtained as a result of a fiduciary relationship or otherwise on a confidential basis is a violation of the Act and Rule 10b-5 thereunder, giving rise to civil and criminal sanctions and private lawsuits for money damages.

SIB

In the UK, there are no statutory restrictions on dual trading or specific provisions regarding insider trading in the context of margined transactions. The majority of UK exchanges do not prohibit dual trading, however, rules vary (under the rules of OM London Ltd. market makers may only deal for their own account).

The CBRs impose restrictions where the firm is trading for its own account; these rules are designed to prevent a firm from taking advantage of a customer's order, whether for its own benefit or for that of another customer. For example, CBR 5.15 restricts a firm trading on its own account, inter alia, where the firm has customer orders which have not been filled.

Information obtained by regulators in the course of the discharge of their duties under the FSA is regarded as restricted information unless it falls into one of the exceptions of s.180. The main restrictions on disclosure in the FSA are found at s.179. Information is "restricted information" if it was obtained by the primary recipient for the purposes of, or in the discharge of his function under, the FSA or any rules or regulations made under the FSA. Restricted information which relates to the business or other affairs of any person shall not be disclosed by, inter alia, the Secretary of State, SIB, the DGFT, the Bank of England or any officer or servant of such person without the consent of the person from whom the primary recipient received the information and the person to whom it relates, if different (FSA, s.179).

A person who contravenes these restrictions and who cannot avail himself of one of the exceptions in s.180, is guilty of an offense and may be liable, on indictment, to two years imprisonment or to a fine or both; and on summary conviction, to three months imprisonment, to a fine, or both (FSA, s.159(6)).

Primary recipients do not include SROs, professional bodies, investment exchanges and clearing houses. These entities and their agents and officers have no powers to obtain information under the FSA so that the restrictions on disclosure can usually be determined on general principles of law in relation to confidentiality and on the relevant constitutions and rules.

COB

An employee of a market participant who is in charge of trading on a specific contract is not allowed to trade that contract for his own account.

On the MATIF, the "negociateurs-courtiers" are not allowed to trade for their own account. Conversely, the locals (negociateurs individuels de parquet) only trade for their own account.

On the MONEP, the same person cannot act as market-maker and trader.

CONSOB

MOF

Although dual trading is not prohibited, the "auction system" leaves little or no room for arbitrary trade execution. Insider trading is prohibited under new legislation enacted in May 1988 (an amendment of the Securities and Exchange Law). However, futures trading is exempt from this regulation, since futures trading is based only on government bonds and large baskets or indices of stocks.

NCSC

A person is prevented from dealing in a futures contract concerning a body corporate if the person:

- is, or at any time during the 6 months preceding the dealing has been, connected with the body corporate; and

- is, by virtue of being, or having so been, connected with the other body corporate, in possession of information that:

- is not generally available but, if it were generally available, would be likely materially to affect the price for dealing in a futures contract of the same kind as that futures contract; and

- relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.

A person who:

- is in possession of information of a kind referred, to being information that, if it were generally available, would be likely materially to affect the price for dealing in a futures contract concerning a body corporate; and

- is precluded by neither of sub-sections (1) and (2) from dealing in a futures contract (in this sub-section referred to as a "relevant futures contract") of the same kind as the futures contract referred to in paragraph (a);

is prevented from dealing in a relevant futures contract if the person:

- has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then precluded by sub-section (1) or (2) from dealing in a relevant futures contract; and

- was, when the information was so obtained, associated with that other person or had with that other person an arrangement for the communication of information or a kind referred to in sub-section (1) or (2) with a view to a dealing in a relevant futures contract by the first-mentioned person, by that other person or by both of them together.

A person is prevented, when precluded by sub-section (1), (2), or (3) from dealing in a futures contract, from causing or procuring another person to deal in a futures contract of the same kind as that futures contract.

A person who, by reason of being in possession of particular information, is precluded by sub-section (1), (2) or (3) from dealing in a futures contract is prevented, when so precluded, from communicating that information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in a futures contract of the same kind as that futures contract.

Without prejudice to sub-section (3), but subject to sub-sections (7) and (8), where an officer of a body corporate is precluded by sub-sections (1), (2) or (3) from dealing in a futures contract, the body corporate is prevented, when the officer is so precluded, from dealing in a futures contract of the same kind as that futures contract.

A body corporate is not, by reason only of information in the possession of an officer of the body corporate, precluded by sub-section (6) from entering into a transaction at a particular time if:

- the decision to enter into the transaction was taken on its behalf by a person other than the other;

- it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no

advice with respect to the transaction was given to that person by a person in possession of the information; and

- the information was not so communicated and no such advice was so given

A body corporate is not, by reason only of information in the possession of an officer of the body corporate, precluded by sub-section (6) from dealing in a futures contract concerning another body corporate if the information:

- was obtained by the officer in the course of the performance of duties as an officer of the first-mentioned body corporate; and

- relates only to a proposed dealing by the first-mentioned body corporate in securities of, or a futures contract concerning, the other body corporate.

The holder of a futures broker's license is not precluded from dealing in a futures contract concerning a body corporate if:

- the holder of the license enters into the dealing as agent for another person pursuant to a specific instruction by that other person to enter into that dealing;

- the holder of the license has not given any advice to the other person in relation to dealing in a futures contract concerning the body corporate; and

- the other person is not associated, in relation to the dealing, with the holder of the license.

Where a prosecution is instituted against a person for an offense because the person was in possession of particular information and dealt in a futures contract in contravention of this section, it is a defense if it is established that the other party to the dealing knew, or ought reasonably to have known, the information before entering into the dealing.

For the above purposes a futures contract concerns a body corporate if, and only if:

- in a case where the futures contract is an adjustment agreement - a commodity to which the futures contract relates is securities of the body corporate; or

- in a case where the futures contract is a commodity agreement - a state of affairs to which the futures contract relates concerns the price of securities of the body corporate, or the prices of a class of securities that includes securities of the body corporate, at a particular time.

A person is connected with a body corporate (in this sub-section referred to as the "relevant body corporate") if the person is a natural person and:

- is an officer of the relevant body corporate or of a related body corporate;

- is a substantial shareholder within the meaning of Division 4 of Part IV of the Companies ([name of State]) Code in the relevant body corporate or in a related body corporate; or

- occupies a position that may reasonably be expected to give the person access to information of a kind referred to in sub-section (1) or (2) by virtue of:

- any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and the relevant body corporate or a related body corporate; or

- the person being an officer of a substantial shareholder within the meaning of Division 4 of Part IV of the Companies ([name of State]) Code in the relevant body corporate or in a related body corporate.

For the purposes of the above paragraph, "officer", in relation to a body corporate, includes:

- a director, secretary, executive officer or employee of the body corporate;

- a receiver, or a receiver and manager, of property of the body corporate;

- an official manager or a deputy official manager of the body corporate;

- a liquidator of the body corporate; and

- a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

A reference to a futures contract of the same kind as a particular futures contract includes a reference to the particular futures contract.

OSC

The CFA does not, at present, contain restrictions against dual trading or insider trading.

The by-laws of the TFE prohibit dual trading by providing that no floor trader may buy or sell for his or her own account (or

for any account in which he or she has an interest) any series of a TFE futures contract while holding an order for a client account for the same class which is executable at the market price or at the price at which a transaction can be made for the floor trader's own account or the account in which he has an interest.

The TFE also prohibits floor traders from taking the other side of a transaction while holding an order from a client.

CVMQ

Securities Act (Quebec)

The Securities Act specifies that no insider of a reporting issuer having privileged information relating to securities of the issuer may trade in such securities. The insider may not disclose the privileged information except if he must disclose the information in the course of business, having no ground to believe it will be used or disclosed contrary to the Securities Act. No person prohibited from trading in securities of a reporting issuer may use the privileged information in any other manner unless he is justified in believing that the information is generally known to the public. Thus, no such person may trade in options concerning the securities of the issuer. Nor may the person trade in the securities of another issuer, in options or in futures contracts concerning an index, once their market prices are likely to be influenced by the price fluctuations of the issuer's securities.

ME

No member, person associated with a member or a permit holder shall engage in transactions in Exchange listings based in whole or in part on non-public information concerning pending transactions in options, futures contracts or securities, which are likely to affect market prices of any other option, futures or security unless such transactions are made solely for the purpose of providing a benefit to the client who is engaged in or proposing the pending transactions to which the non-public information pertains.

The rules of the ME also specifies that no member, person associated with a member, or a permit holder shall use or knowingly participate in the use of any manipulative or deceptive method of trading in connection with the purchase or sale of any Exchange listing which creates or may create a false or misleading appearance of trading activity or an artificial price for the said listing.

SFC

HKFE rules prohibit members from taking the opposite side of their clients' orders unless the following requirements are met:

- the trade is made in a market having an open interest and/or having a turnover lower than a level prescribed by the Board;

- the Client has given prior written consent to such transactions; and

- the trade has been bid, offered and reported in accordance with HKFE's procedures.

Where a member at the same time has both buying and selling orders from different clients for the same commodity and delivery month, he may execute such orders in accordance with procedures prescribed by HKFE's Board.

(c) Special procedures for large or small orders

CFTC

There are no CFTC or exchange rules which govern large or small order procedures; however, the CME has recently proposed Rule 549 regarding large order execution procedures for 300 or more S&P 500 futures contracts. The CFTC published notice of the proposed rules in the Federal Register and the comment period expired on January 4, 1990. In sum, the proposed rule would allow an exchange member who receives a large order to solicit interest off the Exchange floor in the opposite side of the trade prior to its execution in the pit; this action would require the written consent of the customer.

In June 1990 the CFTC published for comment a petition submitted by the CME to amend CFTC rule 1.39 to allow a broker to expose one side, rather than both sides of crossed orders to the pit. The petition also proposes to delete a rule which prohibits FCMs who receive orders from having any interest in the order except as a fiduciary.

SEC

In order to facilitate the execution of large options orders, the options SROs have adopted procedures that permit a floor broker holding an options order for a public customer and a contra-side order to execute such orders as a facilitation cross. Among other things, these procedures require that the order be exposed to the trading crowd and executed between the prevailing bid and offer quotes. The majority of options SROs also have developed and implemented small order execution systems for the facilitation of small options orders. In general, such systems provide for the automatic execution of market and marketable limit options orders of up to ten contracts. In addition, the options SROs have established rules which require the SROs' floor traders to ensure that public customer orders are filled to a minimum depth of ten contracts, at the best bid or offer in the market.

COB

No general distinction exists between large and small orders on French futures and options markets.

However, on the OMF system, the traders can trade either on the electronic system or by transmitting the orders to OMF by telephone. The telephone system is only allowed for transactions of more than 20 contracts.

SIB

There are no specific provisions in the CBRs which provide special procedures for orders of differing sizes.

NCSC

No procedures differentiating large and small orders.

MOF

No such procedures exist.

OSC

There are no special procedures for large and small orders.

CVMQ

Retail Order Policy (ME)

Two levels (10 or 20 options contracts) have been established for the (guaranteed minimum) number of trading units which will be executed automatically in options. The size (10 or 20 contracts) of order which is served automatically under the Retail Order Policy varies with the liquidity and price level of listing.

SFC

There are no special procedures for large or small orders. HKFE, however, monitors large open positions of members.

(d) Other trade practice requirements or prohibitions including anti-fraud rules.

CFTC

CEA §4b prohibits any exchange member or agent thereof or any other person in connection with any order to make, or the making of, a contract of sale of a commodity for future delivery for or on behalf of any other person to engage in a variety of fraudulent transactions, including cheating another person, attempting to deceive any person regarding the disposition or execution of an order, or to "bucket" an order.

Similarly, CEA §4c prohibits fictitious trading or trading which would cause the market to reflect a price that is not "true and bona fide."

CEA §4h prohibits false representation of contract market membership and CFTC registration status.

CEA §4o states that it is unlawful for a CTA or CPO and their APs to engage in any course of conduct or to employ any device which may operate as a fraud upon any actual or prospective client or any participant.

Rule 1.35 contains rules which limit the opportunity for the fabrication or alteration of trade records, assures accountability for trading cards, and enhances exchange audit trail and trade surveillance. See II.B.5(a) below.

Rule 155.2 requires that contract markets promulgate trading standards for floor brokers. In addition, the regulation indicates minimum standards of conduct for floor brokers which should be reflected in the rules. Examples of the requirements are as follows:

- a floor broker is prohibited from making prearranged trades;

- a floor broker is prohibited from trading ahead of a customer order; and

- a member is required to confirm promptly execution of a trade with the opposite floor broker or trader and the confirmation shall include price or premium quantity, future or commodity option and respective clearing members.

Rule 155 specifies those internal standards which an FCM and an IB shall, at a minimum, establish and enforce. For example, rule 155.3(a) requires that the FCM adopt rules which insure that customer orders which are "executable at or near the market price" are transmitted to the floor of the exchange before any order in the same commodity for the FCM's account, a proprietary account of the FCM, or any account in which an affiliated person had an interest or had discretionary trading authority. In addition, rule 155.3(b) requires that an FCM adopt rules which prohibit an FCM or AP from taking the opposite side of a customer order. The procedures for IBs are substantially similar to those applicable to FCMs.

Rules 32.9 and 33.10 proscribe fraud in connection with a commodity option transaction. The prohibition is identically worded in each rule. The rules state that it shall be unlawful for any person directly or indirectly (1) to cheat or defraud or to attempt to cheat or defraud any other person; (2) to make or cause to be made any false report or statement; or (3) to deceive or to attempt to deceive any other person "by any means whatsoever" in connection with an offer to enter into, the

entry into, or the confirmation of, any commodity option transaction.

Rule 33.9 outlines a number of unlawful activities in connection with a commodity option transaction. It shall be unlawful for:

- any registered person to imply that by virtue of registration the CFTC has approved that person's actions;

- any person to imply that compliance with the regulatory structure constitutes a guarantee of fulfillment of the commodity option transaction;

- any person, upon acceptance of an order, to fail unreasonably to secure prompt execution of an order or upon rejection of an order to fail to notify the customer that the order has been rejected; or

- any person to manipulate or to attempt to manipulate the market price.

SEC

In addition to restrictions on dual and insider trading, the federal securities laws prohibit the manipulation of security prices and the employment of manipulative or deceptive devices in the offer or sale of securities through the facilities of a national securities exchange. See Sections 9, 10(b), and 17(a) of the 34 Act. In addition, Sections 15(c)(1) and 15(c)(2) of the 34 Act make it unlawful for B/Ds to effect transactions in the OTC market through fraudulent, manipulative, or deceptive acts or practices.

In accordance with the anti-fraud provisions of the federal securities laws, the options SROs have adopted rules and issued circulars prohibiting the practice of frontrunning. As it pertains to index options, frontrunning is the practice of trading in index options by members or persons associated with members while in possession of material, non-public information concerning imminent block transactions in one or more of the securities underlying the index, with the intention of taking advantage of the attendant price changes of the securities involved in the block transaction.

SIB

A person who:

- makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

- recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive commits an offense (FSA, s.47(1)). The offense is committed where the person makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, "another person" to enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement or to exercise or refrain from exercising any rights conferred by an investment.

Supplementing the provision on misleading statements is a prohibition relating to misleading acts and courses of conduct. Broadly, a person "who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments" commits an offense. The necessary mental element is satisfied if the person does the act (or engages in the course of conduct) for the purpose of creating the false or misleading impression and "thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise or refrain from exercising, any rights conferred by those investments" (FSA, s. 47(2)). In this case, it is a defense for the person concerned to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the price or value of the investments (FSA, s. 47(3)).

A person who is found guilty of an offense under section 47 of the FSA is liable, on conviction or indictment, and subject to imprisonment for a term not exceeding seven years or to a fine (or to both). On summary conviction, a person is liable for imprisonment for a term not exceeding six months or to a fine (or to both) (FSA, s. 47(6)).

The CBRs provide specific trade practice requirements relating to the execution of orders. CBR 5.17 provides criteria for the allocation of trades between customers where a firm has acted, in relation to a transaction, collectively for more than one customer and all of the customer orders cannot be satisfied. The trades are allocated between the customers for whom the firm has acted in a manner which does not unfairly benefit one customer at the expense of another, taking into account the interests of each customer and in a manner which is consistent with customer instructions (CBRs, 5.17(3)).

Firms must ensure that each allocation is made in accordance with standards and procedures which are uniform and which are set out in written instructions; these instructions must be familiar to all employees of the firm who make such allocations (CBRs, 5.17(3)).

Similar criteria are imposed in respect to the allocation of trades between customers and the firm. Generally, the firm

shall allocate the transaction to its customers in accordance with CBR 5.17 and may take for itself only that part of the transaction (if any) which remains after its customers orders have been fully satisfied (CBRs, 5.18(2)).

Part 14 of the CBRs sets forth rules specifically governing dealings by officers and employees of firms. For example, an officer or an employee may not, on his own account or on that of a person connected with him, effect any transaction relating to an investment in relation to which the firm carries on investment business unless consent has been obtained from the firm. The firm must take all reasonable steps to ensure that each officer and each employee observes the requirements in Part 14. Further, each officer and each employee must sign an undertaking that he will observe these requirements. In the case of an employee, the rules require the insertion of a term in his contract of employment that he will observe the requirements of Part 14 (CBRs, 14.02).

COB

The following four criminal offenses exist on every French market whatever the product:

- insider dealing
- price manipulation
- misleading information
- communication of non-public information

CONSOB

Rules prohibiting fraudulent activity on securities are not specific. General rules prohibit financial intermediaries from disseminating false information with the objective of manipulating stock prices.

MOF

Articles 50, 125, 129, and 201 of the Securities and Exchange Law prohibit fraudulent and other undesirable trade practices.

NCSC

A person is prevented, whether within or outside [name of State], from taking part in, being concerned in or carrying out, whether directly or indirectly:

- a transaction (whether or not the transaction is a dealing in a futures contract) that has, is intended to have or is likely to have; or

- 2 or more transactions (whether or not any of the transactions is a dealing in a futures contract) that have, are intended to have or are likely to have the effect of:

- creating an artificial price for dealing in futures contracts on a futures market within [name of State]; or

- maintaining at a level that is artificial (whether or not that level was previously artificial) a price for dealing in futures contracts on a futures market within [name of State].

A person is prohibited, whether within or outside [name of State], from creating, or causing to be created, or doing anything that is calculated to create, a false or misleading appearance of active dealing in futures contracts on a futures market within [name of State] or a false or misleading appearance with respect to the market for, or the price of dealing in, futures contracts market within [name of State].

A person is prohibited, by fictitious or artificial transactions or devices, from maintaining inflating, depressing or causing fluctuations in, the price for dealing in futures contracts on a futures market within [name of State].

For the purpose of determining whether a transaction is fictitious or artificial within the meaning of sub-section (2), the fact that the transaction is, or was at any time, intended by the parties who entered into the transaction to have effect according to its terms shall not be conclusive.

OSC

The OSC is empowered to ensure that the floor trading practices of exchanges are fair and properly supervised, and to ensure that adequate measures have been taken by exchanges to prevent manipulation. In addition, the TFE has rules giving priority to customer orders and ensuring that all trading is conducted in a competitive market.

The TFE's rules: prohibit front running, trading against customer orders, entering into pre-arranged trades and withholding customer orders; give customers priority over firm and trader accounts; and prohibit disclosure of customer identities.

Federal criminal legislation includes prohibitions against fraud, bucket shop operations and manipulative activities.

CVMQ

ME

Without in any way limiting the generality of the foregoing, the following are deemed conduct inconsistent with just and equitable principles of trade:

- Unreasonable quotations
- Unreasonable transactions
- Abuse of orders
- Front running
- Manipulative or deceptive trading
- Corners

SFC

Other trading infractions in HKFE rules include:

- a bid or offer out of line with those in the market;
- a bid or offer which tends to confuse other members;
- an execution at a price which is out of line with the market;
- failure to confirm a transaction;
- failure of buyer and seller to announce a change in the last traded price and failure to ascertain that it is properly recorded;
- disclosure of any orders to buy or sell in hand and pending execution other than to authorized staff of HKFE and/or the Commission;
- trading outside trading hours;
- every HKFE contract made on the trading floor which was the subject of a prior agreement between the parties shall be void.

A member of HKFE must at all times act in the best interests of his client.

The CTO prohibits persons from making a false or misleading statement or employing fraudulent or deceptive devices to induce other people to buy or sell futures contracts.

3. Sales representations and disclosure -- required and restricted

(a) Price and volume dissemination requirements and other transparency requirements

CFTC

The antifraud provision in Section 4b of the CEA generally prohibits any person with respect to a customer from providing any false or misleading information, or from failing to provide any information that can have a material effect on a customer's investment decision.

Part 16 of the CFTC rules requires contract markets to publish each day information on the trading volume, open contracts, and prices on futures and options. The information is to be made readily available to the news media and the general public no later than the business day following the day to which the information pertains. See also the discussion in III.A.1. below regarding publicly available information.

SEC

The options SROs require that all order tickets state the time of execution of the order (to the nearest minute). Transactions also must be reported immediately to floor reporters for entry into the SROs' transaction reporting system. The SRO's transaction reporting systems, in turn, transmit option transactions and quotation information to the Options Price Reporting Authority ("OPRA"). OPRA is operated by the options exchanges under a plan approved by the under Rule 11Aa3-2 under the 34 Act. OPRA is responsible for collecting from the options exchanges last sale and quotation information for all standardized options and disseminating that information to private vendors. Specifically, for last sale reports, each exchange is to transmit such reports to OPRA at least within two minutes of execution. For quotation information, the markets are required to transmit to OPRA bids and offers in sufficient number and timeliness to reflect the current state of the market for each option it trades. The OPRA system, in turn, provides for the uniform dissemination of last sale and quotations information on fair and reasonable terms and on a current basis.

SIB

Schedule 4 to the FSA provides that exchanges must require issuers of investments dealt in on the exchange to comply with such obligations as will, so far as possible, afford to persons dealing in the investments, proper information for determining their current value.

The exchanges vary in the manner in which they satisfy the Schedule 4 requirement, however, all RIEs have arrangements in this regard which are deemed to be adequate.

COB

The exchanges are required to provide the market with price information in real time and to provide at least daily volume and opened position information.

CONSOB

MOF

Price information is disseminated every minute through quotation systems of information venders. Volume information is disseminated 4 times a day.

NCSC

There are no price and volume dissemination requirements other than the requirement to set out specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients.

The SFE collects price information from the Trading Floor and disseminates such information through all major quote vendors including Reuters and Telerate. AFFM trading information is widely disseminated. AFFM trading takes place on the same screen trading network (SEATS) utilised by the ASX. All with access to SEATS can view AFFM markets but only AFFM Members have trading access. Market information is also available via price reporting vendor services i.e., JECNET, AAP REUTERS, VIATEL, BRIDGE and EQUINEET.

OSC

The criteria for OSC registration of exchanges includes the requirement that adequate provision be made to: "publish details of trading including volume and open interest" figures. TFE rules require that the highest bid and lowest offer be posted for each contract.

CVMQ

Bankers' acceptance

Members have to report to the ME all positions, in any one contract month, which exceed 300 Canadian bankers' acceptance futures contracts, or such other number as may be determined by the ME.

Government Bond

Members have to report to the ME all combined positions, regardless of the delivery months, which exceed 250 Canadian Government Bond futures contracts, or such other level as may be determined by the ME.

Options

- Reports Related to Position Limits

Each member shall file with the Exchange Examiner on the last business day of each week a report, in such form as may be prescribed, giving the name and address of any client who, on the last business day of the week, held aggregate long or short positions in excess of:

- in the case of stock or bond options, 250 contracts;

- in the case of index options, 1,500 contracts;

- in the case of IOCC options, 50% of the applicable position limit on the same side of the market in any single class. The report shall indicate for each such class of options the number of contracts comprising each such position and, in the case of short positions, whether covered or uncovered.

In addition to the reports required above, each member shall report immediately to the Exchange Examiner any instance in which the member has reason to believe that a client, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits established by the Exchange or by any Clearing House or other exchange.

The term "client" in respect of any member shall include the member, any general or special partner of the member, any officer or director of the member, or any participant, as such, in any joint group or syndicate account with the member or with a partner, officer or director thereof.

Every member of the ME is required through a general partner, a director, an officer or manage of the branch office to:

- use due diligence to learn the essential facts relative to every client, every order, every cash or margin account accepted or carried by such member and every person holding power of attorney over any account accepted or carried by such member;

- supervise diligently all accounts handled by representative of the members;

- specifically approve the opening of an account prior to or promptly after the completion of any transaction for the account of or with a client.

SFC

HKFE rules and the CTO do not provide specific price and volume dissemination requirements nor other transparency requirements. However, it is normal practice that the time, price and volume of transactions in HSI contracts and HIBOR contracts are

disseminated to Reuters on-line and to the press media at the end of the trading day.

(b) "know your customer", "suitability".

CFTC

Each FCM, IB and member of a contract market is required by rule 1.37 to keep for each commodity futures or option account the name and address of the person for whom such account is carried and the principal occupation or business of such person.

The CFTC has required NFA to adopt a "know your customer" rule which has industry-wide applicability. NFA's "know your customer" rule, rule 2-30, requires each NFA member, with the exception of CPOs whose pool solicitations are subject to related state and federal requirements, to obtain from each customer his age, occupation, income, net worth and previous investment experience and to then provide special risk disclosure where it appears necessary. See NFA Interpretative Notice Compliance Rule 2-30, NFA Manual ¶10,060. An account can be opened if the customer declines to provide the information requested but the customer must indicate each waiver in writing.

SEC

No member of an options exchange may accept an options order from a customer unless the customer's account has been approved for options transactions. In approving a customer's account, a B/D must exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation. Specifically, B/Ds are to seek at a minimum the following information about a customer: investment objectives, employment status, estimated annual income from all sources, estimated net worth, estimated liquid net worth, marital status, age, and investment experience and knowledge. Background and financial information of customers who have been approved for options transactions shall be maintained at both the branch office serving the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of options customers must be maintained for the most recent six-month period.

In addition to the suitability requirements, the options SROs have established specific written sales practice and suitability criteria and standards concerning uncovered short options transactions. Specifically, the options SROs require that members and member organizations establish a minimum net equity requirement for approving and maintaining customer accounts for uncovered short options transactions. The options SROs also require that members and member organizations furnish customers a written description of the risks involved in

uncovered short options transactions, in addition to the Options Disclosure Document, at or prior to the customer's initial uncovered short options transaction.

The rules of the options SROs prohibit member firms from recommending to any customer any options transactions unless they have reasonable ground for believing that the entire recommended transaction is not unsuitable for the customer, based on information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the member or associated person.

The rules also prohibit B/Ds from recommending opening transactions unless the person making the recommendation has a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he reasonably may be expected to be capable of evaluating the risks of the recommended transaction, and is able to bear the financial risks of the transaction.

SIB

CBR 3.01, imposes a "know your customer" requirement. A firm may not provide services for a person on the basis that such person is a business, experienced or professional investor unless the firm has taken reasonable steps to establish that the person is properly so characterized. The firm must also provide to such person a written notice that the firm intends to treat him as a business, experienced or professional investor, as the case may be (CBR, 3.02). The notice must advise the customer that he may decline to become a customer of the firm on that basis. These rules are intended to ensure that a customer will not be inadvertently categorized as a "sophisticated" investor.

The "know your customer" rule also provides that a firm may not make recommendations to a customer unless it has taken all reasonable steps to satisfy itself that the customer understands the extent to which he will be exposed to risk or further liability by entering into such a transaction (CBRs, 3.03).

With respect to "suitability", a firm is prohibited from making a recommendation to a customer (or to exercise discretion on behalf of a person), advising him to purchase, sell or exchange an investment unless it has reasonable grounds for believing that the transaction is suitable for that person. The firm must have regard, in this context, to known facts which ought reasonably to be known about the investment and that person's personal and financial situation, including information regarding his other investments.

The suitability requirement does not apply where a recommendation is made in the course of providing a service to a person who is reasonably believed to be a business, experienced or professional investor, and the firm has no reason to believe that the investment is unsuitable (CBRs, 5.01(1)).

Subject to certain limited exceptions, a firm is prohibited from effecting a transaction for a customer upon that customer's instructions if the firm believes, or ought reasonably to believe, that such transaction is unsuitable. The firm may, however, proceed with the transaction if, the customer, after being advised by the firm of the unsuitability of the proposed transaction, has repeated his instructions (CBR, 5.01(2)).

A firm is required to maintain a record in relation to each customer of those facts about the customer's personal and financial situation and competence in financial matters which are known to the firm and which may be expected to be relevant to the compliance by the firm with the "know your customer" and "suitability" rules (there are several limited exceptions to this) (CBRs, 16.05).

COB

The market members must have the identification of customers (i.e. names and addresses) and communicate this to the risks centralizing organization.

Initial margins paid by a customer must not exceed 20% of his net capital. In order to monitor the compliance with this rule, market members are required to collect on a quarterly basis the level of customers' capital.

If the customer is a natural person, the initial margin he pays must not exceed two million francs.

CONSOB

There is no relevant specific provision concerning this point. As a general rule, law 216 of 1974 art.18, provides that whenever an attempt is made to raise funds from the public by the way of an investment proposal, the persons responsible, in any way, for making the proposal shall notify the CONSOB and publish a prospectus.

The notification must be delivered to the CONSOB before the start of the operation, and must indicate the amount and the nature of the securities to be offered as well as the planned manner and conditions of the operation.

The publication of the prospectus also has to precede the start of the operation and it has to describe the organization, profitability and financial position and the development of the

financial activity of both the offeror and the issuer of the securities offered, as well as the features of the latter.

The general provisions regarding the preparation of the prospectus are issued by the CONSOB.

After examining the prospectus, the CONSOB authorizes its publication by depositing an integral copy of the galley proof in its "prospectus register." A copy of the prospectus has to be delivered to persons to whom the investment is proposed and to any person who applies for copies conforming to the original deposited with the CONSOB. Each copy of the prospectus contains a subscription application form.

MOF

Every securities company shall make rules which require examination of customers, standards for beginning transactions with a customer, prevent excessive trading of securities, and others. The security companies shall comprehend accurately the state of customers' trading of securities and other transactions and the state of employees' business operation.

NCSC

There is no "know your customer" or "suitability" rule.

There is a statutory obligation for brokers to keep records of the names of customers but not necessarily their addresses or occupations.

OSC

Dealers dealing with Ontario residents are obliged by Ontario regulations to establish the identity, creditworthiness and reputation of their clients and to ensure the suitability and continuing suitability of each client trade in view of the markets in which the customer intends to trade, the scale of trading and the general financial needs and objective of the customer.

CVMQ

The client's interest must be the foremost consideration in all business dealings.

All information concerning clients' transactions and their accounts must be considered confidential and must not be disclosed except with the client's permission or by order to the proper authority.

A diligent and business-like effort must be made to learn the essential financial, personal and investment circumstances of each client.

All recommendations must be based on a careful analysis of both the client information obtained and the information related to the particular transaction.

All methods of soliciting and conducting business must be such as to merit public respect and confidence.

All clients entering unsolicited orders which appear unsuitable based on the client information supplied should receive appropriate cautionary advice.

A thorough knowledge of the Securities Acts of the province or provinces in which registration is held and the requirements of the approving self regulating agencies must be maintained.

All personal business affairs must be conducted in a responsible manner, so as to reflect credit on the profession.

A continuous effort should be made to maintain a high standard of professional knowledge through reading and study.

SFC

HKFE members are required to have each client complete and sign a "Client Information Statement." The Member is required to deliver to the client a written statement giving the name of the member, the category of membership, the name of the employee handling the client's account and registration particulars of the member and the employee. Members are required to be satisfied with the Beneficial identity of Clients and that clients have sufficient net worth to assume the risks and potential losses of trading in futures contracts.

(c) Risk specific disclosure

CFTC

The CFTC requires written disclosure of the risks of futures and options trading to ensure that potential customers are aware of these risks and are not otherwise misled. Before a futures commission merchant or an introducing broker may open a commodity account for any customer, the customer must be provided with:

- The written risk disclosure statement in CFTC rule 1.55 which sets forth the risks, costs and mechanics of futures trading. Each FCM or IB must obtain from each customer an acknowledgement, signed and dated by the customer, stating that the customer received and understood the disclosure statement. The acknowledgement and all other acknowledgements referred to herein must be retained in accordance with rule 1.31. Rule 155(d) clarifies that this section does not relieve an FCM or IB from any other disclosure obligation it may have under applicable law. See also 50 Fed. Reg. 5381.

- The written risk disclosure statement in CFTC rule 33.7 sets forth the risks, costs and mechanics of commodity option transactions.

- The written risk disclosure statement in rule 190.10(c), which states that before accepting property other than cash from or for the account of a customer to margin, guarantee or secure a commodity contract, an FCM must first provide a written disclosure statement which sets forth in abbreviated form the distribution scheme for such property in the event the FCM becomes insolvent. The FCM must obtain from such customer an acknowledgement, signed and dated by the customer, stating that the customer received and understood the disclosure statement.

An FCM or IB must provide a foreign futures and options customer either in the customer account agreement or on a separate form a written disclosure statement in the language prescribed in rule 30.6 which sets forth the risks, costs and mechanics of foreign futures and foreign option transactions. Rule 30.6(a)(1). The customer must acknowledge that he received and understood the risk disclosure statement if he has granted discretionary authority to the firm.

Disclosure obligations applicable to commodity pool operators and commodity trading advisors are set forth in Part 4 of the CFTC regulations:

- Rule 4.21 prescribes that CPOs may not, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates unless the CPO delivers to the prospective participant a disclosure document containing, among other things, the name address, telephone number and form of organization of the pool, the name, address, telephone number and form or organization of the CPO, the name of each principal, the performance history of the CPO, business background of principals, conflicts of interest, the name of the CTA and the name of the person who will make trading decisions for the pool.

- Rule 4.31 provides that a CTA may not solicit or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the CTA first delivers to the prospective client a disclosure document for the trading program that contains, among other things, the name of each principal of the CTA, the performance history of the CTA, business background of principals, conflicts of interest, the name, address, telephone and form of organization of the CTA and a description of the trading program.

- A CTA or CPO that is registered or required to be registered under Part 30 or that is exempt from registration pursuant to

rule 30.5 must also comply with rule 30.6 disclosure requirements.

SEC

As the issuer of exchange-traded standardized options OCC registers its options under the Securities Act by using a Form S-20 registration statement which is tailored specifically to standardized options. In conjunction with using FORM S-20, OCC also prepares for SEC approval an Option Disclosure Document ("ODD") pursuant to Rule 9b-1 of the 33 Act that describes the uses, mechanics and risks of options trading. The S-20 and ODD are designed to enhance investor understanding of standardized options by separating information about the issuer from information relating to options. B/Ds are required to furnish customers with a copy of the ODD before approving a customer's account for the trading of options or accepting a customer order to purchase or sell a standardized option contract. The B/D's records for each options account must also contain the date the ODD was provided to the customer.

The disclosure requirements for publicly offered standardized options contracts traded on a foreign exchange are the same as the disclosure requirements for standardized options contracts traded on a U.S. exchange.

SIB

No firm is permitted to effect a margined transaction for or on behalf of a customer unless the firm has first provided to the customer a written risk disclosure statement identifying the risks relative to the proposed transaction. The risk disclosure documents for margined transactions are set forth in Appendices A through D to Part 4 of the CBRs. Where the customer is not a business, experienced or professional investor, the firm must ensure that it retains on file a risk disclosure statement acknowledged and dated by that customer (CBRs, 4.15 and 4.16).

COB

Before opening any futures or option account, firms are required to provide their customers with a prospectus about MATIF or MONEP, approved by the COB (visa).

In that prospectus there is risk disclosure about derivative markets. A new COB regulation will require members to procure customer signatures on the prospectus.

CONSOB

See II.B.3.(b) above.

MOF

Securities companies and banks with brokerage licenses must send risk disclosure documents to their customers (except securities companies and financial institutions) at least once a year.

NCSC

A futures broker is required, before accepting a client of the broker, to give the prospective client:

(a) a document that

- explains the nature of futures contracts;

- explains the nature of the obligations assumed by person who instructs a futures broker to enter into a futures contract;

- sets out a risk disclosure statement in the prescribed form; and

- sets out the specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients; and

(b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to dealings in futures contracts, to require the person to enter.

There are no special disclosure requirements regarding the risks of trading on non-Australian markets.

OSC

Dealers are required by Ontario regulation to provide each client with a risk disclosure document which includes standardized risk disclosure language prescribed by the OSC. At present, separate risk disclosure statements exist for commodity futures, commodity futures options and option transactions. No transaction can be entered into prior to receipt by the dealer of a signed copy of the new disclosure statement indicating that the client understands the risks involved in trading in such products.

CVMQ

The dealer must deliver to the client before the first trade made by that client, the current disclosure document for commodity futures contracts, for options traded on a recognized market and for exchange-traded commodity futures options. The receipt of the document shall be evidenced in writing. The document shall present the following information:

- Nature of an option (futures)
- Specifications of options (futures)
- Exercising options
- Trading of options (futures)
- Costs of options trading
- Risks in options (futures) trading
- Tax consequences
- Margin requirements
- Contracts specifications
- Etc.

SFC

HKFE members are required to have a Risk Disclosure Statement signed by their clients before trades are effected.

(d) Promotional material

CFTC

CFTC rule 166.3 requires each registrant to diligently supervise the activities of all APs. Such supervision includes the use of all promotional material. NFA rule 2.29(d) requires all NFA members to have written supervisory procedures for the review of all promotional material for compliance with rule 2.29. §4b prohibits any person, in connection with any order or contract of sale of any commodity, from making false or misleading statements in connection with a transaction. Thus, the CFTC may bring an action to enjoin misleading advertising or an administrative complaint based on the use of such material.

Rule 33.4(b)(8) requires, as a precondition to designation as a contract market in options, that an Exchange adopt rules which require each FCM which offers or sells options to submit to that FCM's self-regulatory organization all promotional material. Such promotional material must be promptly reviewed by the designated self-regulatory organization to determine that such material is not fraudulent. See also NFA Compliance rule 2-19(c), which requires that each member promptly submit to its designated self-regulatory organization all options related promotional material (as defined in CFTC rule 33.1).

Rule 4.41 prohibits a CPO, CTA or any principal thereof from advertising in a manner which employs a devise, scheme or artifice to defraud a client or prospective client or involves

any transaction, practice or course of business which operates as a fraud or deceit upon a client or prospective client.

NFA has established a Promotional Material Group in its Compliance Department which reviews national and regional newspapers to determine whether advertising complies with the standards set forth in NFA 2.29. For clarification of rule 2-29, see Interpretative Notice to NFA Members dated May 23, 1985 and the compliance guide entitled "Communications with the Public and Promotional Material."

NFA further conducts a "pitch program," whereby it exchanges market information with 25 states, a voluntary pre-publication advertising submission program which operates to screen advertising, and a telephone client solicitation program to test oral sales pitches.

SEC

The rules of the options SROs establish detailed standards concerning the content and manner or presentation of options advertisements, educational material and sales literature. All advertisements, educational material, and sales literature (except completed worksheets) must be approved in advance by a firm's Compliance Registered Options Principal. B/Ds also are required to submit advertisements and educational material to options SROs for approval or review prior to their use.

In general, the rules adopted by the options SROs prohibit the use of sales and advertising material that: (1) is false and misleading; (s) promises specific results; (3) contains exaggerated or unwarranted claims, opinions, or forecasts; (4) contains clauses disclaiming responsibility for its content; or (5) fails to meet general standards of good taste and truthfulness. Specifically, advertising policies for options require that all advertising and sales material reflect the special risks of options transactions and the complexities of certain options strategies.

SIB

Advertising in respect of investment business is regulated by the provisions of the CBRs. Advertisements must be clear and not misleading (CBRs, 7.07). Generally, the nature of the investment and of the services to which an advertisement relates must be clearly described (CBRs, 7.09). In addition, the advertisement must identify the capacity in which the firm will enter into the agreement (ie as agent or principal) for purposes of providing the advertised services (CBRs, 7.11). Any information which must be included in the advertisement under the rules in Part 7 must not be disguised either through lack of prominence in relation to any other matter in the advertisement or by the inclusion of other matter calculated to minimize the significance of the statement (CBRs, 7.05). In

addition, the advertisement must generally state the identity of the authority with regulatory responsibility for the advertising firm (CBRs, 7.12).

Advertisements (other than short form or image) must contain risk warnings (CBRs, 7.22).

Part 8 of the CBRs contains rules relating to the issue and content of "published recommendations". These rules apply to any journal, tip-sheet or other publication, including sound broadcasting or television, which is issued at regular intervals and which may contain recommendations as to the acquisition, retention or disposal of any investments. Published recommendations must, where appropriate, contain a suitable risk warning statement and must not state or imply that a recommendation is based on research or analysis, unless such research or analysis has actually been conducted, the firm is in possession of the results, and it is adequate to support the recommendation (CBRs, 8.05).

Where the investment business of a firm or its associate includes the effecting of investments which are not readily realisable (eg investments which are not traded on or under the rule of an RIE, ROIE or DIE) and the firm also issues a relevant publication which may include recommendations to acquire such investments, the firm shall not give or send that publication to, inter alia, inexperienced private investors (CBRs, 8.04).

COB

There is no specific provision concerning this point.

CONSOB

See II.B.3.(b) above.

MOF

Any securities company which wishes to put in advertisements shall report to the Japan Securities Dealers Association.

NCSC

In this section, "publish", in relation to a statement, means:

- insert the statement in a newspaper or periodical or cause it to be so inserted;

- publicly exhibit the statement or cause it to be publicly exhibited;

- include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent

or delivered to a person, or thrown or left upon premises in the occupation of a person; or

- broadcast the statement by wireless transmission or television or cause it to be so broadcast.

Where the Commission considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, the Commission may, by order in writing served on the person, prohibit the person from publishing statements relating to futures contracts or to the carrying on or proposed carrying on of businesses involving dealing in futures contracts on behalf of other persons, unless the form and content of the statements have first been approved by the Commission.

An order shall not be made unless the Commission has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before the Commission (being a hearing that takes place in private) and make submissions and give evidence to the Commission in relation to the matter.

OSC

The CFA enables the OSC to review all advertising and sales literature proposed to be used by dealers in connection with trading in contracts where, based upon a dealer's past conduct, the Commission is satisfied that such a review is necessary for the protection of the public.

The TFE by-laws require that all advertisements and sales literature issued by a futures commission merchant be approved by the Designated Registered Futures Principal.

No advertisement or sales literature may be issued which:

(a) contains an untrue statement of a material fact (or omits to state a material fact that is required to be stated in order to make a statement not misleading);

(b) contains an unjustified promise of specific results;

(c) uses unrepresentative or misleading statistics;

(d) contains any opinion or forecast not clearly labeled as such;

(e) fails to present fairly the potential risks to the client; or

(f) is detrimental to the interests of the public, the Exchange or its members.

CVMQ

No ME member shall issue any circular, market letter, bulletin, broadcast or telecast unless a partner, director or officer of the member has approved thereof and signed an exact copy thereof as evidence of such approval.

No ME member or approved person shall advertise or promote, either a product or their own service, using material which:

- contains any untrue statement or omission of a material fact or is otherwise false or misleading;

- contains an unjustified promise of specific results;

- uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;

- contains any opinion or forecast of futures events which is not clearly labeled as such;

- fails to fairly present the potential risks to the client; or

- is detrimental to the interests of the public, the Exchange or its members.

SFC

All promotional material must be approved by the HKFE and filed with the Commission.

(e) Fees, cold-calls -- any restrictions?

CFTC

The CFTC has no regulations governing fees or cold calls.

Neither regulatory nor self-regulatory organizations have regulations that limit the amount of commission that can be collected. However, if commission fees exceed eighteen percent of the equity in the account in any given month, NFA auditors will examine the pattern of commission charged by the firm for potential churning or other abuses.

NFA has adopted guidelines under its rule 2-4 (a general rule that mandates "just and equitable principles of trade") that require FCMs and IBs who charge fees other than on a per-trade or "round-turn" basis to provide a customer with a complete written explanation, including examples, of any unusual fees. Proposed legislation would require each futures association (i.e., NFA), subject to Commission approval, to adopt supervisory guidelines applicable to members determined to require such guidelines concerning telephone solicitations for new

accounts including a requirement that no new customer may enter an order for three days after signing the required acknowledgment of receipt of applicable risk disclosure documents.

SEC

There are no specific restrictions imposed on fees that members can charge investors relating to options transactions other than the requirement that members adhere to "just and equitable principles of trade" when imposing fees. B/Ds also are required by Rule 10b-10 to disclose the amount of the commission. Additionally, the SEC also has prohibited SRO-imposed minimum commission rates.

Section 6(b)(4) of the 34 Act requires exchanges to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and the SEC has authority under Section 19(b) of the Act to ensure exchange fees are reasonable.

Additionally, the SEC's recently adopted rule aimed at addressing abuses associated with cold calling does not apply to options contracts issued by OCC. The SEC granted this exemption because of the specific safeguards provided investors of OCC options contracts and the absence of reported abuses. As described in II.B.3.(b)(c) and (d), there are SEC safeguards in place governing suitability, risk disclosure, and communications with customers.

SIB

There are no restrictions on the quantum of fees which a firm may charge, although the firm may not charge unfairly or unreasonably for the services it provides (CBRs, 2.08 (1)).

Section 56 of the FSA provides that, except as permitted by the regulations, no person shall enter into an investment agreement with a person resulting from an unsolicited personal visit or oral communication. There are, in addition, several carefully defined exceptions in the FSA under which overseas persons may carry on investment business with, among others, authorised persons in the UK. Contracts entered into as a result of an unsolicited call are unenforceable and the customer may rescind the agreement and recover any property transferred thereunder together with compensation for any loss. The SROs are required to adopt and implement their own similar rules regarding unsolicited calls.

COB

Fees are freely negotiated between the dealer and the customer.

Cold-calling on futures and options is authorized for persons holding an appropriate card attributed by the CMT. These person cannot accept orders of funds through cold-calling

before expiration of a time-limit of 7 days after the delivery of a prospectus which provides information on the operations of the stock options market and the risks involved in trading thereon.

CONSOB

No restrictions.

MOF

In order to protect investors from extremely high fees, the stock exchanges fix maximum levels of brokerage fees for futures and options. (In the case of futures transactions with physical delivery (JGB futures, Stock futures 50, etc), brokerage fee schedules are fixed by the stock exchanges).

NCSC

No restrictions

OSC

Fees are not regulated. However, OSC regulation and TFE rules do not permit managed account fees to be based on performance without client agreement, or to be based on the value or volume of transactions. The OSC has authority to restrict or condition the right of dealers to cold-call potential customers.

CVMQ

There is no fixed rate of commissions in Quebec.

There is no specific legislation respecting cold-calls in the Securities Act by the ME rules specify that indiscriminate or improper solicitation of orders either by telephone or otherwise and high pressure or other salesmanship of character considered undesirable shall be deemed conduct unbecoming a member.

SFC

HKFE's rules provide that a member shall charge commissions for all trades executed on the floor on behalf of clients at a rate not less than the rates prescribed by HKFE. The CTO prohibits cold-calling.

(f) Other sales practice requirements, including supervision of orders and sales personnel and anti-fraud rules

CFTC

CFTC rule 166.3 and NFA rule 2-9 require the "diligent supervision" of all conduct by sales personnel related to their activities subject to regulation by the CFTC.

§17(p) of the CEA requires NFA to submit for CFTC approval rules that establish minimum standards governing members' sales practices. These include training standards and proficiency testing, among other things. §17(q) of the CEA mandates the development of a comprehensive program to implement this section.

NFA, in compliance with §§17(p) and (q) of the CEA has established sales practice standards. NFA conducts full scope financial and sales practice audits of all FCMs carrying customer funds once every two years, with a limited scope audit in the off year for FCMs for which it is the designated self-regulatory organization. NFA also conducts sales practice audits of all other membership categories including IBs, CPOs, CTAs and their branches.

Part 33 of the CFTC's regulations requires any exchange which seeks designation as a "contract market" for options to adopt rules regarding options sales practices and supervision thereof. In particular, rule 33.4(c) requires each exchange to conduct sales practice audits of member FCMs.

Thus, NFA and the exchanges have sales practice audit responsibilities and the scope of such audits includes: proper order handling; the handling of discretionary accounts; adequacy of internal supervision; fraudulent or high-pressure sales communications; compliance with disclosure requirements; proper handling and disposition of customer complaints; determining whether promotional materials are fraudulent, and in the case of options, submitted for review; and also in the case of options, that the firm enforces written supervisory procedures for option accounts.

The CFTC relies on SROs, i.e. NFA and the exchanges, to provide for direct supervision of industry sales practices.

The CFTC's rule is that of an overseer and in that capacity, the CFTC's staff conducts regular reviews of the SROs' sales practice audit program to determine whether SRO programs meet CFTC standards and to ensure the adequacy and proper coordination of SRO efforts. See Interpretation 4-1, discussed in II.A.1(d) above.

SEC

The options SROs require that all registered representatives pass a general securities examination that includes options questions. Options supervisors must pass a general principal examination plus a separate options principal examination.

The 34 Act explicitly authorizes the SEC to discipline a B/D or an associated person for an unreasonable failure to supervise another person with a view towards preventing violations of the federal securities laws and the rules and regulations thereunder. In addition, the options SROs require that: (1) member firms develop and implement a written program for the supervision of their options business; (2) those options programs be under the overall supervision of a designated senior registered options principal; (3) compliance responsibilities be under the supervision of a designated compliance registered options principal; and (4) all branch offices (except those with less than three options representatives) be supervised by a principal-qualified branch office manager.

The anti-fraud provisions of the securities laws are designed to prohibit and redress abusive trading practices. The two principal anti-fraud provisions, which are implied rights of action, are Section 17(a) of the 33 Act, which prohibits fraud or misrepresentation in the offer or sale of securities and Section 10(b) of the 34 Act which makes it unlawful to use or employ, in connection with the purchase or sale of any security, manipulative or deceptive devices in contravention of SEC rules. In addition, several provisions of the federal securities laws grant investors express causes of action (e.g., Sections 9(e) and 18(a) of the 34 Act) against securities professionals. Finally, investors may pursue remedies under state general anti-fraud statutes as well as state "blue sky" laws.

Options SRO members also are required to adhere to "just and equitable principles of trade." The SROs have used the just and equitable principles standard to issue stated policies, practices, and interpretations to prohibit specific conduct. For example, the SROs have issued interpretations and policy statements noting that frontrunning is conduct inconsistent with just and equitable principles of trade. In addition, this standard has been used in a variety of situations to discipline unethical conduct. See also SEC response at II.B.7.(b).

SIB

Firms are required to establish and maintain procedures for the supervision of each officer, employee and appointed representative of the firm (CBRs, 2.13(1)(a)).

The firm must ensure that each officer, employee and appointed representative does not give advice or provide services of such a nature as is beyond his competence to give or to provide (CBRs, 2.13(1)(b)).

The supervision procedures must be recorded in writing (CBRs, 2.13(3)). This does not apply in the case of a small firm, that is one where the total of officers and employees does not exceed ten (CBRs, 2.13(3) and (4)).

Periodic audits are undertaken, in the case of directly authorised businesses by SIB and, in other cases, by the relevant SRO.

COB

Individuals in charge of trading must hold an appropriate card delivered upon request of the firm for which they work. To obtain this card these individuals must pass a professional examination and prove that they have never committed a criminal offense before.

CONSOB

See II.B.3.(b) above.

MOF

Other than mentioned at II.B.1.(b) above, the Securities and Exchange Law prohibits unfair trading (Article 58), manipulation of securities price (Article 125) and others.

NCSC

A person is prevented from:

- making or publishing any statement, promising or forecasting that the person knows to be misleading, false or deceptive;

- dishonestly concealing material facts;

- the reckless making or publishing (dishonestly or otherwise) of any statement, promising or forecasting that is misleading, false or deceptive; or

- recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular, inducing or attempting to induce another person to deal in a futures contract or a class of futures contracts.

It is a defense to a prosecution for an offense under subsection (1) constituted by recording or storing information as mentioned in paragraph (1)(d) if it is established that, at the time when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person.

Where:

- a person makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:

- to induce other persons to deal in futures contracts on a futures market within [name of State]; or

- to have the effect of raising, lowering, maintaining or stabilizing the price for dealing in futures contracts, or in a class of futures contracts, on a futures market within [name of State]; and

- at the time when the person makes the statement, or disseminates the information:

- the person is recklessly indifferent as to whether or not the statement or information is true or false; or

- the person knows, or ought reasonably to know, that the statement or information is false or misleading in a material particular.

For these purposes, "relevant person", in relation to a dealing or proposed dealing in a futures contract by a futures broker, means:

- the broker

- an employee or agent of the broker; or

- a person who has an interest, or is otherwise concerned in, the dealing or proposed dealing.

Where, in connection with a dealing or proposed dealing in a futures contract by a futures broker on behalf of a client of the broker, a relevant person in relation to the dealing or proposed dealing:

- defrauds the client;

- does an act, or omits to do an act, knowing that the client will be deceived or misled, or with reckless indifference as to whether or not the client will be deceived or misled, as a result of the act or omission; or

- (without limiting the generality of paragraph (b)) makes a statement, promise or forecast to the client, or makes an entry in a record relating to the client or persons including the client:

- knowing that the statement, promise, forecast or entry is false, misleading or deceptive in a material particular; or

- with reckless indifference as to whether or not the statement, promise, forecast or entry is false, misleading or deceptive in a material particular.

Futures Industry Regulations enacted in December 1989 provide as conditions of holding a license the following:

- For the purposes of section 69 of the Act, a license is subject to the conditions that the holder of the license must ensure that each representative of the holder:

  -- is adequately supervised in the performance of the duties that he or she is required by the holder to perform;

  -- is sufficiently trained in relation to those duties before acting as a representative; and

  -- keeps up to date in relation to those duties by means of continuing training programs.

- The Commission may, by notice in writing, require a holder of a license to satisfy it that the conditions referred to in subregulation (1) have been met by the holder."

Guidelines on procedures for conducting sales practice audits have not yet been formalised by the AFFM.

OSC

Dealers are obliged to file with and have approved by the OSC, supervisory procedures respecting their conduct of business. Such procedures include descriptions of sales practices and supervision of orders and sales personnel.

In addition, the CFA prohibits representations that:

(a) a person or company will refund all or any portion of margin or premium paid; or

(b) assume all or any portion of the obligations of a person or company under the contract.

It is an offense under the CFA to give any undertaking, whether written or oral relating to the future value of a contract.

CVMQ

See II.B.3.(b) above.

The Quebec Securities Commission requires that every dealer/broker establish in writing the internal control mechanisms which enable his senior executives to:

- oversee the opening and administration of clients' accounts;

- supervise representatives and office staff;

- ensure compliance with the Act, the Regulation, the Commission's policy statements and the rules of a self-regulatory organization of which he is a member.

SFC

The CTO prohibits the making of false or misleading statements or employing fraudulent or deceptive devices to induce the purchase or sale of futures contracts.

Any transaction for the account of a director or employee of an HKFE member must be separately recorded and clearly identified in the accounting records, but otherwise must be dealt with in the same manner as transactions on behalf of other clients and in particular must be margined in the same manner as that adopted for other clients.

Transactions of a director or an employee must be reported to and actively monitored by senior management of the member who must be independent of the director or employee concerned and who shall maintain procedures to ensure that the trading and conduct of the director or employee are not prejudicial to the interest of the member's other clients.

4. Product design -- delivery procedures, settlement prices

CFTC

Guideline No. 1 (set forth in Appendix A of Part 5 of the Commission's rules) requires that the justification for an individual contract's terms and conditions contain specific information regarding delivery procedures. These are set forth in II.C.1.(a) and (c) below.

Guideline No. 1 also requires the justification to include, in the case of contracts where cash settlement is possible, evidence that the cash settlement of the contract price is at a price reflecting the underlying cash market, will not be subject to manipulation, and must also include an analysis of the price series upon which the settlement will be based and an analysis of the potential for manipulation of the cash-price series.

Guideline No. 1 requires a board of trade to demonstrate, as a condition of initial and continued designation, that a contract meets the "Economic Purpose Test." This test is generally met when it can be shown that it is reasonable to expect the contract to be used for hedging and/or price basing purposes. See II.C.1.(a) below.

Under CFTC rule 5.2 any contract market in which no trading has occurred in any futures or options expiration for a period of six calendar months (or has otherwise been certified by a board of trade to be dormant) may not list additional months or

expirations or permit trading to recommence without prior CFTC approval. In order to obtain such CFTC approval, the board of trade must submit an economic justification, which shall include an explanation of the conditions which have changed subsequent to the time the contract become dormant.

SEC

Stock index options are settled by the payment of cash rather than the delivery of stock. The assigned writer of an index option is obligated to pay the exercising holder cash in an amount equal to the difference between the exercise settlement value of the underlying index and the exercise price of the option, multiplied by a specified index multiplier. Index options presently trading utilize either American or European style exercise provisions. While American-style options may be exercised at any time before expiration, European-style options may be exercised at expiration only. Currently, several stock index options settle on the basis of opening expiration day prices for the underlying index stocks while others settle on the basis of closing expiration day prices.

The SEC has no specific guidelines that govern the product design of index options. In general, however, the exchanges must comply with Section 6 of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. See also response to I.A.(c) above.

SIB

The relevant legislation does not impose requirements in respect to product design except in so far as it limits an exchange to dealings in investments in which there is a proper market (FSA, Schedule 4, paragraph 2(2)(a)). In assessing compliance with the requirements of Schedule 4 and, in particular, compliance by the exchange with the requirement that the exchange must limit dealings on the exchange to investments in which there is a proper market, regulators will seek to be satisfied of liquidity and depth of the market and controls in relation to the scope for market manipulation. As part of these requirements an exchange will need to ensure that it has adequate arrangements and provision for the suspension of dealings in the event that the market ceases, or is likely to cease, to be a proper market. The legislation does not provide a definition of "proper market" and is silent regarding delivery procedures and the determination of settlement prices.

Delivery procedures are established by the relevant exchange. The rules and practices of the exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors (FSA, Schedule 4, paragraph 2(1)).

Settlement prices are determined daily by the clearing house and will take into account the risks associated with holding positions in the market. The determination of settlement prices, which are calculated on a daily basis and which are used for establishing the margin requirements, is a component of the arrangements which the exchange must have for ensuring the performance of transactions effected on the exchange (FSA, Schedule 4, paragraph 4).

COB

See II.C.1.(a) below.

CONSOB

The delivery of shares has to be made following settlement procedures whose dates are fixed in the exchange calendar issued annually by CONSOB. Bonds are delivered and settled on a continuous rolling basis three days after the trade is made.

MOF

Delivery procedures and the procedures for determining settlement prices are stipulated by stock exchange rules. Contracts must be approved before they can be traded on an exchange. Dormant or low-volume contracts do not receive any special regulatory treatment.

NCSC

All products of the SFE and the AFFM have to be approved by a Committee of the relevant exchange and formally approved by their respective Boards. Final approval is determined by the Commission.

Delivery procedures are approved by Austraclear or ICCH in relation to the SFE.

Settlement prices are determined by a Committee of the SFE, however, ultimate discretion rests with the clearing house, ICCH.

Sydney Futures Exchange products are developed through the Committees of the Exchange made up of Members of the Exchange and other market participants. Contracts are developed on the basis of the needs of the market and the likely demand for the product - as assessed by these committees. Considerations such as the likely liquidity of the contract and the possibility of manipulation are important factors in this consideration.

It has been the practice of the AFFM to restrict contracts to those related to the sharemarket although the possibility exists for other contracts to be listed.

For individual share contracts the criteria of the AFFM include the capitalisation of the relevant listed company, turnover in the underlying security, existence of other derivatives, i.e., exchange traded options, spread of shareholding and share price volatility.

For share price indices the criteria are capitalisation (all indices are capitalisation-weighted) sensitivity of index to component stocks, utility to investors as a hedging instrument.

After AFFM Board approval has been granted, ICCH has the first option on agreeing to clear and guarantee the contract. Ultimate authority for listing a contract rests with the NCSC who must provide notification of non-disallowance before the Exchange will list the contract for trading. The NCSC will issue a notice of non-disallowance of rule amendments pertaining to the introduction of a new product if it is satisfied that the product can not be easily manipulated and will serve the interests of the market in general.

Austraclear is an electronic delivery facility used by the SFE for deliveries in its bank accepted bill and semi-government bond contracts. It is rapidly becoming the principal delivery facility in the physical securities markets and is a Member organisation made up of participants in those markets. It does not as such approve delivery procedures but rather provides them.

Delivery procedures for the AFFM are specified in AFFM Contract Regulations which must have the sanction of the Board, ICCH and NCSC. All contracts are cash settled.

Settlement price procedures are specified in AFFM Contract Regulations. All individual share contracts use an average weighted price for mandatory settlement. This is calculated by dividing turnover value by turnover volume for the whole day. A closing market price is not used.

For index contracts settlement price is the closing level as adjusted at 10 am the following day. Settlement prices are provided to ICCH by the Exchange. Provision for varying the settlement price is covered in Article 79(iv) Undesirable Situations and Practices. Article 79(iv) authorises the Futures Exchange to direct that "any Futures Contract made on a Futures Market or a class of Futures Contracts so made be closed out forthwith or invoiced back to a specified date and/or at a price or value determined by the Board".

In accordance with recent approval by the Board of the SFE in future settlement prices will be disseminated by the Exchange based on prescribed criteria. Traders will have an opportunity to object via a Pit Settlement panel consisting of senior pit traders and the senior Exchange Pit Boss. On Agreement the firm settlement price will be displayed.

OSC

The criteria for OSC registration of an exchange includes the requirement that the OSC be assured that the exchange, its clearing house and its members are able to meet all obligations arising out of contracts entered into on the exchange. TCO and the TFE have detailed rules and procedures respecting delivery and settlement prices.

CVMQ

Exercise/Delivery procedures

The clearing house issues a Daily Transaction Report on the following business day to each clearing member who submitted an exercise notice and to each assigned clearing member. The report identifies the clearing member, the account from which the exercise was tendered or to which the exercise is assigned, the number of contracts, by series exercised or assigned and the value.

Options

- A stock is deemed to be in good deliverable form only if the delivery of the certificate in such form would constitute good delivery under the by-laws and rules of the ME.

- The bonds acceptable for delivery against exercise of a bond option must be the specific underlying issue and shall bear a full coupon of accrued interest.

- Settlement of options is on the next business day basis as provided by the Rules of TCO and no delayed or private settlement of Exchange option trades is permitted.

Assignment of exercise notice:

Exercise notices accepted by TCO shall be assigned, in accordance with TCO's procedures of random selection, to clearing members with open short positions in the series of options involved. TCO shall treat all accounts equally, provided that an exercise notice for more than 10 options will be randomly assigned to clearing members in blocks not exceeding 10 options, except on the expiration date when an exercise notice may be randomly assigned in total.

An exercise notice shall not be assigned to any clearing member which has been suspended for default or insolvency. An exercise suspended shall be withdrawn and thereupon assigned to another clearing member.

Futures:

- Unless otherwise specified by TCO, delivery of the underlying interest and payment therefor is made through TCO.

Assignment of tender notice (Futures):

Tender notices accepted by TCO shall be assigned, at the end of each business day on which the contract specifications permits tender notices to be tendered, in accordance with TCO's procedures of random selection, to clearing members with open long positions as of the close of trading on the day on which the tender notice is submitted.

A tender notice shall not be assigned to any clearing member which has been suspended for default or insolvency. A tender notice assigned to a clearing member which is subsequently so suspended shall be withdrawn and thereupon assigned to another clearing member.

Each clearing member shall establish fixed procedures for the allocation of tender notices assigned to it in respect of a long position in the clearing member's client account. The allocation shall be on a basis that is fair and equitable to the clearing member's clients and consistent with the by-laws and rules of the exchange on which the futures is traded. Such allocation procedures and any changes thereto shall be reported to TCO on request.

Canadian banker's acceptance futures

- the final settlement price is the amount quoted by the ME at the close of trading on the last day on which such Future trades determined by subtracting from 100 the Canadian Bankers' Acceptance Reference Rate for such day, rounded to the nearest 1/100th of a percentage.

  Unless otherwise specified by TCO, settlement of positions held following the close of trading on the last day of trading in a series of futures shall be made on the first business day following the last day of trading. Settlement shall be made by an exchange of cash between TCO and each of the short and long clearing members. The amount to be paid or received in final settlement of:

  -- each position opened prior to the last trading day is the difference between

     --- the final settlement price; and

     --- the settlement price of the contract on the previous trading day multiplied by the multiplier; and

-- each position opened on the last trading day is the difference between

--- the final settlement price and

--- the trade price of the open contract multiplied by the multiplier

Canada bonds future

Delivery of Government of Canada bonds shall be made by the clearing member on the fifth business day following submission of a tender notice, or on a day as otherwise determined by TCO. Delivery must be made no later than the last business day of the delivery month.

- Delivery standards

The delivery unit for 10-year Canada Bond Futures shall be Government of Canada Bonds which do not mature and are not callable for at least 6 1/2 years and no more than 10 years from the first calendar day of the delivery month, having a coupon rate of 9% and an aggregate face value at maturity of $100,000. All bonds in a delivery unit must be of the same issue.

The delivery unit for 5-year Canada Bond Futures shall be Government of Canada Bonds which do not mature and are not callable for at least 4 years three months and no more than 5 years three months from the first calendar day of the delivery month, having a coupon rate of 9% and an aggregate face value at maturity of $100,000. All bonds in a delivery unit must be of the same issue.

Substitution - at the seller's option, bonds with coupon rates other than 9% are deliverable, at a discount for bonds with coupons less than 9%, and at a premium for bonds with coupons more than 9%.

- Submission of tender notices

A clearing member who holds a short position in the currently deliverable series and who wishes to make delivery must submit a tender notice to TCO no later than the time established by TCO on a business day from five business days prior to the first business day of the delivery month up to and including the fifth last business day preceding the last business day of the delivery month indicating the maturity of the Government of Canada bonds being delivered.

A clearing member who, at the time that trading has ceased, holds a short position of the currently deliverable series shall submit a tender notice to TCO indicating the maturity of the Government of Canada bonds being delivered. Such notice

must be tendered no later than the fifth business day preceding the last business day of the delivery month.

The clearing member to whom a delivery has been assigned must confirm to TCO that delivery has been completed.

SFC

Both HSI and HIBOR are cash settled contracts. The procedures for fixing the settlement prices are designed to ensure fairness and to reduce the chance of manipulation. The Settlement Price of the HSI market is the average of the quotations for the Hang Seng Index taken at five-minute intervals during the Last Trading Day of the contract month of cash settlement as calculated and published by HSI Services Ltd. Settlement price of the HIBOR contract is based on random sampling twelve of twenty designated banks chosen to supply a HIBOR quote. The random sampling is taken on the last trading day at two different times. Average of the bank quotes excluding the highest and the lowest two is calculated each time. The settlement price is the difference between 100 and the average of the two samplings averages.

5. **Recordkeeping -- maintenance, retention period, availability and confidentiality**

(a) Transaction audit trail

CFTC

General

CEA §4(b) states that the CFTC shall be authorised to promulgate rules and regulations in a variety of areas, including "the keeping of books and records."

Pursuant to CEA §5(b), an exchange cannot be designated as a contract market until the governing board of the exchange provides for the making and filing of reports showing the details and terms of all transactions entered into by the exchange.

Pursuant to CEA §4g, every person registered as an FCM, IB or FB shall make reports, in the form as prescribed by the CFTC, and shall keep such reports available for inspection by the CFTC and the Department of Justice.

CEA §4g(2) requires that clearing houses and contract markets maintain daily trading records. Moreover, §4g(3) requires FBs, IBs and FCMs to maintain trading records for each customer so that they are identifiable with the trades referred to in subsection (2); pursuant to §4g(4), these records must be kept in a form suitable to the CFTC.

Rule 1.31 requires all books and record to be kept for a period of five years and to be readily accessible during the first 2 years of the 5-year period. All books and records must be open to inspection by a representative of the CFTC or the U.S. Department of Justice.

Under rule 1.31(b) and (c), computer, accounting machine, or business machine generated records may be immediately produced or reproduced on microfilm and kept in that form. For all other books and record, microfilm copies must be substituted for the hard copy for the final three years of the 5-year period. Such microfilm records must be arranged and indexed and must be easily accessible.

CEA §4n(3)(A) mandates that every CTA and CPO keep books and records as prescribed by the CFTC. Rules 4.23 and 4.33 contain the recordkeeping requirements for CPOs and CTAs, respectively. In general, these rules require CTAs and CPOs to keep books and record which identify the client, required acknowledgements, powers of attorney, written agreements, a list of all client accounts and transactions effected for such accounts, copies of the confirmation slips and account statements received from an FCM, all reports, letters or other literature given to clients, an itemized daily record of each transaction, books and records of all other transactions.

Rule 1.35 prescribes the scope of recordkeeping for FCMs, IBs, members of exchanges and exchanges for all cash commodity, futures and option transactions. This regulation sets forth those recordkeeping criteria which are instrumental in the recreation of a sequence of trading events. The records required to be kept are as follows:

- Each FCM, IB and exchange member on the floor of the exchange upon receipt of a customer order shall immediately prepare a written record of such order, including the account identification number and shall record the date and time to the nearest minute that the order is received and is executed or transmitted for execution.

- Each FCM, IB and exchange clearing member shall as a minimum requirement prepare (1) a financial ledger record which will show charges and credits to each customer account, (2) a record of all futures and options transactions noting the details of the transactions, including price and quantity, and (3) a record of all details regarding the futures and options transactions executed on that day, including the FCM if the person required to keep the record is an IB.

- In the daily record required in the preceding paragraph, each clearing member is required to note the FB or trader, the opposite FB or trader and the opposite clearing member to the transaction.

- Each exchange member who participates in purchases or sales of commodity transactions is required to prepare, in non-erasable ink a pre-printed sequentially-numbered trading card which is unique to each exchange member showing the quantity, price or premium, transaction date or time, the delivery month or expiration date, the clearing member, the opposite FB or trader and the opposite clearing member. The purchases and sales must be recorded in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades. Any lines remaining after the last execution recorded must be marked through.

- Recently-adopted provisions to rule 1.35 require that the trading cards prepared by the exchange member must be time-stamped to the nearest minute upon collection, and must be collected by the exchange within 15 minutes of designated intervals not to exceed 30 minutes. The opening and closing periods must be designated on the trading card. An exchange may petition the CFTC for an exemption from these requirements based upon the demonstrated current availability of hand-held terminals or other automated means for trade recordation which can eliminate improper alteration or fabrication of such records. The newly-adopted provisions impose obligations directly upon exchange members with regard to the content, completion, collection, and timestamping of trading records. Each exchange is required to implement rules to that effect.

- Each exchange is required to maintain a single record which contains all identifying information regarding the transaction. The major difference between the information contained on this record and the other previously mentioned records is that the exchange record must contain a customer type indicator, which indicates the type of account for which the person executing the trade is trading.

- In all of the records of this section required to be kept by exchanges, each exchange is required to provide for identification of floor brokers, traders and clearing members by non-variable designation.

- Each exchange is required to identify the actual time of execution of a transaction in increments of one minute or less if the contract market identifies and records the time of the transaction or must obtain the actual times of execution of each side of a transaction.

- Each exchange must obtain a record of all changes in the price of futures and options transactions executed on the floor of the exchange to the nearest ten seconds.

- An exchange is required to demonstrate continued compliance with the regulations with effective use of the information required to be obtained. It may also be required to submit to the CFTC reports concerning all of the information collected.

Rule 20.00 states that each member of an exchange who executes uncleared transactions on a contract market shall report such transactions to the CFTC unless the transactions are recorded on the books of a clearing member or member of an exchange and they are included in the reports furnished by these entities to the CFTC.

Rule 32.7 establishes the books and recordkeeping requirements for commodity option transactions. This requirement applies to all persons who accept "money, securities or property (or extend credit in lieu thereof)" as payment of purchase price in a commodity option transaction. The records required to be kept are essentially all data and memoranda relating to an option transaction. As in similar transactions, any person who accepts an order is required to make written record of the order and must record the time, to the nearest minute, that (1) the order is accepted, (2) the order is transmitted and (3) the order is executed. All records generated are subject to the recordkeeping requirements of rule 1.31.

SEC

The options SROs have been required by the SEC, and have in place, audit trails designed to permit each SRO to capture complete information about each options transaction effected, including the time, price and size of transactions and the floor broker and clearing firm on each side of a trade. Specifically, transactions reported over OPRA (see II.B.2.a. above) are matched with transactions submitted for clearing by the buying and selling firms. At less active options exchanges, "locked-in" trade reporting matches the buyer's and seller's clearing tickets at the same time that the transaction is reported to OPRA. At more active option exchanges, trades are matched electronically.

The SROs are required under Section 6(b) of the Act as a condition of exchange registration to have, among other things, the capacity to enforce member firm compliance with the Act, the rules thereunder, and the SRO's own rules. To meet this responsibility, the SROs have developed and implemented audit trail systems designed to surveil for member firm compliance. Each SRO has promulgated rules requiring member firms to supply timely, accurate information to the SRO for both special reviews, such as examinations or investigations, and routine functions, such as trade reporting and clearing operations that form the basis of audit trails. The Commission requires the SROs, pursuant to the recordkeeping provisions of Section 17(a) of the Act, to retain audit trail records.

SIB

The exchange must either have or it must secure the provision on its behalf of satisfactory arrangements for the recording of transactions effected on the exchange (FSA, Schedule 4,

paragraph 2(5)). The manner in which this is achieved by the relevant exchange may vary.

Firms must record, forthwith, the time of receipt of a customer order and the time of execution on the exchange. The time frames applicable to the recording of the execution of orders may vary with exchanges, however, all transactions must be recorded (CBRs, 16.02(4)).

Firms must maintain records regarding transactions undertaken for a customer pursuant to instructions received and with respect to transactions undertaken for a discretionary managed portfolio (CBRs, 16.02(1)). CBR 16.02 identifies that information which must be recorded for purposes of establishing and preserving the transaction audit trail.

In addition, Part 16 of the CBRs contains requirements relating to the maintenance of customer account records and the execution of transactions. For example, the CBRs require the firm to make a record of:

- the investment and the number of units which are the subject of the instructions (or decision in the case of discretionary portfolio management);

- the nature of the proposed transaction;

- the date and time that orders were received; and

- the date and time of execution.

Where the transaction has been effected on behalf of more than one customer, a record must be maintained identifying how the transaction was allocated.

Each customer has the right to inspect, either personally or by an agent, any record that relates exclusively to him; the inspection must take place within seven days of the request (CBRs 16.17). If a customer requests to inspect any other entries in the firm's books relating to transactions with or for that customer, and if the firm does not accede to the customer's request, the firm must inform the customer that SIB has the right in appropriate circumstances to make such inspections under the FSA (CBRs, 16.17(2)).

COB

Internal statements and records which must be maintained include:

- daily ledger of all transactions;

- daily account summary per customer, indicating open positions, deposits and margins (cash or treasury bonds) and account balance;

- daily summary of open positions per customer and per contract, indicating number of contracts, delivery dates, date of trade, trading slip references, closing quotation price and margins;

- daily account activity report, indicating daily profits and losses on closed positions, premiums paid or received, brokerage commission and VAT paid.

CONSOB

Currently, the regulatory regime does not provide specific rules requiring the financial intermediary to track customer orders from placement through execution. However, such a rule has been drafted for inclusion in the more general regulatory regime concerning the introduction of a screen based continuous trading system. In particular, stockbrokers will be required to keep track of each customer order, from the moment of its reception until execution or cancellation.

Each exchange is required to maintain records containing information of all transactions between stockbrokers. The global daily volume is required to be made public by the stock exchanges.

MOF

All the data are retained by the stock exchanges. Although, some aggregate data are publicly available, specific individual data are kept in strict confidence.

Daily recording of transactions are automatically done by computers of stock exchanges. And other information reported by stock exchange members are also kept in the stock exchange.

Transaction recording procedures are a prerequisite to recognition of an exchange.

Original trading records (time, price, volume, etc.) must be kept for 10 years, and open interest records for 3 years.

NCSC

A futures broker is required to maintain records that set out the prescribed particulars of -

- instructions by a client to deal in futures contracts;

- the date and time of receipt, transmission and execution of those instructions;

- the person by whom those instructions are received, the person by whom they are transmitted and the person by whom they are executed;

- the date and the time of receipt, transmission and execution instructions to deal in futures contracts on the broker's own account; and

- the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are transmitted and the person by whom they are executed.

These records are required to be retained for a period of 7 years.

OSC

TFE procedures require members to file cards (numbered sequentially and time-stamped every half-hour by TFE staff) with the TFE for each completed trade, and the TFE to file daily trade summaries with each clearing member which when confirmed by the member are submitted to TCO. Ontario regulations require all dealers to maintain daily trading records, including itemization of all cash receipts and disbursements and all other debits and credits. These regulations also require that such records be maintained in a form such that they are easily reproducible in a timely fashion by those entitled to review them. Documents must be maintained for at least six years and in a readily accessible location for two years. Dealers whose head offices are not in Ontario must maintain in Ontario records which pertain to business carried on in Ontario.

CVMQ

See II.A.8. above.

SFC

Exchange rules and the CTO require dealers' records to be kept in a manner that will enable them to be conveniently and properly audited. See also answer to II.A.2. above.

(b) Price, volume, and open interest records

CFTC

CEA §4g(5) states that at the beginning of each day, the exchange shall make public the volume of trading for each type of contract for the previous day and other information as the CFTC shall deem necessary.

Rule 16.01 requires that each exchange publish for each business day a variety of information regarding price, volume and open interest, including the total volume of trading, the total

quantity of futures for cash transactions included in the total volume of trading, the total gross open contracts and the total number of option contracts exercised and unexercised. With respect to prices, the information generally includes among other things the highest and lowest price of a sale and offer and the settlement price.

Rule 17.00 requires that each FCM, clearing member and FB shall submit a report to the CFTC for each business day for all Special Accounts (i.e., those accounts for which there is a reportable position, such as large traders) showing various details regarding the reportable futures position. These reports are filed on a series of 01 forms. The first day an account carried by an FCM or foreign broker becomes a special account by attaining a reportable position, the FCM or foreign broker must describe the account on a Form 102.

Pursuant to rule 1.33(a), an FCM must prepare a statement for each futures or options customer which shows the open contracts acquired or pertinent options transaction and their prices, the net unrealized prices in all open contracts marked to the market, any customer funds carried with the FCM and a detailed accounting of all credits and charges to the customer's account for the month. If there is no activity in an account, an account statement need only be prepared every three months.

SEC

As discussed above, the price and volume of each transaction is disseminated publicly on a real-time basis. Records of transactions on options exchanges, including price and volume, must be kept and preserved by their members. Specifically, national securities exchanges are required by Rule 17a-1 to maintain books and records made or received by them in the course of business and in the conduct of self-regulatory activity, for a period of five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a-6.

SIB

An RIE is required to ensure that it has (or secures the provision of) satisfactory arrangements for recording the transactions effected on the exchange. Information is to be available so as to enable market users to determine the current value of investments. (FSA, Schedule 4, paragraph 2(2)(b)). The FSA does not impose specific requirements regarding the recordkeeping obligations of an exchange.

An ROIE, in order to satisfy the requirements imposed by the FSA (s.40), must be subject to supervision which shall ensure that UK investors are afforded protection in relation to that exchange at least equivalent to that provided by an RIE. The maintenance of records regarding transactions effected on the

exchange, as an identified requirement for RIE status, would be an element of investor protection to be considered in a review for ROIE status.

COB

See II.B.5.(a) above.

CONSOB

See II.B.5.(a) above.

MOF

See II.B.5.(a) above.

NCSC

See II.B.5.(a) above.

The exchanges do make price, volume and open interest information available to the public on a daily basis and upon request will provide historic information.

OSC

The TFE maintains and makes available to the public historical price, volume and open interest data.

CVMQ

SFC

There are no specific requirements in this area affecting the Exchange, but HKFE keeps detailed records of price, volume, and net/gross open interest data. Exchange rules require members to keep records concerning time of receipt of orders and particulars of open positions for the member and separately for clients.

(c) Confirmation of Transactions

CFTC

Rule 1.33 requires an FCM to prepare monthly and confirmation statements. Rule 1.33(b) requires that each FCM must furnish no later than the next business day (1) a written confirmation of each futures transaction or (2) a written confirmation of an options transaction containing the account identification number, a statement of the commission, premium or other applicable option charges, the strike price, the underlying futures contract or physical, the final exercise date of the option and the date the transaction was executed. In addition, if an

option expires or is exercised, an FCM must send a confirmation notice by the end of the next business day.

SEC

Rule 10b-10 of the 34 Act requires B/Ds to provide customers with a written confirmation of securities transaction that includes, among other things, the identity, price and number of shares or units of a security purchased or sold by the customer and the commission charged by the B/D.

SIB

In relation to margined transactions, a firm shall, after a transaction has been effected with or on behalf of a customer, arrange for the delivery or sending to the customer (or to a nominated person) of:

- a confirmation note; and

- a difference account (when the effect of the transaction is to close out an existing open position) (CBRs, 13.06(2))

A confirmation note must specify certain required information including a description of the investment and its size, the date of the transaction and either the time of the transaction or a statement that the time of the transaction will be supplied on request (CBRs, 13.06(3) and 13.04(1)(iii)).

The confirmation note must be sent before the close of business on the business day next following the day on which the transaction was effected (CBRs, 13.06(3) and 13.01(4)).

Where a transaction has been effected through an associate of the firm, that fact and any material interests must be disclosed (CBRs 13.06(3) and 13.04(1)).

COB

Market members are required to send a written trade confirmation for each transaction, not later than 24 hours after the transaction has been executed. This confirmation must include the number the transaction has been recorded by the clearing house with. If the counterparty of the customer is the customer's firm the confirmation must so indicate.

CONSOB

Currently, financial intermediaries are requested to provide customers with monthly statements concerning equity transactions.

MOF

See II.B.5.(a) above.

NCSC

See II.B.5.(a) above.

Forthwith, after execution of an acquisition or disposal of a futures contract order, the broker must confirm to the client. The broker must include a contract note given by a broker in respect of a transaction, being the acquisition or disposal of a futures contract (other than a futures option or a prescribed exchange-traded option), which shall include -

- the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

- the name of the person to whom the broker gives the contract note;

- the day on which the transaction took place;

- a description of the futures contract sufficient to identify the nature of the transaction, including -

    -- in a case where the futures contract is a commodity agreement, a description of the commodity and a statement of the contract price;

    -- in a case where the futures contract is an adjustment agreement -

        --- a description of the class of adjustment agreements in which the futures contract is included;

        --- a statement of the contract price; and

        --- if the transaction is the completion of the futures contract, the value or worth (as described in accordance with the futures contract) of the futures contract at the time of that completion; and

    -- in a case where the transaction is a liquidating trade, details of the liquidating trade and of the futures contract this is intended to be closed out following the entering into of the liquidating trade;

- the deposit paid or payable in respect of the transaction;

- the month and year for the performance or settlement of the contract;

- in a case where the transaction took place on a futures market of a futures exchange or of a recognised futures exchange, or on an exempt futures market - a name or abbreviation by which the futures exchange, recognised futures exchange or exempt futures market, as the case may be, is generally known;

- a statement of the amount of commission charged or the rate (if any) at which the commission was charged; and

- a statement of the amounts (if any) of all stamp duties and other duties and taxes payable in connection with the transaction.

83(5) [Contents where transaction involves futures option] A contract note given by a broker under sub-section (2) in respect of a transaction, being the acquisition or disposal of a futures option, shall include -

- the matters specified in paragraphs (4)(a), (b), (c), (g), (h) and (j);

- a description of the class of futures contracts in which is included the futures contract to which the futures option relates;

- the month and year for performance or settlement of the futures contract to which the futures option relates;

- the date by which the purchaser of the futures option, in order to exercise the futures option, must declare an intention to exercise the futures option;

- a statement of the amount of the premium; and

- details of the price at which the purchaser of the futures option has, by virtue of the futures option, an option or right

to assume a bought position, or sold position, as the case requires, in relation to the futures contract to which the futures option relates.

83(6) [Contents-prescribed exchange-traded option] A contract note given by a broker under sub-section (2) in respect of a transaction, being the acquisition or disposal of a prescribed exchange-traded option (in this sub-section referred to as the "option"), shall include-

- the matters specified in paragraphs (4)(a), (b), (c), (g), (h) and (j);

- a description of the commodity or index to which the option relates;

- the date by which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option;

- details of-

-- in a case where the option relates to a commodity - the price at which the purchaser of the option has, by virtue of the option, an option or right to purchase, or sell, as the case requires, that commodity; or

-- in a case where the purchaser of the option has, by virtue of the option, an option or right to be paid an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index - the specified number and the manner in which that amount of money is to be determined.

A broker shall not include in a contract note given under sub-section (2), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.

OSC

The CFA requires that dealers "promptly" provide customers with detailed written confirmations, and promptly provide to all customers with open positions, a monthly statement describing the open positions and detailing all account debits and credits. Such documents are subject to the retention requirements described in (a) above.

CVMQ

SFC

The CTO requires a commodity dealer to deliver a contract note to his client by the end of the next trading day in respect of every contract for the purchase or sale of a futures contract. These must be retained for 2 years.

(d) Position reporting

CFTC

See II.C.2 for a discussion of speculative limits and hedge exemptions.

CEA §4(i) states that it is unlawful for any person to enter into the purchase or sale of a futures contract if that person's long or short position exceeds those limits set by the CFTC or if that person enters into a number of contracts which exceed those limits set by the CFTC unless the person files the appropriate report with the CFTC and unless the person

maintains complete records regarding all such transactions and related material and keeps these records open for inspection at all times for representatives of the CFTC or the Department of Justice.

Rule 16.00 requires that each exchange submit to the CFTC a report for each business day showing for each clearing member by proprietary and customer account and by future or underlying futures contract for options on futures contracts or by underlying physicals for options on physicals information such as the total long and short open contracts carried at the end of the day covered by the report and the quantity of contracts bought and sold during the day covered by the report.

Rule 16.02 states the requirements for large option trader reports which, in sum, require each exchange to submit a weekly report on options that are settled in cash and daily report on all other options on physicals, containing information for each option trader controlling a reportable option position.

Rule 16.04 requires each exchange to submit to the CFTC for each month a report for options on futures contracts and a report for options on physicals showing long and short option positions held at month's end on all accounts.

Rule 18.00 outlines the information which is required to be submitted by traders. Every trader who holds or controls a reportable futures or options position shall after a special call by the CFTC file reports with the CFTC concerning transactions or positions in the futures or options. Each such report shall be filled out on the Large Trader Reporting Form (Form 103) on a separate sheet for each commodity or option and shall contain information pertaining to open contracts, purchases and sales, delivery notices issued and stopped, and options exercised.

Rule 18.04 requires that each trader who holds or controls a reportable position shall file a "Statement of Reporting Trader" on a Form 40. Each trader shall file the form at the direction of the CFTC; however, this period shall not be later than the tenth business day following the assumption of a reportable position. The Form 40 essentially requires all identifying information regarding the transactions. The rule also imposes a duty on the trader to update the form.

Rule 18.05 requires a trader to maintain books and records with respect to the reportable futures position and to furnish these records upon request to the CFTC.

Rule 19.00 requires reports from (1) those persons who have reportable futures positions and any part of which constitutes a bona fide hedging position as defined in §1.3(z), (2) merchants, processors and dealers of cotton holding reportable futures positions in cotton, and (3) those persons holding

reportable positions who have received a special call from the CFTC. Rule 19.01 sets forth the informational requirements for reports pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil or soybean meal and rule 19.02 sets forth the informational requirements for reports pertaining to cotton.

SEC

The options SROs require that its members file daily a report providing information, including name, address and social security or tax identification number of any customer who, on the previous business day, held an aggregate long or short position of 200 or more options contracts of any single class of options on the exchange.

SIB

Position reporting is not an FSA requirement for exchanges. However, SIB may require an RIE or RCH to provide such information as it may reasonably require for the exercise of its functions under the FSA (FSA, s.104(2)). Section 104 provides that a person who is authorized to carry on investment business by virtue of section 22 (insurance companies), 24 (operators and trustees of recognized schemes), 25 (directly authorized persons) and 31 (persons authorised to carry on business in another Member State of the EC) may be required to provide information which the Secretary of State may reasonably require (FSA, s.104(1)). SROs and recognised professional bodies may also be compelled to provide information (FSA, s.104(1)). The combination of these provisions may provide the authority to compel individual traders and firms to provide position information.

COB

On the financial futures market, MATIF SA recommends that general information statements, including opened positions, be sent at least weekly to customers.

OMF sets up complete statements - including details of transactions and opened positions - for each individual account. For the option contracts, the COB recommends that the statements be sent daily.

On commodities markets, market members are required to send complete financial statements at least weekly to customers.

MONEP requires its members transmit to their customers statements with the same information they receive from the clearing house.

CONSOB

Authorized financial intermediaries are subject to furnish all traded contracts upon request by the regulators.

MOF

See II.B.5.(a) above.

NCSC

None to the AFFM. The Exchange is provided with this information from ICCH. The SFE requires daily reporting of positions by all members.

OSC

The TFE sets limits on positions for contracts held by any person acting alone or in concert with others, which are reportable positions. In addition, dealers are required to report to the TFE on a monthly basis, the greater of the total long position or total short position held in client and non-client accounts for each contract; and to report daily as to any positions exceeding reportable limits established by the TFE or TCO.

The OSC may, where it appears to it to be in the public interest to do so, set additional price and trading limits.

CVMQ

SFC

HKFE rules require members to report the holders of large positions, which currently are set at 500 HSI or HIBOR contracts.

(e) Confidentiality

CFTC

§8(a) provides that except as otherwise specified in the CEA, the CFTC may not publish data and information that would separately disclose market positions, business transactions, trade secrets or names of customers.

Such information may be disclosed in connection with a congressional proceeding, a receivership proceeding or a bankruptcy proceeding. See §8(b).

§8(e) generally provides that the CFTC may disclose any information it possesses to any department or agency of the United States government or a foreign government acting within the scope of its jurisdiction. However, such information generally will not be disclosed by such agency or department except in connection with a proceeding to which the agency or department is a party.

The Part 145 rules govern the confidentiality of government records. As a general rule, all documents which are classified as "public" documents must be made available for inspection and copying by the CFTC. These documents are listed in rule 145.1 ("Information Published in the Federal Register") and rule 145.2 ("Records available for public inspection and copying; documents published and indexed"). Appendix A to Part 145, entitled "Compilation of CFTC Records Available to the Public" is a compilation of CFTC records routinely available to the public.

Rule 145.5 provides that the CFTC may decline to publish or make available to the public any "non-public" records as defined in rule 145.0(d) and if the records fall within the categories detailed in this section. In sum, the types of information concern trade secrets, national policy concerns, personal privacy, various financial statement forms and pending investigations. Moreover, rule 145.9 outlines the procedures by which a person submitting information to the CFTC may request the non-disclosure of that information. Generally, the grounds for non-disclosure of information pursuant to this rule are substantially similar to the criteria for classifying documents as "non-public".

Rule 145.7 outlines the procedures to be followed in order to review documents.

SEC

See SEC response to II.A.8.(b) for a discussion of confidential treatment of information provided to the SEC.

SIB

The confidentiality of market information provided to government regulators or SROs is protected (see item II.B.2(b)).

COB

CONSOB

MOF

See II.B.5.(a) above.

NCSC

OSC

Specific market information obtained by the Commission is treated as being confidential. Information obtained by the Commission pursuant to an investigation is confidential pursuant to section 10 of the CFA.

The OSC is subject to the Freedom of Information and Protection and Privacy Act ("FOI") which requires that personal information held by an institution such as the OSC be protected from unauthorized use and disclosure. FOI mandates the release of certain kinds of information.

A dealer member of the TFE is required to disclose its financial condition as of the close of its latest financial year based upon the audited financial report filed with the TFE to its customers should they request such information.

CVMQ

SFC

6. Market disruption programs

(a) Position limits, special call procedures, other

CFTC

Position limits; See C.2. below.

Special Call Procedures: Part 21 of the rules sets forth the means by which the CFTC can obtain specific information from certain participants in the commodities markets through special calls.

Rule 21.02 provides that upon special call, FCMs, members of contract markets, IBs, and foreign brokers must provide information concerning futures and options carried by the FCM or foreign broker, except for accounts carried on a fully disclosed basis by another FCM, as may be specified in the call. The information specified in the call includes the name and address of the person for whom each account is introduced or carried as well as his principal business or occupation, the type of each such account, the name, address and principal business or occupation of any person controlling the trading of each account, the name and address of any person having a financial interest of at least 10% in each account, the number of open futures and/or option positions as specified in the call and any applicable identifying information as set forth in subsection (g) of rule 21.02.

Pursuant to rule 21.03(c), an FCM, IB, or foreign broker must respond as required to a special call of the CFTC for a report of "relevant information" concerning the threat of market manipulation, corner, squeeze, or other market disorder unless the books and records of the FCM, IB, or foreign broker are open at all times to the CFTC for inspection. See rule 21.03(a).

Rule 21.03(e) specifies the information that the FCM, IB, foreign broker or trader must provide to the CFTC when a

special call is made. Subsection (2) of this rule further specifies information to be provided by traders to the CFTC.

Rule 21.03(f) provides that if an FCM, IB, or foreign broker fails to respond as required, the CFTC may impose sanctions by directing the appropriate exchange to prohibit execution of, and no FCM, IB, or foreign broker shall accept an order for, trades on the exchange and in the delivery months or options expiration dates specified in the call, unless such trades offset existing open contracts of the person named in the call. Rule 23.03(g) provides that a person affected by such action may request a hearing before the CFTC.

SEC

All options exchanges impose limits on the number of options contracts that any person may hold on the same side of the market, and on the number of long contracts that may be executed within any five consecutive business days. There are no generally applicable position and exercise limits for broad-based stock index options, although each exchange has adopted limits for the contracts it trades. For example, the CBOE has a position limit of 25,000 contracts on the same side of the market for index options, with no more than 15,000 of such contracts in the series of such index with the nearest expiration month. Section 17(a) of the 34 Act provides the Commission with broad authority to request information from B/Ds.

SIB

Position limits are not an FSA requirement and exchange rules currently do not impose them.

Exchange and clearing house rules may vary regarding provision for special call procedures; generally, an exchange or clearing house will reserve the right to make special margin calls during the day.

Where there is a threat of manipulation, corner, squeeze or other market disorder, exchange rules authorise exchanges to require firms and brokers to provide information on customer accounts. Generally, this is by virtue of the contractual arrangements between exchanges and their members.

COB

Position limits

The aggregate initial margins paid by a firm must not exceed 20% of its net capital

- The aggregate initial margins paid by one customer to a firm must not exceed 100% of the firm's net capital.

- The aggregate initial margins paid by all customers to a firm must not exceed 200% of the firm's net capital.

- No customer can hold more than 20% of the total opened position on any maturity of any contract.

CONSOB

Law 216 of 1974 entrusts the CONSOB with the responsibility of conducting routine inspections and examinations of listed companies. CONSOB can also inquire of managing directors about data and information concerning their company to be published or communicated.

MOF

In normal situations, stock exchanges impose no position limits to their members. (The Ministry of Finance imposes position limits to securities companies etc. in order to maintain their financial soundness.)

NCSC

There are no position limits, however, there is a general requirement of the FSE that members not be over exposed to any one client at any time.

This reference is in relation to an SFE rule in their Articles of Association which stipulates:

- "(n) not to permit any one client (in which context the expression 'client' shall include all persons firms and corporations related to associated or affiliated with the client or otherwise financially dependent upon the client) to represent such a percentage of the trading by the Member as may prejudice or diminish the ability of the Floor Member to meet its obligations."

OSC

See II.B.5(d)(e) above. In addition, Ontario regulation requires the TFE to have price limits on its contracts.

CVMQ

See II.A.7. above.

SFC

See answer to II.A.7.(a) & (b) above.

(b) Trading halts, circuit breakers

CFTC

See Section II.A.7.(b) above.

SEC

For a discussion of circuit breakers, see II.A.7.(b) above.

In addition, the options SRO rules provide that trading in index options shall be halted whenever trading in a significant portion of the underlying stocks of the market index is halted. For example, trading in an index option is halted on the CBOE whenever trading in underlying stocks representing 20% of the index's value is halted.

SIB

See II.A.7.(b) above.

COB

See II.A.7.(b-d) above.

CONSOB

See II.B.6.(a) above.

NCSC

The NCSC may, in relation to a futures market of a futures exchange, give a direction in writing to the futures exchange -

- to close the futures market;

- to suspend dealing on the futures market in a specified class of futures contracts;

- to limit transactions on the futures market to the closing out of futures contracts;

- to defer for a specified period the completion date for all futures contracts, or for a specified class of futures contracts, made on the futures market;

- to cause a specified futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be -

  -- closed out forthwith as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or

  -- invoiced back to a specified date at a price or value determined by the futures exchange;

- to require a futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be discharged by -

    -- the tendering of a merchantable lot of a commodity determined by the futures exchange, being a commodity of a quality or standard that is -

        --- different from the quality or standard of the commodity specified in the futures contract; and

        --- determined by the futures exchange; and

- the tendering of a price adjusted by an amount that is -

    -- appropriate having regard to the quality or standard of the commodity referred to in sub-paragraph (i); and

    -- determined by the futures exchange; or

- to require a member of the futures exchange to act in a specified manner in relation to dealings in futures contracts on the futures market, or in relation to a specified class of such dealings.

The NCSC is precluded from giving a direction in relation to a futures market of a futures exchange unless -

- it has determined that a direction should be so given because it is of the opinion that -

    -- an orderly and fair market for dealing in futures contracts in relation to that futures market does not or may not exist;

    -- it is necessary to protect the interests of persons on behalf of whom futures contracts are or may be dealt with on that futures market; or

    -- it would be in the public interest for a direction to be so given;

- it has given to the futures exchange a notice in writing stating that it has formed that opinion and specifying -

    -- its reasons for forming that opinion;

    -- the direction that it considers should be so given; and

    -- a time, or a date and time, before which it will not so give the direction;

- it has given a copy of the notice to each clearing house for that futures market; and

- the direction is so given after the time, or date and time, as the case may be, specified pursuant to sub-paragraph (b)(iii).

The Commission is required, before determining in relation to a futures market of a futures exchange, to consult the futures exchange and each clearing house of that futures market.

The Ministerial Council may determine in writing the period throughout which a particular direction under sub-section (1) is to remain in force.

A direction remains in force -

- in a case where a determination is in force, throughout the period specified in the determination; or

- in any other case, unless sooner revoked, until the end of the period of 21 days, or such shorter period (if any) as is specified in the direction, commencing when the direction is given.

In the event that an undesirable situation is developing or has developed the Board of the SFE may take the following steps:

- suspend or curtail trading on a market for any one or more delivery months for such period as it specifies;

- limit trading on any market to closing out of open contracts

- defer settlement of contracts and/or extend the date for delivery under any contract for such period as it determines;

- direct that any contract be closed out forthwith or be invoiced back to a fixed date and/or at a price determined by it;

- permit any merchantable lot of a particular commodity or financial instrument equal to or superior to the commodity or the financial instrument as specified in any contract to be tendered subject to appropriate conditions as to compensation;

- fix an amount of compensation payable under paragraph (v);

- direct that contracts be settled at a price other than that determined in accordance with the Market By-Laws, as determined by the Board;

- give directions to Members to act in such a manner as will in its opinion correct or assist in overcoming the situation or practice.

MOF

OSC

The TFE has stock index contract circuit breakers in place which track circuit breakers on the Toronto and New York stock exchanges.

CVMQ

SFC

See answer to II.A.7.(a) & (b) above.

(c) Emergency procedures

CFTC

For purposes of exchange action, the term "emergency" is defined in rule 1.41(a)(4), in part, as "[a]ny...occurrence or circumstance which, in the opinion of the governing board of the contract market, requires immediate action and threatens...the fair and orderly trading in, or the liquidation of or delivery pursuant to, any contract...on such contract market."

Emergency actions taken by an exchange are governed by §5(a)(12) of the CEA and CFTC rule 1.41((f). These provisions permit an exchange by two-thirds vote of its governing board or an authorized committee thereof, to impose temporary rules for an initial period of 30 days without prior CFTC approval "in the event of an emergency" subject to certain procedural guidelines, including a proper finding of an emergency pursuant to exchange rules which previously have been approved by the CFTC. Rule 1.41(f)(3) provides that temporary emergency rules may authorize "actions necessary or appropriate to meet the emergency, including, but not limited to...ordering the liquidation of contracts, the fixing of a settlement price or the reduction of positions...."

An exception to the requirement that temporary emergency rules must be adopted by two-thirds of the governing body is that a contract market official may act alone in the event of "physical emergencies," such as fire or substantial inclement weather.

The CFTC, consistent with the provisions of §8a(9) of the CEA, can take emergency action when it finds that there is a threatened or actual manipulation or corner or "other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand. . . . Such CFTC action would be "subject to review in the U.S. Court of Appeals.

SEC

The options SROs rules permit the exchanges to halt trading in an option whenever an exchange deems such action to be appropriate in the interests of a fair and orderly market and the protection of investors and the public interest.

Moreover, each options SROs has developed contingency plans for market emergencies such as electrical black-outs or computer difficulties. Moreover, the SEC specifically has requested that the options SROs ensure that their automated systems have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately, and are reasonably immune to external and internal physical threats.

The SROs' rules do not specifically define the term "emergency." The SROs, however, have enumerated factors that may be considered by exchange officials before deciding to halt trading in a stock index options contract in the interest of a fair and orderly market. Among the factors that an options exchange may consider when deciding to halt trading in a particular stock index option are whether: (1) the current calculation of the numerical index value derived is unavailable; (2) trading in one or more of the underlying stocks comprising the index has been halted under circumstances which indicate that such stock or stocks will likely re-open at a price(s) significantly different from the price(s) at which the stock(s) last traded; and (3) trading has been halted or suspended in stocks accounting for a significant percentage of the value of the index.

Section 12(k) of the Act provides the SEC with power to act in an emergency situation. Specifically, it provides that, if in the SEC's opinion the public interest and the protection of investors so require, the SEC is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days. The provision also provides the SEC the authority, with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days.

SIB

All exchange rules provide for emergency situations including cessation of trading; the objective of exchange rules in this regard is to ensure that trading is conducted in an orderly manner. Trading by means of the exchange facilities must continue to afford proper protection to investors (FSA, Schedule 4, paragraph 2). The Notification Regulations require an RIE to notify SIB immediately upon the occurrence of any event or where circumstances arise which make it impossible or impracticable for the exchange to satisfy the requirement of Schedule 4 (Notification Regulations, 2.16). SIB will also be

made aware of developments in relation to the treatment of a firm which has triggered the application of the default rules of an exchange or clearing house pursuant to the provisions of Part VII of the Companies Act 1989 (see item II.A.6., above).

COB

CONSOB

See II.A.7. above.

MOF

Stock exchanges can take such measures as trading halts, strengthening of price limits, shortening of time limits for margin payments, increase of margin levels, position limits etc.

NCSC

See II.B.6.(b) above.

OSC

The TFE's rules permit the TFE Board to declare emergencies, and to take appropriate action. Emergencies include manipulative activity, actual, attempted or threatened corners, squeezes, congestion or undue concentration, any circumstance which may adversely affect the performance of TFE listed contracts, government actions which might have a direct impact on trading on the TFE, the bankruptcy or insolvency of a member or the imposition of an injunction and any other unusual, unforeseeable and adverse circumstance (including physical emergency). Should an emergency be determined to exist the TFE may suspend trading, limit trading to the closing of open positions, extend or shorten the period of trading, alter conditions of delivery, fix a settlement price, alter the amount of capital charged to members or the amount of margin required or require cash settlement. OSC regulations permit the OSC to vary or revoke any prior decision made by it under the Act and to make any decision with respect to trading on a commodity futures exchange.

CVMQ

SFC

The HKFE may suspend trading only for natural disasters affecting orderly trading. Fluctuations in market prices are not considered circumstances affecting orderly trading. In response to extraordinary events, HKFE/HKCC also can restrict trading to liquidation purposes only.

7. Compliance programs; enforcement

(a) Market surveillance

CFTC

Rule 1.51(a)(1) requires each exchange to maintain a continuing affirmative action program to secure compliance with the CEA and exchange rules and by-laws. Such program must include a surveillance of market activity for indications of possible congestion or other market situations conducive to possible price distortion.

Guideline No. 2 states that an adequate market surveillance program should include surveillance of: (1) price movements; (2) changes in price relationships (among futures, between markets, futures vs. cash); (3) open interest and changes in open interest; (4) concentrations of positions among clearing members; (5) volume of trading and changes therein; (6) trading liquidity and the magnitude of successive price changes; (7) deliverable supplies; (8) deliveries (is there any apparent concentration in the making or taking of deliveries?); and (9) market news and gossip.

Each exchange establishes its own committees responsible for market surveillance. Compliance staff assumes the daily market surveillance activities; however, the CFTC does have the power to perform market surveillance functions.

Rule 1.51(a)(7) requires each exchange to establish a procedure which results in the taking of prompt, effective disciplinary action for any violation which is found to have been committed.

§16 of the CEA authorizes the CFTC to conduct regular investigations of the commodity markets. As part of its routine rule enforcement reviews of the exchanges, the CFTC reviews the SRO market surveillance programs.

SEC

In the options markets, the SROs have the primary responsibilities to perform day-to-day surveillance for trading abuses. The SEC staff routinely conducts inspections of SRO surveillance systems, as well as related SRO investigatory, examination, and disciplinary programs. In addition, the SEC staff uses its own surveillance capabilities to test SRO systems and analyze specific trading situations.

In addition to monitoring trading patterns for possible insider trading, prearranged trading, and market manipulations, the surveillance systems and complaint-based inquiries programs in place at the nation's options exchanges also seek to detect various forms of stock/option trading abuses (involving both equity options and index options) such as frontrunning, mini-manipulation, and capping/pegging. In addition, if new options products are multiply-traded, surveillance seeks to detect instances of "chumming." Finally, surveillance systems also detect apparent violations of various exchange rules such as position or exercise limits and dual-capacity rules (prohibitions on acting as broker and dealer in the same options

class on the same trading session). Additionally, complaint-based inquiries and routine examinations of specialist and market maker records are used to determine if trading was inconsistent with the parties' market making obligations.

Each SRO maintains rules and procedures governing the imposition of formal disciplinary action. Generally, SROs initiate formal disciplinary actions by issuing a complaint stating the specific charges and rules alleged to be violated. Accused members or persons may answer the charges against them or initiate a settlement. In the event a settlement is not reached, the case is presented before a hearing committee which receives the evidence from each side before reaching a decision. Members of the hearing panel are to be impartial, with no interest in the outcome of the case against the member or associated person. Following the initial decision, a respondent has the right to appeal to the SRO board, to the SEC, and ultimately to the federal courts.

SIB

It is a requirement of recognition that an exchange has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and any clearing arrangements made by it (FSA, Schedule 4, paragraph 3(1)). The arrangements for monitoring may make provision for that function to be performed on behalf of the exchange (and without affecting its responsibility) by any body or person who is able and willing to perform it (FSA, Schedule 4, paragraph 3(2)). In practice, UK exchanges fulfil their own compliance obligations through exchange staff and market committees.

SIB, as the authority which grants recognition to domestic investment exchanges, monitors the continued compliance by exchanges with the requirements of Schedule 4. This would include continued compliance with, inter alia, paragraph 3(1) of Schedule 4 of the FSA which requires adequate arrangements and resources for the effective monitoring and enforcement of compliance with exchange rules and clearing arrangements. The manner in which an exchange determines its own surveillance is a matter for the exchange.

As regards ROIEs, arrangements are made with the home country regulators to ensure that their compliance and monitoring procedures are not only adequate, but also extend to the investment business undertaken in the UK by that overseas exchange.

COB

Enforcement of laws and regulations governing the functioning of the derivative market is organized at two main levels: at the exchange level i.e. at the MATIF and MONEP levels; and at the supervisory level i.e. at the COB level.

- MATIF and MONEP are in charge of maintaining primary controls on the floor, at the members' facilities, and through the trading data.

. On the floor, the clerks of the MATIF and MONEP observe the trading practices and make sure that all the participants abide by the rules of the open outcry defined in the "General Regulations", (timely time-stamping, prearranged trading, etc...)

· At the members' facilities inspectors of the MATIF and of the MONEP will ensure that tradings have been fairly allocated in the members' books, examine the way the front office and back-office are organized, the efficiency of the controls exercised by the members themselves, the risks taken by the members and their customers, the accuracy of the accounting etc...

· The trading data are processed through powerful computers in order to analyze the strategy of the main participants to the market, to find out any unusual profit or loss, etc...

- The COB in order to ensure its supervisory function relies upon its Enforcement Division. This division has two different Departments: Market Surveillance and Market Investigations. The investigations conducted fall under three main types.

· Investigations initiated when a breach of the law is suspected: The Division of Enforcement can be alerted by different sources:

· its market surveillance Department has different programs to detect unusual price movement and/or trading activity, discrepancies between the prices of the futures contracts or options and the underlying asset, heavy buying or selling preceding an important announcement etc...

· Some facts or conduct may be reported by the market authorities.

· The COB is empowered to ask for the reports written by MATIF.

· Frequent meetings are organized at the enforcement level between the Bank of France, The Commission Bancaire, the Conseil du Marche a Terme, the Conseil des Bourses de Valeurs, the Paris Bourse and the MATIF.

· Thematic Investigations

The purpose of these procedures is to study the conduct of a given category of professionals, or the features of a

given category of operations or products and determine if they are not as such a cause of disfunction in the market. These investigations may lead to proposals to amend the regulations involved.

· Customer protection

When a discretionary account is involved the COB ensures that the customer has given to the manager the appropriate mandate to do so.

When a mutual fund is conducting operations on futures or options markets, the manager must comply with specific COB regulations in order to limit the risk exposure and to keep the customer informed of the risks taken.

CONSOB

MOF

Stock exchanges perform surveillance of the markets and trade practices every day, and inform the Ministry of Finance upon detecting any abuses or other problems.

NCSC

The SFE monitors the market on a daily basis and receives reports from each of its members. The Commission receives a weekly report from the SFE. Further, the Commission monitors all open positions of members of the exchanges. There is a daily review of the day's trading. The emphasis in market surveillance is on co-regulation with the SFE and the AFFM conducting, on a daily basis, a review of all activities.

OSC

As required by Ontario regulation, market and trade practice surveillance, including compliance, is conducted by the TFE. The TFE, IDA and the OSC each undertake compliance audits investigations and enforcement.

CVMQ

See II.A.4. above.

SFC

The HKFE and the Commission perform market surveillance functions to detect trading irregularities or market rigging activities.

(b) Trade practice surveillance

CEA §5(f) requires that each exchange must, as part of its application for designation as an exchange (i.e., contract market) provide for compliance with all of the requirements applicable to exchanges under the CEA.

CEA §5a(8) states that each exchange shall enforce its own bylaws, rules, regulations, and resolutions that have been promulgated pursuant to CFTC rule or have been approved pursuant to CEA §5a(12) relating to terms and conditions in contracts of sale to be executed on or subject to the rules of the exchange.

CEA §6(b) provides that the CFTC may commence proceedings against any person (other than an exchange) if the CFTC has reason to believe that the person has or is attempting to manipulate the market, has made material misrepresentations in a registration statement or is otherwise violating the CEA or the rules promulgated thereunder.

CEA §8 authorizes CFTC investigations of the operations of the boards of trade as "it deems necessary to ascertain the facts regarding the operations of the boards of trade and other persons subject to the provisions of the CEA."

Compliance Programs

Rule 1.50 states that, upon CFTC request, an exchange shall be required to establish continued compliance with the requirements of exchange designation. Any failure to comply shall be the basis for CFTC action.

Rule 1.51 obliges each exchange to use due diligence to maintain a "continuing affirmative action program to secure compliance" with various portions of the CEA.

Enforcement

Rule 1.53 requires that each exchange enforce each "bylaw, rule, regulation and resolution" issued by the exchange or its governing board and which relate to the terms and conditions in contracts of sale to be executed on or subject to the rules of the exchange.

Rule 8.05 mandates that each exchange establish an adequate enforcement staff to investigate, to prepare reports and to prosecute possible rule violations within the disciplinary jurisdiction of the exchange.

Exchange investigations are conducted pursuant to rule 8.06. Each exchange must maintain disciplinary procedures which require the enforcement staff to investigate potential rule violations. Each investigation should be completed within four months unless good cause exists to extend the period.

Pursuant to rule 8.07, the staff shall prepare an investigation report outlining the reasons for the investigation, the relevant facts and the staff's conclusions and recommendations. If the staff concludes that no reasonable basis exists for a rule violation, the staff may recommend that the exchange disciplinary committee issue a warning letter or may prepare and maintain an investigation file.

Rule 8.08 requires each exchange to establish one or more disciplinary committees to review any investigative reports, to consider settlement actions and to levy penalties where appropriate. Regulation 8.09 prescribes the procedures to be used in evaluating the reports.

Rules 11.1-11.8 govern the conduct of investigations taken pursuant to CEA §6(b) and §8. In general, rule 11.2 gives the Director of the Division of Enforcement and staff members acting pursuant to his authority the power to investigate current or potential violations of the rules.

Both the Senate and the House versions of the pending CFTC reauthorization bills require exchanges to provide for enhanced surveillance of trading practices. Among the proposed improvements are the implementation of comprehensive systems which can be used to review trading data more easily and enhanced audit trail procedures. The Senate bill also provides for CFTC evaluation of the effectiveness of these systems every two years.

SEC

The securities SROs also have the primary responsibilities to perform surveillance for sales practice violations. As with market surveillance, SEC staff reviews the SRO surveillance activities and, in certain cases, investigates specific trade practice conduct.

The SROs surveillance programs are bifurcated between examinations of specific sales practice conduct that is brought to the SROs attention and ongoing examinations of the sales practices of B/Ds. There are generally four catalysts by which an SRO will commence a specific, targeted investigation of an alleged sales practice abuse: (1) when a broker begins employment with a member of an options SRO that member must submit a Form U-4 to the SRO on behalf of the broker disclosing, among other things, the brokers disciplinary history; (2) when a broker terminates employment with a member of an options SRO that member must submit a Form U-5 to the SRO disclosing, among other things, the reason why the broker is leaving the firm as well as any disciplinary action taken by the firm against the broker or any pending investigations against the broker; (3) when a broker is disciplined by its employer or another SRO, named as a defendant in a civil proceeding which was disposed of for more than $5,000, or the subject of any

claim for damages greater than $5,000, then the employer must disclose this to an SRO; or (4) when a customer has complained directly to an SRO about a broker. After conducting an investigation, the SRO may impose an appropriate sanction on the broker and/or the member firm including, among others, a censure, fine or suspension. In addition, the SEC will investigate and prosecute large sales practice cases involving several brokers.

Additionally, the SROs have an ongoing program to examine sales practices of B/Ds. The sales practice examination of a selected B/D includes a review of, among other things, its supervisory procedures and the adequacy of its options documentation. Typically, a sales practice examination will include the selection of a number of customer accounts for an in-depth options suitability review. See also response to 7.(a) above.

SIB

All firms are required to establish and maintain procedures for the supervision of officers and employees of the firm and for ensuring that such persons do not give advice or provide services beyond their competence (CBRs 2.13). Pursuant to CBRs 16.10 through 16.12, the firm must also maintain a register of all employees of the firm and of all current customers who are connected or affiliated with the firm.

Part 15 of the CBRs generally requires a firm to establish and maintain written rules and procedures (compliance procedures) to ensure compliance with the requirements of the FSA and the rules or regulations made by SIB under the FSA. In addition, a firm is required to conduct a review of its compliance procedures no less frequently than once every twelve months to ensure that such compliance procedures are effective.

In that connection, a firm must appoint a compliance officer to review a representative sample of that firm's investment business, and any investment business of each appointed representative for which the firm has accepted responsibility. Compliance officers are appointed to ensure that the compliance procedures of the firm have been complied with during the review period. Such review includes, but is not limited to, an examination of the firm's maintenance of records, adherence to compliance procedures, and supervision of customer accounts. The review of a customer's account is required to be conducted by an officer or employee of the firm who was not concerned in the management of that account other than in a general supervisory capacity and must be a person of such experience, competence and seniority as to be relied on to carry out such a review adequately (CBRs, 15.02). As part of the general regulatory responsibility that SIB has for authorised persons, SIB has set up a direct regulation division to maintain continuous oversight with respect to, among other persons, firms

which it has authorised. In this role SIB may make surprise visits to the authorised person in addition to periodic visits as part of normal inspection procedures.

In the event that a firm is found to have breached rules or regulations regarding unsolicited calls or employment of prohibited persons, SIB may make a public statement as to a person's misconduct (FSA, s.60). SIB may apply to court for an injunction or a restitution order under Section 61 of the FSA for breaches of CBRs. Sections 64 to 71 of the FSA vest SIB with the powers to:

- restrict the business activities of the firm (FSA, s.65);

- restrict the firm from dealing with assets (FSA, s.66);

- require the assets of the firm to be vested in a trustee (FSA, s.67); and

- require the firm to maintain assets in the UK (FSA, s.68).

Authorized persons, and their employees and appointed representatives where appropriate, who are members of a recognized SRO and who are subject to the rules of that regulatory authority are subject instead to the comparable powers of intervention provided for in the SRO's rules except where assets of the firm are committed to trustees as set forth in section 67(1)(b) of the FSA.

In respect to trade practice issues, the SROs have the primary responsibility for ensuring that their members comply with any rules relating to trade practice issues. In the case of directly authorized businesses, the responsibility falls to SIB. SROs are compelled by the provisions of Schedule 2, paragraph 7 to promote and maintain high standards of integrity and fair dealing and to cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

COB

See II. B.7.(a) above.

CONSOB

MOF

See II.B.7.(a) above.

NCSC

The exchanges perform most of the trade practice surveillance. The NCSC conducts a routine analysis of newspaper articles and investigates all complaints that have been lodged with it.

The SFE is required to maintain an orderly and fair market by Section 55 of the FIC. The Exchange in monitoring markets is looking for any price or trading aberrations suggestive of market manipulation, pre-arrangement, wash trading, front-running or any other abuses. AFFM markets are constantly monitored on an intra day basis, daily and weekly.

All AFFM listed futures contracts derive from the sharemarket. Each contract is either based on the price of a share in a company listed on ASX or an ASX share price index. Share prices, index levels and futures prices are available on a real time basis enabling ready comparison of relationship of futures prices to the "physical".

Factors included in assessing market prices are trends in the market for the underlying security or movement in the underlying index, comparisons of actual prices with theoretical forward prices based on a cost of money calculation and market trends in similar derivative markets, i.e., The Australian Options Market and Share Price Index Contract traded on the SFE. There are no formal guidelines. Members' positions are monitored by ICCH with documentation and verbal communication occurring on a daily basis.

OSC

Futures commission merchants registered in Ontario must establish and maintain supervisory procedures. The Designated Registered Futures Principal is responsible for administering such procedures. The Audit and Compliance function of the IDA and TFE provide a check and balance to the firm's supervision of its own activities.

CVMQ

SFC

The HKFE performs trade practice surveillance reviews (also see answer to II.A.4).

8. Customer dispute resolution procedures and other forms of customer redress

CFTC

Arbitration

§5(a)(11) of the CEA requires each exchange to provide a procedure, such as arbitration, for the settlement of customer

claims or grievances against exchange members and their employees. This procedure must be fair and equitable. Its use by a customer (who is defined not to include another member of the exchange) must be voluntary, but it is compulsory for any exchange member named as a respondent in a customer initiated proceeding.

§17(b)(10) of the CEA and rule 170.8 similarly mandate the availability of an arbitration program for customer disputes through the NFA. NFA's program must be consistent with the provisions of Part 180 of the rules, which establish the standards for arbitration programs of the exchanges.

Each exchange and NFA have established rules for customer-member arbitrations which the CFTC has found to be consistent with §5(a)(11) of the CEA and Part 180 of the rules.

A predispute arbitration agreement is generally prohibited by rule 180.3(b) unless it is in writing and contains specified warnings. The predispute agreement must be specifically endorsed by the customer and may not be made a precondition to the customer obtaining the firm's services.

On November 17, 1988, NFA's Board of Directors adopted rules governing arbitration of disputes between United States customers and non-member foreign firms. In essence, this new international arbitration program would permit an "on the papers" hearing unless the foreign firm requests otherwise. NFA has clarified in a policy statement that it will reject requests for arbitration involving a claim arising primarily out of exchange floor practices.

Reparations

§14 of the CEA and Part 12 of the rules thereunder address the CFTC's reparations procedure. Reparations proceedings are actions brought by customers against a CFTC registrant in a forum provided by the CFTC. The complaint must be filed no later than two years after the cause of action accrues. The complaint must allege a violation of the CEA or any rule, regulation or order thereunder, for example, misrepresentation, unauthorized trading and failure to disclose material facts. As with arbitration, damage awards are compensatory in nature.

Where the amount of damages claimed does not exceed $10,000, exclusive of interest and costs, the parties may request an oral hearing. Under this procedure, however, the Administrative Law Judge ("ALJ") may grant on oral hearing or may, in his discretion, render a decision based solely upon the written submissions made by the parties. In either case, the decision of the ALJ may be reviewed by the CFTC and thereafter, where appropriate, a federal court of appeals.

Where the amount of damages claimed exceeds $10,000, exclusive of interests and costs, the parties may elect an oral hearing.

After making the required written submissions, the parties may present oral testimony (in person or by telephone) and engage in informal discovery, including examination of the parties and their witnesses. There is no requirement that the parties be represented by counsel at any stage of the proceeding. The decision of the ALJ, which may be reviewed by the CFTC and thereafter, where appropriate, a federal court of appeals, must contain a written statement of the findings of fact upon which the decision is based.

Courts

With respect to litigation in federal court, Congress amended the CEA in 1983 by adding §22, which created an express private right of action under the CEA. Such legislation confirmed that customers may file suit in federal district court for alleged violations of the CEA.

Customers may initiate action in state court on claims including common law fraud or violation of state consumer protection laws. Sate courts cannot exercise jurisdiction over a claim alleging violation of the CEA or regulations if that claim arose on or after January 11, 1983.

SEC

The options SROs have established uniform arbitration procedures for the handling of investor grievances against B/Ds. In this connection, most B/Ds have adopted mandatory pre-dispute arbitration clauses which are pre-conditions to the opening of an account.

Two SRO rules approved by the Commission in May 1989 contain restrictions applicable to pre-dispute arbitration clauses. First, B/Ds using pre-dispute arbitration clauses are required to place immediately before the clause highlighted introductory language informing customers that: (1) they are waiving their right to seek remedies in court; (2) arbitration is final; (3) discovery is generally more limited than in court proceeding; (4) the award is not required to contain factual findings or legal reasoning; and (5) the arbitration panel typically will include a minority of arbitrators associated with the securities industry. Second, SRO members are prohibited from having agreements with customers that: (1) limit or contradict the rules of any SRO; (2) limit the ability of a customer to file any claim in arbitration; or (3) limit the ability of the arbitrators to make any award.

If the customer's account with the B/D is not governed by a pre-dispute arbitration clause, then the customer may pursue his dispute with a B/D through litigation in court. The customer and B/D also could agree, after a dispute has arisen, to submit their disputes to a non-SRO affiliated arbitration forum such as the American Arbitration Association ("AAA"). In

addition, a number of B/Ds include the AAA within their arbitration clauses as an alternative to SRO arbitration.

A customer generally may initiate an arbitration proceeding at any SRO at which his B/D is a member.

COB

The new general regulation established by the CMT provides the possibility of an arbitration procedure between clients and market-members. An arbitration procedure plan will be submitted to the CMT on the 19th of February 1990.

CONSOB

Customers have a private right of action only under the civil law. No relevant regulatory act is provided in this regard.

SIB

An exchange is required to have effective arrangements for the investigation of complaints with respect to business transacted by means of its facilities (FSA, Schedule 4, paragraph 4). Each exchange is required to have complaints procedures and, in practice, each also has arbitration facilities.

SROs are required to have effective arrangements for the investigation of complaints against the organization or its members (FSA, Schedule 2 6(1)). The procedures in relation to investigation of complaints include, in most circumstances, dispute settlement arrangements including the ability to arrange for an independent review of the matter.

Firms must also have complaints procedures. Generally, firms are required, in the absence of compelling reasons, to respond to customer dispute settlement arrangements where they are invoked at the request of a customer.

Generally, there is no restriction with respect to those persons who have access to any dispute settlement arrangements.

In general, customers may bring an action in a court of law for disputes arising as a result of investment business. This may be restricted where a customer has agreed to be bound by the decision of a mediator or arbitrator; in such circumstances that customer may be precluded from bringing an action in a court of law after exhausting the applicable dispute settlement arrangements.

MOF

When any dispute arises with respect to a securities transaction or other transaction effected by any securities company, the parties to such dispute may apply to the Finance Minister for mediation to resolve such dispute.

When a dispute arises on the securities market the parties may apply to the exchange for mediation of the dispute.

NCSC

The SFE and the AFFM have arbitration procedures for dispute resolution which are compulsory for members and, in respect of which all decisions are binding and must be implemented (subject to any right of appeal).

The Courts, Small Claims Tribunal, Independent Mediation, and arbitration under the rules of the various state Arbitration Acts exist as forums for dispute resolution other than the arbitration of disputes provided for by the rules of the exchanges.

As each state within Australia has a different Arbitration Act access to the provisions of a particular Act will vary from one locality to another. However, in relation to the other forums mentioned above access is not dependent upon locality.

OSC

There are no arbitration or other "alternative" customer dispute resolution procedures available in Ontario pursuant to exchange or SRO rules, or Ontario commodity futures or securities legislation.

CVMQ

Each ME member must keep an up-to-date record in a central place of all written complaints received by the member that relate in any way to the conduct, business or affairs of the member or of a director, partner, officer or employee of the member.

A complaint and any reply to the complaint must be retained for twenty-four months from the date of receipt of the complaint by the member and must be made available to the Exchange's responsible officer upon request.

In accordance with the Quebec Securities Act, the Quebec Securities Commission has delegated to the ME the surveillance of its members so the complaints must be firstly examined by the ME. If a client is not satisfied with the action taken by the ME or the explanations forwarded to him then the client can make a request to the Quebec Securities Commission for a review of the complaint. The Commission has the power to investigate and deal with complaints against ME members and their employees.

SFC

No special procedures have been prescribed.

C. Market Efficiency

1. Product design

(a) Economic purpose test or non wagering criteria

CFTC

§5(g) of the CEA requires an exchange to demonstrate that transactions not be "contrary to the public interest." Guideline No. 1 requires the exchange applying for a contract market designation to submit a description of the cash market for the commodity in which the contract is based. For purposes of the Guideline, "cash market" includes "all aspects of the spot and forward markets in which the underlying commodity is merchandised and for which the contracts are used as a hedging or price-basing function." Section A of Guideline No. 1 lists information to be provided in the description as appropriate. The information includes (1) production of the underlying commodity; (2) consumption of the underlying commodity; (3) the nature and structure of the cash marketing channels; (4) the prevalent means of market communications, methods of financing commodity ownership, and for tangible commodities how they are transported and stored; and (5) statistical data regarding historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions.

Guideline No. 1 also requires a justification of individual contract terms and conditions. The purpose of this justification is to show that the contract terms do not vary from the actual cash market practice with the result that the contract might be less useful for hedging or price-basing functions or provide an increased potential for market disruption. To the extent a term or condition is not in conformity with the actual cash market practices, the exchange must provide a reason for the variance and demonstrate that it is necessary. Contract terms and conditions to be justified on an individual basis are detailed in the Guideline and include the par and non-par commodity characteristics, delivery locations, contract differentials, delivery facilities, trading months, delivery pack and size, inspection and certification procedures, and delivery instrument. Guideline No. 1 also requires that delivery months be specified and that there be a description of the relationship, if any, of delivery month to deliverable supply, warehouse space, transportation facilities, market activity, and other factors which affect delivery in each such delivery month, specifically including delivery months for existing futures contracts which rely on the same deliverable supply.

Guideline No. 1 also requires an exchange to demonstrate the extent to which the contract will be used for price-basing

and/or hedging. To maintain its designation a contract must be used for hedging and price-basing purposes on more than an occasional basis.

Section C of Guideline No. 1 sets forth the Economic Purpose test. An exchange must demonstrate that (1) the prices involved in transactions for future delivery of the commodity are, or reasonably can be expected to be, disseminated as a basis for determining prices to producers, processors, merchants, or consumers of such commodity or the products or by-products thereof; or (2) such transactions are, or reasonably can be expected to be utilized in interstate and foreign commerce by producers, processors, merchants or consumers who handle such commodity as a means of hedging themselves against possible loss through price fluctuations.

SEC

The federal securities laws do not contain an explicit "economic purpose" test for new options products. Pursuant to Section 6(b)(5) of the 34 Act, however, the SEC must predicate approval of any new option proposal upon a finding that the introduction of such option is in the public interest. Such a finding would be difficult with respect to an option product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. The Commission uses no set criteria in considering whether to approve a new options product. In general, an exchange which proposes to list a new option product must comply with Section 6 of the Act. See also response to II.A.1.(c) above.

SIB

There are no requirements in the applicable legislation regarding specific aspects for product design. There is no economic purpose test nor are there restrictions on types of products.

The only related requirement imposed on exchanges is the restriction that an exchange must limit dealings on the exchange to investments in which there is a proper market (FSA, Schedule 4, paragraph 2(2)).

There are no specific rules in relation to the treatment of dormant contracts and contracts with low volume. Schedule 4 of the FSA, in relation to RIEs, does require the exchange to limit dealings on the exchange to investments in which there is a proper market. The liquidity of contracts would be an important consideration in this context.

COB

The application for the authorization of a new contract must include information regarding the economic purpose of the contract.

The economic purpose is a major criterion used by the CMT to authorize a new contract, after having received advice from the COB and, eventually, the Bank of France.

CONSOB

MOF

In the approval process of new trade listings, stock exchanges must present to the Ministry of Finance sound purposes for introducing the new products.

NCSC

There is no limit prescribed by legislation on the type of product or design in relation to non-wagering criteria. However, specialist markets e.g., Loco London Bullion Market are recognised as exempt futures markets and the contracts of such markets are not to be traded on the futures exchanges.

An example of a product which may not be eligible for trading is a contract over a portion of a Share Market Index (a portfolio) which clearly shows that breadth and depth are non-existent, thereby being prone to manipulation.

OSC

The criteria for acceptance of contracts are: more than occasional use will be made of the contract for hedging purposes; each term or condition of the contract is consistent with normal commercial practices of trade in the underlying commodity; margin levels, price limits, position limits and reporting limits are satisfactory; and the underlying interest is a commodity as defined in the CFA. An extensive body of case law has developed under Federal criminal legislation as to whether commodity futures contracts are wagering contracts (in general terms the case law suggests that they are not).

CVMQ

See I.A.1. above.

SFC

There are no specific criteria concerning an economic purpose test or non-wagering criteria. The Commission and government, however, consider economic purposes in deciding whether to approve new products.

(b) Restrictions on types of products (based on underlying instruments or commodity or on type of derivative contract).

CFTC

§2(a)(1)(A) of the CEA excludes onions from the definition of commodity.

§2(a)(1)(A) of the CEA provides that the CFTC does not have jurisdiction over transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade. This provision, the so-called "Treasury Amendment," was most recently interpreted by the CFTC in 1985. In its 1985 statement, the CFTC reaffirmed its view that the Treasury Amendment exclusion from the CFTC's exclusive jurisdiction is not applicable when such transactions involve members of the general public. See 50 Fed. Reg. 42963 (October 23, 1985).

§2(a)(8)(B)(i) of the CEA requires the CFTC to advise the Department of Treasury, the Federal Reserve System and the SEC of CFTC activities that relate to the responsibilities of those agencies, to receive their views and to consider the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under jurisdiction of these agencies.

§2(a)(1)(B) of the CEA states that the CFTC has exclusive jurisdiction over futures contracts involving any stock index or group (and over options on those futures contracts) and to establish the conditions and procedures that must be satisfied before an exchange may be designated by the CFTC as a contract market to trade those futures. §2(a)(1)(B)(iv)(II) of the CEA requires the CFTC to provide the SEC with a copy of an exchange's designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. The CFTC may not approve the application if the SEC determines that the contract fails to meet the minimum requirements set forth in §2(a)(1)(B)(ii) of the CEA. This provision, however, also prohibits futures trading on any municipal security or any security registered pursuant to the Securities Act of 1933 or the Securities Act of 1934. See also I.A.1.(c) and I.A.2.(b) above.

The offer and sale in the United States of foreign exchange traded futures contracts based on an index of securities also is subject to special procedures. Specifically, such offers and sales are contingent upon the issuance of a "no-action" letter by CFTC staff, after it determines that such

transactions would not be inconsistent with the criteria set forth in §2(a)(1)(B)(ii) of the CEA.

SEC

Although the federal securities laws place no formal restrictions on the type of index options products which may be approved for trading by the SEC, Section 2(a) of the Commodity Exchange Act provides the Commodity Futures Trading Commission with exclusive jurisdiction over options on index futures contracts.

In addition, when proposing a new index options contract for trading, the options SROs submit eligibility criteria to the SEC that pertain to the securities underlying the index option. In most instances, these criteria include minimum trading volumes for the component securities of the underlying index.

SIB

See II.C.1. (a) above.

COB

The French futures and options markets can have any legal financial product, any legal commodity and any index as an underlying instrument.

However a contract which would have directly or indirectly the consumption price index as an underlying instrument would be illegal.

CONSOB

Currently, under the Italian regulatory regime only contracts on securities are admitted.

MOF

No specific futures and options products are prohibited.

NCSC

There are no restrictions on the types of products. However, there may be types or classes of products which may not be eligible for trading as these products may be inconsistent with the protections and philosophy of the Futures Industry legislation and/or the Articles and By-laws of the exchanges and would therefore not receive the requisite approval for trading.

OSC

There are no restrictions on the types of products that may be traded in Ontario.

CVMQ

SFC

No general restrictions have been imposed on the types of products to be traded.

(c) Exercise and/or delivery allocation procedures

CFTC

Guideline No. 1 requires that the justification of individual contract terms include (1) all delivery points; (2) the nature of the cash market at the delivery point; (3) a description of the composition of the market at the delivery points; and (4) the normal commercial practice for establishing cash market value and the availability of published cash prices reflecting the value of the deliverable commodity; (5) the level of deliverable supplies normally available, including the seasonal distribution of such supplies; and (6) any locational differences for delivery points, including the economic basis for discounts or premiums, or lack thereof, applying to delivery points.

SEC

The rules of the options SROs provide that each member shall establish fixed procedures for the allocation of exercise notices assigned to a short position in options in a member's customer's account. The allocation shall be made on a "first-in, first-out" basis, an automated random selection basis that has been approved by the SRO, or on a manual random selection basis.

SIB

See II.C.1.(a) above.

COB

Option exercises: in order to get an equitable distribution of assignations among the options writers, the selection process is based upon a random drawing.

CONSOB

MOF

No system of delivery allocation is necessary since, for futures, delivery is performed wholly on a specified date

determined by stock exchange rules. Exercise allocation of options trading is done under the rules of the stock exchanges.

NCSC

The matter is considered prior to approval being given.

Procedures as such do not exist. Consideration is given to these factors by means of informal canvassing of the Members, the clearing house, the NCSC and other relevant bodies.

OSC

In accordance with TCO rules, individuals and dealers with short positions in contracts are entitled, through clearing members, to make delivery of the underlying interest in the expiration month by filing a delivery notice with TCO. TCO assigns such notices to clearing members with net long positions on a random selection basis. Clearing members which are assigned such notices are required to reassign them to customers in accordance with previously approved firm procedures.

CVMQ

SFC

As both HSI and HIBOR contracts are contracts with cash settlement, delivery is by way of cash transfer to and from the clearing members' bank accounts.

(d) Cash settlement

CFTC

The CEA provides certain criteria under which the CFTC may designate contracts based on stock indexes. The criteria include the requirement that the contracts provide for cash settlement as opposed to physical delivery, that the contracts must not be readily susceptible to price manipulation with respect to the prices of the securities making up the index and that the index must be constructed from a broad group of securities.

Section 2(a)(1)(B)(iv)(II) of the CEA requires the CFTC to provide the SEC with a copy of an exchange's designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. The CFTC cannot approve the application unless the SEC determines that the contract meets the minimum requirements set forth in §2(a)(1)(B)(ii) of the CEA. Among other things, §2(a)(1)(B)(ii)(I) requires that settlement of or delivery on such stock index futures contract (or option thereon) must be in cash or by means other than transfer or receipt of any security, except an exempted security.

The CFTC has also designated such cash settlement contracts as Eurodollar certificates of deposit and issuer contracts such as AMEX gold warrants.

SEC

See II.B.4. above.

SIB

See II.C.1.(a) above.

COB

Three MATIF or MONEP contracts are delivered through cash settlement:

- Eurodem 3 mois,
- PIBOR 3 mois,
- CAC 40(future and option).

CONSOB

MOF

For stock index futures and stock index options, only cash settlement is permitted. For JGB futures, T-bond futures and Stock Futures 50 physical delivery is required for final settlement.

NCSC

The matter is considered prior to approval being given.

AFFM contracts are all settled in cash. The AFFM does not envisage having contracts settled in any other manner. The SFE considers cash settlement in the same manner as noted above in relation to exercise and/or delivery allocation procedures.

OSC

The CFA does not provide separate criteria for cash-settled contracts. The TSE 35 contract which trades on the TFE is a cash-settled contract.

TCO rules state that cash settlement prices shall be determined by the exchange using closing prices. When there is no closing price the average of the closing bid and offer shall be used together with other information the exchange deems relevant.

CVMQ

SFC

See answer to II.C.1.(c) above.

(e) Volume requirements (dormancy rules).

CFTC

Dormant contracts: Rule 5.2 requires that an exchange must obtain CFTC approval in order to list additional months or permit trading to recommence in any contract in which no trading has occurred in any month listed for trading for a period of six calendar months (or otherwise certified by an exchange to be dormant).

Rule 5.2(c) requires that in order to obtain CFTC approval, the exchange must designate the submission pursuant to rule 1.41(b) and submit an economic justification explaining the conditions which have changed subsequent to the time the contract became dormant and the basis which makes it reasonable to expect that the contract will be used on more than an occasional basis for hedging or price basing.

Rule 5.2(d) specifically provides that no contract shall be considered dormant until the end of 36 calendar months: following initial designation in order to permit new contracts to develop a market, following CFTC notice to the contract market that it has reviewed the economic purpose and the terms and conditions of the contract and has permitted the exemption, or following CFTC approval of a bylaw, rule, regulation or resolution to list additional trading months pursuant to rule 5.2(c).

Low-volume contracts: For purposes of rule 5.3, a low-volume contract is a futures contract in which the trading volume in all futures listed for trading falls below 1,000 contracts per month during at least four of any six consecutive calendar months.

For any low-volume contract, the exchange must file with the CFTC information with respect to (1) the proportion of trading by FBs and traders for their own accounts or accounts they control, for their clearing members' house accounts, and for any other types of accounts, (2) the identity of commercial participants holding open positions and the price risk, if any, those participants are hedging or the relevant data demonstrating that the contracts are being used for hedging purposes, and (3) any additional surveillance procedures the contract market may have instituted to monitor trade practices in the low-volume contract. See rule 5.3(b).

The CFTC does not require low-volume reports until the end of 36 complete calendar months: following designation, following CFTC notice to the exchange that it has reviewed the economic

purpose and the terms and conditions of the contract and has permitted the exemption, or the CFTC has approved a bylaw, rules, regulation or resolution to list additional trading months pursuant to rule 5.2(c).

SEC

Neither the federal securities laws nor the rules of the options SROs require index options to maintain a minimum trading volume in order to continue to be listed for trading.

SIB

See II.C.1.(a) above.

COB

There are no volume requirements on the French futures markets.

CONSOB

MOF

There are no dormancy rules.

NCSC

There are no volume requirements.

OSC

There are no dormancy rules in Ontario.

CVMQ

SFC

No dormancy rules have been set.

2. Position limits

CFTC

Section 4a of the CEA authorizes the CFTC to set limits on the amount of futures trading which may be done and the number of futures positions which may be held by any one person or "by two or more persons pursuant to an express or implied agreement or understanding." Section 4a(3) of the CEA exempts bona fide hedging transactions and positions from any limits imposed by the CFTC.

The CFTC imposes daily and special call reporting requirements on FCMs and foreign brokers carrying accounts for traders with large positions.

Rule 150.2 sets forth position limits for certain agricultural contracts. Rule 150.3 defines the circumstances in which the positions may exceed the limits.

Rule 1.61 requires each exchange to establish speculative limits for all commodities traded on the exchange that do not have limits imposed by CFTC rules. In addition, paragraph (b) of rule 1.61 requires each exchange to set speculative limits on any commodity options traded on the exchange. Paragraph (a)(2) outlines some of the factors upon which an exchange must base its determination of levels for speculative limits. These include position sizes customarily held by speculative traders on such market for a period of time selected by the exchange, which shall not be extraordinarily large relative to total open positions in the contract for such period. Other factors that the exchange may use include breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market underlying the futures contract.

The exchanges, pursuant to the provisions of rule 1.61, have provided rules for the petition by hedgers for exemptions from speculative limits. On a case-by-case basis, the exchanges may grant exemptions to hedgers from the position limit requirement.

Rule 1.61(a)(1) permits an exchange to exempt positions usually referred to as "spreads, straddles or arbitrage." Rule 1.61(a)(3) exempts bona fide hedging positions as defined by an exchange in accordance with rule 1.3(z)(1) unless the exchange determines that such positions are not in accord "with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion."

Rule 1.3(z)(1) defines a bona fide hedging transaction and positions as "transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transaction or positions normally represent a substitute for transactions made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise." These transactions or positions must arise from the potential change in (1) the value of a person's assets, (2) the value of a person's liabilities, or (3) the value of services which a person provides, purchases or anticipates providing or purchasing.

Rule 1.61(e) permits an exchange to provide (subject to the CFTC approval) speculative limit exemptions.

In its statement of agency interpretation of "Risk Management Exemptions for Speculative Position Limits Approved Under CFTC

Regulation 1.61," 52 Fed. Reg. 34633 (Sept. 14, 1987), the CFTC stated that it would be consistent with the regulation to amend exchange speculative position limit rules to exempt certain risk-management positions in debt-based, equity-based and foreign currency futures and options.

SEC

See II.B.6.(a) above.

SIB

See II.B.5.(d) and II.B.6.(a) above.

COB

See II.B.6.(c) above.

CONSOB

See II.B.6. above.

MOF

See II.B.6. above.

NCSC

There are no position limits except with certain overseas contracts e.g. COMEX in relation to which position limits are set consistent with the legislation and rules of the host country.

Position limits exist only on those overseas contracts in which the host country has established position limits.

OSC

The TFE sets limits on positions, in particular contracts held by any person acting alone or in concert with others, which are reportable positions. In addition, dealers are required to report to the TFE monthly the greater of the total long position or total short position held in client and non-client accounts for each contract; and to report daily as to any positions exceeding reportable limits established by the TFE or TCO. The OSC may also make decisions as to position limits pursuant to subsection 20(2) of the CFA.

CVMQ

SFC

HKFE rules prescribe position limits a member may hold or control in respect of any one delivery month, or in respect of

all delivery months combined. HKCC rules also prescribe position limits an HKCC member may hold or control. The Commission is authorized to set position limits, but has not done so.

3. Price limits, circuit breakers

CFTC

See II.A.7.(b) above.

SEC

See II.A.7.(a) above.

SIB

See II.A.7.(b) above.

COB

See II.A.7.(b-d) above.

CONSOB

MOF

See II.A.7.(b) above.

NCSC

There are no restrictions in relation to price limits nor are there any requirements for circuit breakers.

OSC

OSC regulations require the TFE to have price limits on its contracts. In addition, the TFE has circuit breakers on stock index futures which track circuit breakers on the Toronto and New York stock exchanges.

CVMQ

SFC

See answer to II.A.7.(b) above.

4. Order execution

(a) Priority

CFTC

See II.B.2.(a) above.

SEC

Options SRO regulations require execution of customer orders at the best price available at the time the order is to be executed. Section 11(a) of the 34 Act requires that exchange transactions, including options transactions yield "priority, parity and precedence in execution for members who are not members or associated with members of the Exchange." Generally, the options SRO rules provide that the highest bid and lowest offer shall have priority. In cases of more than one such bid or offer, then a bid representing an order resting on the limit order book shall have priority. If there are two or more best bids or offers and there is no order resting on the limit order book, then priority shall be afforded to such bids in the sequence that they were made. Exceptions are provided if a member holds a special order such as spread order, straddle order or combination and is bidding or offering on the basis of a total credit or debit.

SIB

See II.B.2.(a) above.

COB

See II.3.2.(c) above.

CONSOB

Rules for priority of order execution exist only as stockbrokers self-regulatory discipline.

Currently, the exchange's regulatory regime does not provide any priority rules. Nevertheless, in the closest months with the introduction of the screen based continuous trading system, a priority rule will be established by which customer orders will be executed following the order of reception by the stockbrokers.

MOF

See II.B.2.(a) above.

NCSC

Priority is on a first-come/first-served basis. The SFE has the right to change this [as the basis] if to do so is fair and equitable and would not result in preference being given to any party.

OSC

TFE rules give priority to customer orders and ensure that all trading is conducted in a competitive market. Priority among

customer orders is established in accordance with the time such orders are received by the futures floor trader. Priority among customer limit orders is established by price and time.

CVMQ

See II.B.2. above.

SFC

See answer to II.B.2.(a) above.

(b) Large orders; small orders

CFTC

See II.B.2.(c) above.

SEC

The options exchanges have special rules to permit crossing and facilitation orders that are designed, in part, to accommodate large options transactions. Generally, such orders must be within the bid/ask spreads and displayed for a reasonable period of time.

Some options exchanges have instituted special rules and procedures to facilitate the orders of small investors. The exchanges have established ten-up requirements that guarantee the execution of public customer orders up to 10 contracts. Additionally, automatic execution systems have been developed that permit investors to execute small orders. The automation of the execution of small orders, by providing computer generated trades at displayed bid and offer quotations, has provided customers with speedier executions and greater assurance as to the firmness of displayed quotations.

SIB

See II.B.2.(c) above.

COB

See II.B.2.(c) above.

CONSOB

MOF

See II.B.2.(c) above.

NCSC

There is no differentiation between large and small orders.

OSC

Large orders do not have greater or lesser priority than small orders.

CVMQ

SFC

No rules on this have been prescribed.

(c) Off-exchange transactions

CFTC

SEC

OCC will issue an option only if it is traded on an exchange. In the event the NASD recommences a standardized options program, OCC would also issue the options traded through NASDAQ. Thus off-market transactions in standardized exchange-traded options are in effect impossible. There continues to be an OTC market for conventional, privately negotiated options transactions.

Additionally, the options SROs have issued rules prohibiting prearranged trading. The execution of a prearranged trade does not expose the transaction to the market forces designed to protect the integrity of the individual order and the marketplace. Such trades are violative of just and equitable principles of trade and exchange rules, whether undertaken merely to create an artificial appearance of activity or intended to affect market prices.

SIB

In relation to margined transactions undertaken for and pursuant to instructions of inexperienced private customers, all trades must be on or subject to the rules of an RIE, ROIE or DIE (CBRs 11.04). A firm, in the provision of its services as a portfolio manager to an inexperienced private customer, may effect transactions otherwise than on or under the rules of an RIE, ROIE or DIE for hedging purposes provided that it is covered in the customer agreement (CBRs 11.04(e)).

Transactions may be effected for business, experienced or professional investors in margined transactions which are not traded on or under the rules of an exchange. A special risk disclosure document must be provided to customer for whom such trades are undertaken (CBRs 4.15(3)(b), Appendix B to Part 4).

COB

On the MATIF, traders are allowed to negotiate contracts when the floor is closed and to get these transactions recorded with the clearing house the day after (system THS: Transactions hors seances). These are by-phone transactions whose prices are defined freely by intermediaries.

CONSOB

MOF

Permitted only in the case of correction. (Special permission of the exchange is necessary.) An over-the-counter market exists for JGB options.

NCSC

Generally, off-exchange transactions are prohibited unless the transactions are part of an exempt market.

OSC

All commodity futures transactions must take place on the trading floor except for certain kinds of cross trades permitted under the TFE rules and for the exchange of the physical commodity for the commodity futures contract which is also permitted under TFE rules. OTC transactions are subject to the provisions of the Securities Act..

CVMQ

SFC

HKFE rules require all trading in HKFE contracts to be done on the HKFE floor during normal trading hours.

(d) Anti-manipulation provisions

CFTC

The term "manipulation" is not defined in the CEA or the regulations but is defined by CFTC and court decisions. See, e.g., In re Indiana Farm Bureau Cooperative Association, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,964, (Dec. 12, 1979), aff'd. CFTC No. 75-14 (Dec. 17, 1982); In the Matter of Cox, et al. [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,786 (July 15, 1987).

CEA §5(d) requires that in order for an exchange to be designated as such, its governing board must provide for the prevention of manipulation of prices and the cornering of any commodity by the board's dealers or operators.

CEA §6(b) permits the CFTC to institute enforcement proceedings if it has reason to believe that any person other than an exchange is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any exchange. CEA §6(c) provides that the CFTC after notice, hearing and subject to the opportunity to appeal may make and enter a cease and desist order and may levy fines.

CEA §9(b) states that it shall be a felony for any person to manipulate or to attempt to manipulate the price of any commodity in interstate commerce or to corner or to attempt to corner any such commodity.

The statutes and regulations which set speculative limits are important to anti-manipulation regulation. They are discussed in Section II.C.2 above. It should be noted, however, that rule 150.5 provides that "[n]othing in the CEA shall be construed to affect any provisions of the CEA relating to manipulation or corners, nor to relieve any contract market or its governing board from responsibility under Section 5(d) of the CEA to prevent manipulation and corners."

SEC

Section 9(a) of the 34 Act prohibits a series of specific manipulative practices. Specifically, section 9(a)(1) prohibits wash sales and matched orders when the purpose of such transactions is to create "a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false misleading appearance with respect to the market for any such security." Section 9(a)(2) in essence addresses "chumming" and pre-arranged trading by prohibiting transactions "creating actual or apparent active trading" in a security or raising or depressing the price of a security, "for the purpose of inducing the purchase or sale of such security by others." See also the response to II.B.7.(a) above.

SIB

An exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors (FSA, Schedule 4, paragraph 2(1)). Exchanges have rules prohibiting activities which threaten the integrity of the market; these prohibited activities would include manipulation of prices and squeezes.

The provisions of section 47 of the FSA in relation to misleading statements and practices would likely capture and prohibit activities including market manipulation. The term "manipulation" is not defined in the FSA.

The FSA also imposes the requirement for an exchange to have adequate arrangements for the effective monitoring and enforcement of compliance with its rules (FSA, Schedule 4, paragraph 3).

It is an offense for a person to make misleading statements or to engage in practices which create a false impression as to the value of investments (FSA, s.47). See item II.b.2(d), above.

COB

No specific provision for the futures market. The definition of the price manipulation criminal offense is general in France.

The French law of 22.01.88 provides that a price manipulation arises in case of a person who directly or through an intermediary, knowingly carries out a scheme with the objective of impeding the normal functioning of the market by misleading others. This person shall be punished through imprisonment ranging from two months to two years and/or by a fine ranging from 6 KF to 10 MF, the greater of or 10 times the amount of any profits made or to be made, with the added stipulation that in no case shall the fine be lower than said profits.

CONSOB

MOF

Manipulation is prohibited by law.

NCSC

Provisions exist within the legislation as well as within the rules of the SFE and the AFFM.

Part VIII of the Futures Industry Code has anti-manipulative provisions. The SFE in its Articles of Association at rule 3.6 provides anti-manipulative provisions.

OSC

Manipulation is an offense under the Federal Criminal Code.

The OSC is empowered to ensure that the floor trading practices of exchanges are fair and properly supervised, and to ensure that adequate measures have been taken by exchanges to prevent manipulation. The TFE's rules are designed to prevent non-competitive types of trading. As such they proscribe: frontrunning, trading against customer orders, entering into pre-arranged trades and withholding customer orders; give customer priority over firm and trader accounts; and prohibit disclosure of customer identities.

CVMQ

SFC

See answer to II.B.2.(d) above.

(e) Access restrictions

CFTC

CEA §4(a)(1)-(2) prohibits any person from engaging in a commodity transaction unless the transaction is on or subject to the rules of an exchange and the transaction is executed through a member of an exchange.

CEA §4(a) specifically excludes from its requirements those contracts which are made on or subject to the rules of a board of trade, exchange, or market located outside of the U.S., its territories or possessions.

CEA §15 requires that the CFTC take into consideration the public interest to be protected by the antitrust laws and endeavor to take the "least anticompetitive" means of achieving the objectives of the CEA when adopting or issuing rules or orders and when requiring or approving contract market or registered futures association rules.

Rule 1.62 requires that each exchange adopt, maintain and enforce rules which say that no person may engage in the purchase or sale of a commodity future or option on or subject to the rules of that exchange in any trading area unless that person is registered as a floor broker with the CFTC.

Rule 170.15 requires that each person required to be registered as an FCM must "become and remain a member of at least one futures association which is registered under section 17 of the [CEA] and which provides for the membership therein of such FCM . . . ." NFA bylaw 1101 prohibits members from doing business with non-members.

Each exchange has promulgated rules which prohibit trading unless a person is accorded membership on an exchange.

SEC

The options exchanges require that all trading of options contracts be restricted to members of the exchange.

SIB

Beyond requiring that trading is conducted in an orderly manner and that proper protection is afforded to investors, the legislation is silent on specific constraints in relation to access.

An exchange will have rules to ensure that the orderly manner in which its market is conducted is not compromised by the incompetence or behavior of persons on the exchange floor. Restrictions are imposed by the granting of permits, rights or licences to persons who have satisfied exchange-imposed minimum competency and financial requirements.

COB

CONSOB

MOF

Direct access to exchange trading is limited to stock exchange members and so-called special participants (securities companies and banks with trading licenses).

NCSC

There are no restrictions on access.

OSC

No person may trade in a contract in Ontario unless such person is registered pursuant to the CFA. Customers and hedgers among others are exempt from this requirement. The CFA only regulates trading in contracts traded on a commodity futures exchange. OTC transactions are subject to the Securities Act. Registrants are required to address the suitability of a trade for a customer.

CVMQ

SFC

Only registered Member Representatives can trade on the HKFE floor.

(f) Role of market makers

CFTC

At this time, exchanges do not have market makers. However, the CFTC is considering a CME rule establishing a category of market makers with affirmative responsibilities to put both a bid and an offer in specified contracts for a specified percentage of a Globex session. A similar submission of the CSCE is being considered by the CFTC in connection with CSCE's pit trading.

The CFTC has approved the use of the Board Broker system at the ACC and PBOT, two exchanges with low volume. For a description of this system, see section II.B.2.(a) above.

The Amex, NYSE, and Phix employ modified specialist systems for options trading. Each option is assigned to a specialist, who is responsible for maintaining a fair and orderly market and for handling orders placed in the limit order book. The options markets using a specialist system have the same basic rules against manipulative and fraudulent conduct as the exchange equity markets.

Specifically, the specialist's activities are circumscribed by Section 11 of the Act and the rules thereunder, and by the rules of the exchange where the specialist is registered. SEC Rule 11b-1(a)(2), which articulates the primary responsibilities of a specialist, states that a specialist's course of dealings must be designed to "assist in the maintenance, so far as practicable, of a fair and orderly market."

A specialist's dealer responsibilities are referred to as "affirmative" and negative" obligations. Pursuant to their affirmative obligations, specialists are obliged to trade for their own accounts to minimize order disparities and contribute to market continuity and depth. Additionally, "negative" obligations are designed to guard against inappropriate specialist dealer activity, i.e., the specialist is prohibited from trading for his own account unless that trading is reasonably necessary for the maintenance of a fair and orderly market.

Additional market making is provided by registered options traders ("ROTs"), who trade on the floor for their own accounts. ROTs generally are assigned by an exchange to make markets in one or more particular classes of options. Exchange rules require ROTs to engage in a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. The CBOE has also developed a specialist-type trading system that involves the use of Designated Primary Market Makers ("DPMs"). DPMs have powers and responsibilities akin to a specialist and are used to enhance market making capabilities in new options products and classes.

In contrast, the CBOE and PSE do not use specialists. Instead, each option has a crowd of competing market makers trading for their own accounts, with an exchange official, called an Order Book Official (OBO), handling the limit order book. Options market makers have affirmative obligations "to contribute to the maintenance of a fair and orderly market" and not to enter into transactions that are inconsistent with such a course of dealings.

As with stock orders, floor brokers handling option orders generally are required to use due diligence to execute orders they are handling at the best possible price available. In addition, floor brokers may not handle discretionary orders

whereby the broker would determine either the class of option to be bought or sold, the number of contracts to be bought or sold or whether to purchase or sell the contract.

SIB

Exchange rules may provide for the presence of market makers.

COB

Market makers are charged with ensuring the liquidity of the market. They have the following obligations.

- Permanent presence on the floor.

- Continuous quotation of a given range of buyer/seller prices.

- Commitment to buy or sell on request up to 20 contracts at current displayed prices.

On the MONEP, added to the obligation of permanent presence on the floor, market makers have to answer to every order at the bid-ask spread they propose as follows:

- for 4 to 10 contracts on the 5 central series of the underlying product,

- for 1 to 5 contracts on the other extreme series.

The maximum bid-ask spread proposed by market makers is +- 15 percent of the central price and concerns the 5 central series and the 3 nearest maturities. The spread is free for other series.

Market makers must also modify their spread if they expect to trade at higher bid prices or lower ask prices than the central point of their spread.

CONSOB

MOF

There is no market maker system in Japan.

NCSC

The SFE has no paid market makers although it does have local members who fulfill that function. There is no change in the order of execution for local members.

Local members of the SFE are entitled to trade on the Floor of the Exchange on their own behalf. They have no specific market-making responsibilities but perform that role as a result of their trading activities. They are also entitled to

execute orders for Floor Members but can not execute their own orders while holding Floor Member orders.

OSC

There are no provisions in Ontario for market makers who are obliged to post a market. However, the TFE has locals and floor traders on its trading floor who provide additional liquidity.

CVMQ

TFE rules give priority to customer orders and ensure that all trading is conducted in a competitive market.

Role of market-makers, specialist/market-maker trading policy

General obligations of specialists

In order to enhance market liquidity and facilitate the handling of orders, where feasible, each exchange listing shall be assigned to a member or permit holder who has agreed to undertake specialist responsibilities. A specialist shall have the following general obligations:

- in respect of orders entrusted to the specialist as agent, it shall be his duty:

  -- to hold the interest of the persons to whom such orders pertain above his own interest; and

  -- to fulfill, in a professional manner, all other duties of an agent, including but not limited to, insuring that each such order (regardless of its size or source) receives proper representation and timely, best possible execution in accordance with the terms of the order and the rules and policies of the Exchange.

- As a principal, a specialist shall provide, to the extent reasonably practicable, a fair and orderly market in the Exchange listing(s) in which he is registered. A specialist shall be expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there is a lack of price continuity or lack of depth in the market or when a temporary disparity between supply and demand exists or is reasonably to the anticipated. Furthermore, no specialist shall effect a transaction on the Exchange for his own account in the Exchange listing in which he is registered, unless it is reasonably calculated to contribute:

  - to the maintenance of price continuity with reasonable depth; and

- to minimizing the effects of the temporary disparity between supply and demand that is immediate or is reasonably to be anticipated.

General obligations of market-maker:

In order to enhance the quality of markets for exchange listings and support exchange specialists in providing liquidity, the ME shall appoint market-makers whose duty it shall be to carry out a course of dealings reasonably calculated to contribute to a fair and orderly market and to avoid entering into transactions or making bids or offers that are inconsistent with such a course of dealings.

In conformity with the market depth and spread requirements set down by the Specialist Performance Evaluation Committee in Policy T-1, market-makers shall have the responsibilities described below:

- for any ME listing which has an assigned specialist, a floor official or the specialist may call upon market makers to assist in making fair, orderly and competitive markets;

- for ME listings which have no formally designated specialist but in which market-makers have been appointed, the order book official or any floor official, may call upon such market-makers to make competitive bids or offers. The order book official or floor official will normally make such a demand when:

    - a trading representative or other person representing a client order in that particular ME listing so requests;

    - in the opinion of the floor official or order book official, the interests of a fair and orderly and competitive market are best served by such action.

- In the interest of maintaining a fair and orderly and competitive market, a request for a quotation may also be made by an exchange official at any time for the purpose of dissemination over the exchange's price reporting network.

- If satisfactory responses are not forthcoming promptly when the requests described above are made, record shall be made of this fact and a report forwarded to the Floor Committee and Specialist Performance Evaluation Committee.

Specialists - relationship to market-makers

In the absence of public orders, competitive bids and offers by market-makers and the specialist will ensure a tight market.

To encourage the reduction of bid-ask spreads by market-maker participation, it is exchange policy that the first professional order to bid or offer at a price where no customer order is represented in the Book or the crowd, shall have priority over all other professional orders for up to the number of trading units designated by the retail order policy for that listing.

SFC

Inapplicable.

III. Information Sharing and Coordination

A. Intra-Jurisdiction

1. Routine sharing--reporting, fitness, financial data

CFTC

The information routinely shared under the CFTC's regulatory program is discussed in II (see, e.g., II.B.5 (reporting), II.B.1. (fitness), and II.A.1(d) and 4 (financial data) above).

Section 8(a) of the CEA provides that the CFTC may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. Section 8(b) provides that such information may be disclosed in connection with a congressional proceeding, in an administration or judicial proceeding brought under the CEA, in a receivership proceeding involving the CEA or in any bankruptcy proceeding in which the CFTC has intervened or in which the CFTC has the right to appear and be heard. Section 8 of the CEA has been interpreted to prohibit disclosure of information filed with the CFTC by traders in compliance with its requirements. See Freeman v. Seligson, 405 F. 2d 1326, 1343 (D.C. Cir. 1968). In addition, Section 8(a) provides that the CFTC may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person.

The CFTC exchanges information and cooperates with U.S. federal and state government agencies pursuant to the authority contained in §8(e) of the CEA. The CFTC may disclose any information obtained in connection with the administration of the CEA to any federal or state agency. Such information cannot be disclosed by the agency except in connection with any action or proceeding to which the federal or state agency, the CFTC or the U.S. is a party.

The Freedom of Information Act (FOIA), 5 U.S.C. §552, and Part 145 of the CFTC regulations, generally require the CFTC to disclose its files unless the material falls within at least one of the applicable exemptions. If the material comes within

an exemption, then the Commission has the discretion to determine that it will withhold the information. For example, information may be withheld if it comes under the investigatory records exemption (FOIA Exemption 7) or the trade secrets and confidential commercial or financial information exemption (FOIA Exemption 4). Exemption 3 of the FOIA exempts from disclosure matters that are "specifically exempted from disclosure by statute...."

Exchange Information Routinely Made Available to the Public:

- Rule 16.01(a) requires that each exchange publish each business day, separately for each futures contract and delivery month, total volume of trading (excluding transfer trades), the total quantity of EFPs, the total gross open contracts, and the number of open contracts against which delivery notices have been stopped on the day for which publication is made. This information must be readily available to the news media and the general publication without charge no later than the business day following the day for which publication is made.

- Rule 16.01(b) requires each exchange to make available to the news media and the general public no later than the next business day, the lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, for the trading session and for the opening and closing periods of trading, provided that such numbers accurately reflect market conditions. Rule 16.01(c) also requires that each exchange publish the settlement price for each contract.

- Rule 16.01(c) requires each exchange to have available in its offices for public inspection the method used to determine settlement prices and, if discretion is used to determine opening and closing ranges, an explanation that certain discretion may be employed by the exchange and the manner in which it is done.

Pending Legal Proceedings by Exchanges:

- Rule 1.60 requires each exchange to submit to the CFTC copies of all complaints, answers and other pleadings filed that the CFTC may request with respect to any material legal proceeding to which the exchange is a party. Pleadings must also be submitted with respect to proceedings directed against any officer, director, or official of the exchange when that person has acted in his official capacity, if such proceedings allege violations of the CEA, CFTC rules and regulations, or applicable provisions of state law. See rule 1.60(b).

- Rule 1.60(c) requires each exchange to notify the CFTC of any proceedings known to the exchanges to be contemplated against them by a government agency other than the CFTC.

- Rule 1.60 (d) requires the exchange to advise the CFTC of any matter in which the exchange is indemnifying an officer, director or other official.

Information Sharing by Clearing Houses:

- Each of the futures clearing houses, as well as the Options Clearing Corporation (OCC), have signed a Market Information Sharing Agreement which provides for the sharing of pay and collect information among participants to the agreement. All futures clearing organizations and, as of October 1989, OCC are now participating in the sharing of this information which is collected and disseminated by the BTCC. In addition, the clearing houses have formally amended this agreement to provide for the sharing of margin surplus and deficit information.

Sharing of Information by SROs:

- Although the restrictions imposed on the CFTC regarding the disclosure of information are not applicable to the exchanges, the exchanges have their own rules and policies regarding the disclosure of information of trading data and actions that may be taken against members of the exchange.

- The CME and NYSE recently agreed to share information regarding market data to investigate possible frontrunning and other inter-market trading abuses. Other exchanges are considering such agreements.

- As discussed in II.A.4(b) above, the SROs participate in the Joint Audit Committee which provides for the routine sharing of financial information obtained from audits conducted by the DSROs.

- All futures and securities SROs have executed an agreement to share certain information on high risk firms.

SEC

The options and equities SROs (including OCC) share information under the oversight of the SEC. The SROs, among other things, share information in order to identify individuals involved in fraudulent sales practices, assure compliance by firms of financial requirements, and conduct effective surveillance of intermarket trading activities.

The SEC has sought to improve surveillance and investigatory programs for possible intermarket trading abuses. To further this effort, the major securities SROs have operated the Intermarket Surveillance Group (ISG) since 1981 to enhance the sharing of surveillance information by the various stock and options markets and to coordinate investigations of suspicious trading activities that involve more than one market. In addition, the Securities Clearing Group composed of the

securities clearing agencies provides a means for sharing information relating to the financial condition of clearing members.

The SEC and the CFTC routinely share information to tackle broad regulatory policy issues as well as to address specific concerns. The SEC also has access to and shares information with other federal and state agencies such as the FBI and the Attorney General.

In response to the market events of October 1987, the Intermarket Communications Group (ICG) operates a communication system (commonly referred to as a "shout-down" or "hoot-'n'-holler" system, using dedicated data transmission lines among the major securities and futures SROs regulated by the SEC and CFTC that comprise the ICG. This system will be used during periods of market stress to disseminate among the markets the latest information available concerning: (1) the approach, implementation or suspension of circuit breaker mechanisms; (2) NYSE securities experiencing delayed openings or trading halts; (3) order imbalances in NYSE securities, disseminated as part of circuit breaker mechanisms; and (4) operational problems concerning the Consolidated Tape Association, Consolidated Quotation System, OPRA, Intermarket Trading System, exchange order-routing or order-execution systems, or other exchange systems.

SIB

Subject to certain exceptions, restricted information which "relates to the business or other affairs of any person" is not to be disclosed either by the primary recipient, or by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient received the information and, if different, the person to whom the information relates (FSA, s.179(1)).

The fundamental concept is that of "restricted information." This is information obtained by certain primary recipients for the purposes of, or in the discharge of functions under, the FSA or any rules or regulations made under it, whether or not the information was obtained by a requirement to supply it under those provisions (FSA, s.179(2)). The primary recipients for these purposes include, among others:

- the Secretary of State;

- SIB;

- the Bank of England; and

- DGFT.

The list of primary recipients does not include SROs, professional bodies, investment exchanges or clearing houses. These have no powers to obtain information under the FSA, so the applicable restrictions on disclosure can usually be determined on general principles and by their constitutions. These authorities may, of course, obtain restricted information directly or indirectly from one of the specified primary recipients, in which case the statutory restrictions of s.179(1) will apply. Information is not to be treated as restricted information for these purposes if it has been made available to the public by a disclosure which is not precluded by s.179 (FSA, s.179(4)).

A slightly different restriction applies to information obtained by the competent authority in the exercise of its functions under Part IV of the Act or received by it pursuant to a EEC obligation from any authority exercising corresponding functions in another member State. In this case, the protected information is not limited to information about the business or other affairs of any person. Subject to the same exceptions as the main restriction, information protected under this provision is not to be disclosed without the consent of the person from whom the authority obtained it and, again, if different, the person to whom it relates (FSA, s.179 (5)).

A contravention of s.179 is an offense, punishable:

- on conviction on indictment, by imprisonment for a period not exceeding two years, a fine, or both; and

- on summary conviction, by imprisonment for a period not exceeding three months, a fine not exceeding the statutory maximum, or both (s.179(6)).

Section 180(1) contains a series of exceptions to the restrictions on disclosure in s. 179. These cover disclosure:

- with a view to the institution of or otherwise for the purposes of criminal proceedings;

- with a view to the institution of, or otherwise for the purpose of, any civil proceedings arising under or by virtue of the FSA or proceedings before the Financial Services Tribunal;

- for the purpose of enabling or assisting various specified authorities to carry out particular functions;

- with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

- for the purpose of enabling or assisting any person appointed or authorized to exercise investigatory powers under FSA, s. 94, 106 or 177 to discharge his functions;

- for the purpose of enabling or assisting an auditor of an authorized person or a person approved under the power to require a second audit (FSA, s. 108) to discharge his functions;

- if the information is or has been available to the public from other sources;

- in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or

- in pursuance of any EEC obligation.

Section 179 of the FSA does not preclude the disclosure of information to the Secretary of State or to the Treasury if the disclosure is made in the interests of investors or in the public interest (FSA s. 180(2)). There is, also, a power to permit, by order, disclosures for the purpose of enabling or assisting other authorities to discharge functions specified in the order (FSA, s. 180(3) and (4)).

One of the requirements imposed for the recognition of investment exchanges, clearing houses and SROs is that these bodies must be able and willing to cooperate, by the sharing of information and otherwise with the authorities, bodies or persons in the UK having responsibility for the supervision of regulation of investment business or other financial services (FSA, Schedule 4, paragraph 5; s.40(2)(b); s.39(4)(d); and Schedule 2, paragraph 7). The type of information to be shared is not specified in these provisions of the FSA.

In the context of financial regulation, the UK has adopted a lead regulator approach whereby in circumstances where a single entity is subject to more than one statutory regime such as the FSA and the Banking Act, one of the relevant regulatory authorities will assume a lead regulator role. Information will be shared on a periodic basis. Additionally, information will be shared where the lead regulator identifies a concern of special interest to another relevant regulator.

In circumstances where a single entity is subject to a single statutory regime such as the FSA but is, for example, a member of more than one SRO, the lead regulator approach will also be adopted. The lead regulator will report to the other regulators on a periodic basis. These reports will include information relating to problems (if any) with the regulated entity and financial information. Where there is a material problem, the lead regulator will contact the other supervisors.

In the case of a financial conglomerate which is subject to more than one statutory regime, a college of regulators will assume responsibility for regulatory purposes. A college meeting will be held once a year or more often, if required. The college will identify which of the regulators is to assume responsibility for particular aspects of regulation. The college will meet periodically to update the members on outstanding issues and problems.

COB

Article 21 of the Law of the 22nd of January 1988 provides that the Conseil des Bourses de Valeurs (CBV, French securities exchanges Council), the CMT, the COB and the banking Commission are authorized to share necessary information for the execution of their secrecy mission. This information is subject to the professional secrecy of these authorities.

The inspection and enforcement departments of the supervising authorities also meet on a regular basis to coordinate their activities.

CONSOB

MOF

In Japan, exchange of information intra-jurisdiction does not come into question for the following reasons:

- both cash and futures transactions are managed by the Ministry of Finance of Japan;

- MOF is in charge of financial futures transactions (securities futures transactions and interest futures transactions); and

- commodity futures transactions are not related to financial futures transactions.

We, MOF, think that exchange of information intra-jurisdiction is a problem which each authority has to cope with, because each authority has various regulatory systems respectively.

NCSC

The SFE regularly shares information with the NCSC in relation to financial compliance, defaults, insolvency, bankruptcy, aberrations in recordkeeping, the fitness of members, the nature of any new products, the exposure of members and any information which it believes will assist the NCSC in the performance of its functions under the legislation.

The NCSC does not share information with any agency within Australia on a routine basis.

OSC

The TFE routinely shares the following information with the OSC: all financial data respecting dealers and the exchange itself; information relating to responsible persons employed by dealers; statistical information relating to trading on the TFE; certain investigation and enforcement reports and any new rules or proposed changes to the rules of the TFE or any new contracts or proposed changes to TFE contracts. The IDA also routinely shares certain membership, investigation and enforcement reports with the OSC.

CVMQ

SFC

There is routine sharing of position and financial information among HKFE, HKCC and the Commission.

2. Sharing on request or special call basis (e.g., position data)

CFTC

See II.B.6.(a) above.

SEC

See II.B.6.(a) above.

SIB

COB

Article 5B of the ordinance of the 28th of September 1967, amended by the Law of the 2nd of August 1989, authorizes the COB to perform investigations qualified by the chairman.

If an investigation is initiated by the chairman of the COB, investigators have access to any statement whatever its nature and may have a copy of it. They can summon for a hearing every person who can give them information. They also have access to offices, and have access to all information from clearing houses.

CONSOB

MOF

NCSC

The NCSC shares information on request if it is determined that to do so is in the public interest. Information that is shared is not confined to any specific area.

All futures exchanges, clearing houses for futures exchanges, and futures associations are obliged, by legislation, to provide such assistance to the NCSC as the NCSC reasonably requires for the performance of its functions under the legislation.

OSC

The following information is provided to the OSC by the TFE on an as-requested basis: information relating to specific trades, accounts or firms; certain investigation, surveillance or compliance reports; and any other information relating to the operation of the TFE which the OSC deems necessary. On an as requested basis, the IDA and the OSC share information respecting investigations and enforcement on a similar basis. The OSC shares certain investigation and enforcement information with law enforcement agencies as required by such agencies to fulfill their responsibilities. The OSC is bound by Ontario freedom of information legislation to make available all records in its possession which are not subject to protection pursuant to exemptions in that legislation or pursuant to confidentiality provisions in the right to privacy sections of that legislation.

CVMQ

SFC

On special occasions, the Commission, HKFE, and HKCC share information regarding the financial status of open positions held by registered dealers/members.

3. **Emergency sharing**

CFTC

See II.A.7.(a) (early warning or increased reporting requirements) and II.A.7.(b) (price limits, circuit breakers) above. A member of the Joint Audit Committee, see II.A.4(b) above, can on an emergency basis directly obtain financial data regarding an FCM from other members of the Committee where that FCM is a member.

SEC

See II.A.7(a) and III.a.1. above.

SIB

COB

In the event of an emergency situation a coordinated management of markets has been established. The CMT can ask MATIF SA and OMF to suspend trading on the markets.

CONSOB

MOF

NCSC

This is done by the Commission if it is determined that it is in the public interest.

OSC

See III.A.2. above.

CVMQ

SFC

The HKFE, HKCC, and the Commission share information relating to open positions and financial positions of HKFE/HKCC members during emergencies.

B. Inter-Jurisdiction

1. Routine sharing--reporting, fitness, financial data

CFTC

Section 8(e) of the CEA permits the CFTC to furnish to a foreign government or any political subdivision therein acting within the scope of its jurisdiction, "any information in the possession of the [CFTC] obtained in connection with the administration of [the CEA]." The CFTC is prohibited from furnishing any information to a foreign government unless the CFTC is satisfied that the information will not be disclosed by any agency or department of that government except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party.

The CFTC has authority to enter into a Memorandum of Understanding (MOU) with a foreign authority. MOUs are subject to the provisions of the CEA and regulations thereunder regarding confidentiality of information (see proposed legislative amendments below). The CFTC and SEC have signed a formal MOU on the Exchange of Information with the United Kingdom DTI and the SIB. The CFTC has also entered into a Financial Information Sharing MOU (FISMOU) that includes as signatories a number of U.S. and UK signatories. The purpose of the FISMOU is to

provide a mechanism for routine information sharing on a routine and "as needed" basis pursuant to which the relevant UK regulator will waive the applicability of certain of its financial requirements to U.S. firms with branch offices in the UK In addition, the "Side Letter Relating to U.K./U.S. MOU" provides for the sharing of monitoring information between the CFTC and SIB relevant to Part 30 of the CFTC rules. Other jurisdictions with which the CFTC has compliance information sharing arrangements include various regulatory authorities in Australia, Singapore, Canada and France.

The CFTC has requested legislation to eliminate the possibility of compelled disclosure under FOIA or pursuant to third-party subpoenas of confidential information received from a foreign futures authority (as defined in H.R. 2869, 101st Cong., 1st Sess. §301 (1989) and S. 1729, 101st Cong., 1st Sess. §702 (1989)) unless the disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the U.S. or the CFTC, or in any bankruptcy proceeding where the CFTC has intervened or has the right to appear under Title 11 of the Bankruptcy Code. See, e.g., H.R. 2869 §305 (proposed amendment to §8(a)(1) (as redesignated by §203) of the bill). The House bill was passed by the U.S. House of Representatives on September 13, 1989. However, the Senate has not yet adopted its version of the bill.

SEC

Authority

The SEC's Rules of Practice [Rule 30-4(a)(7), 17 C.F.R. 200.30-4(a)(7)] authorize the Director of the Division of Enforcement to provide access to non-public materials in the SEC's investigative files to domestic and foreign governmental authorities, self-regulatory organizations, and other specified persons. In addition, Rule 2 of the SEC's Rules Relating to Investigations authorizes designated members of the SEC staff to "engage in discussions" concerning the non-public materials with the persons specified in Rule 30-4(a)(7).

The International Securities Enforcement Cooperation Act of 1989 ("ISECA"), when enacted into law, will make explicit the SEC's authority to provide documents and other information to foreign as well as domestic authorities. The ISECA has been reported out of both the U.S. Senate and House of Representatives, but the bills must be reconciled. However, ISECA is expected to be enacted later this year. In addition the Insider Trading and Securities Fraud Enforcement Act of 1988 contains a section that expands the SEC's authority to conduct investigations upon the request of a foreign securities authority.

Mechanisms

The mechanisms used to share information are set forth in the Memoranda of Understanding ("MOUs") the SEC has established with various foreign jurisdictions. The MOUs the SEC has entered into are described below.

Switzerland

The SEC entered into its first MOU in 1982, with Switzerland. Prior to that time, the SEC could utilize the 1977 Treaty on Mutual Assistance between the United States and Switzerland. This treaty requires dual criminality, however. Until July 1, 1988, when Switzerland's insider trading law came into effect, insider trading was not a violation of Swiss Law. To ensure the SEC's ability to obtain information in insider trading cases, the governments of the United States and Switzerland signed the MOU to establish "mutually acceptable means" for dealing with the problems of insider trading. The Swiss MOU provided a mechanism for Swiss banks under certain circumstances to disclose information to the SEC without violating the Swiss bank secrecy laws. The SEC has obtained assistance and information pursuant to the Swiss MOU, and, in one case, successfully pursued a civil injunctive action based on assistance provided pursuant to the MOU. At the time the Swiss MOU was signed, it was agreed that once insider trading was made illegal in Switzerland, the MOU would cease operation. To ensure that the SEC would be able to obtain and use information under the Treaty on Mutual Assistance in insider trading cases when insider trading was made illegal in Switzerland and the Swiss MOU therefore expired, the United States and Switzerland exchanged Diplomatic Notes on November 10, 1987. The Diplomatic Notes specifically provide that in insider trading cases the Treaty on Mutual Assistance can be used to provide assistance in SEC investigations relating to serious violations of U.S. securities laws.

Japan

The SEC entered into the MOU with the Securities Bureau of the Japanese Ministry of Finance in 1986. It provides that each agency will facilitate the other's "respective requests for surveillance and investigatory information on a case-by-case basis." The Japanese MOU designates a specific contact person in each agency to enhance regular communication and processing of requests. Although the Japanese MOU is less specific than the SEC's other MOUs, it has worked when the SEC has sought assistance.

United Kingdom

Also in 1986, the SEC, the CFTC, and the United Kingdom Department of Trade and Industry (DTI) entered into an MOU which, on a reciprocal basis, provides assistance in obtaining records that are in the hands of the other agency or that can be

obtained through the best efforts of the parties to the MOU. The UK MOU is viewed as an interim arrangement intended to be a first step in the signatories' efforts to establish a comprehensive understanding to provide bilateral cooperation relating to securities regulation. The UK MOU makes assistance available in matters involving insider trading, market manipulation, and misrepresentations relating to market transactions. It also provides for exchange of information in matters relating to the oversight of the operational and financial qualifications of investment businesses and brokerage firms. The UK MOU provides special safeguards to ensure that assistance is not abused by either party and requires that requests be made with particularity. The SEC has on numerous occasions received and provided assistance and information pursuant to the UK MOU, and several actions have been brought in the U.S. and the UK based in part on assistance provided pursuant to the MOU. On November 22, 1988, the SEC, CFTC and the DTI agreed that the UK Securities and Investments Board would be considered a party to the MOU with respect to matters concerning the supervision of investment businesses.

Canada

The SEC entered into an MOU on January 7, 1988, with the Ontario, Quebec, and British Columbia securities commissions. It is one of the most comprehensive of the SEC's MOUs entered into to date, exceeding the scope of assistance available under, and subject matter covered by, the SEC's MOUs with Switzerland, Japan, and the United Kingdom. It provides that the parties will provide each other with the fullest mutual assistance possible where information needed by one authority is in the territory of the other. The MOU provides that assistance will be available in essentially the full range of cases investigated by the SEC.

The MOU also provides that the parties will use their compulsory/subpoena authority, where necessary, to obtain the information requested by another authority. The Canadian MOU has already proven to be an effective means of obtaining and providing mutual assistance, and can be used as a basis for future agreements with other foreign regulatory authorities.

Brazil

On July 1, 1988, the SEC entered into an MOU with the Brazil Comissao de Valores Mobiliarios, the SEC's counterpart in Brazil. The Brazil MOU is identical in almost every respect to the Canadian MOU, and it differs from it only in that it contains additional language making explicit the parties' intention to use the MOU mechanism to conduct compliance inspections of investment businesses such as brokers and investment companies that engage in business in both jurisdictions.

Italy

On September 20, 1989, the SEC and the Commissione Nazionale Per le Societa' e la Borsa (CONSOB) of Italy issued a Communique recognizing the increasing international activity in securities markets and the corresponding need for mutual cooperation in matters relating to the administration and enforcement of Italian and United States securities laws. In the Communique, the SEC and the CONSOB stated their intent to provide the fullest mutual assistance possible under the laws of their respective countries to facilitate the performance of the SEC's and the CONSOB's functions regarding the legal rules and requirements of Italy and the United States relating to market oversight and the conduct of investigations, litigation and prosecution in cases where information needed by one of the parties is located within the territory of the other.

Although the Communique does not provide specific procedures for implementation or specifically define the assistance that may be provided under its terms, the SEC and the CONSOB have stated that they view the Communique as a preliminary step to a more expansive and comprehensive MOU pending the parties' obtaining additional legal authority.

Netherlands

The U.S. entered into an Agreement with the Netherlands on December 11, 1989. The Ministry of Finance of the Netherlands and the SEC are the relevant authorities for purposes of the Agreement. The Agreement states that the parties will provide each other with the greatest possible measure of mutual administrative assistance in obtaining and exchanging information relating to investigations of possible securities law violations. The scope of the Agreement is such that assistance will be provided with respect to the full range of securities matters which can be investigated by the SEC. Both parties agreed to use compulsory/subpoena authority, where necessary, to obtain the information requested by the other party. Additionally, the Agreement states the parties intention to use the Agreement mechanism to conduct compliance inspections of investment businesses that engage in business in both jurisdictions.

The Agreement will enter into force after domestic legislation implementing the Agreement has been adopted in the Netherlands.

France

The SEC entered into an Agreement with the Commission des Operations de Bourse on December 14, 1989. The SEC and COB agreed to provide each other with full assistance in securities matters. The French Agreement is similar to the Dutch Agreement with respect to its scope and the types of assistance to be provided under the Agreement.

Additionally, the SEC and the COB signed an Understanding in which they agreed to engage in consultations about all matters relating to the operation of securities markets in their respective countries. The understanding established a new framework for addressing a wide range of issues concerning the efficiency, stability, and integrity of the U.S. and French markets.

The French Agreement will not become effective until the adoption, in the U.S., of measures that will implement the confidentiality provisions of the Agreement. In particular, the ISECA would achieve this end.

SIB

There are provisions in the FSA permitting disclosure for the purpose of enabling or assisting certain overseas regulators to discharge their functions (s. 180(6)). In determining whether these functions correspond to those of the Secretary of State under the FSA - one of the grounds stated - the FSA provisions are to be regarded as in force (Schedule 15, paragraph 13). There are also provisions enabling the DGFT to disclose information obtained for the purposes, or in the discharge, of his functions under the FSA to enable or assist authorities under UK competition legislation to discharge their functions or in relation to civil proceedings under that legislation (s. 180(7)).

The Companies Act 1989 (Companies Act) (Part III of which will come into force early in 1990) extends the concept of assisting overseas regulators by providing new powers for the Secretary of State to obtain non-public information in connection with their enquiries. These powers may be implemented where the alleged offenses would not be infringements of UK law had they been committed within UK jurisdiction. They are, however, broadly comparable to powers available in UK domestic investigations, and include the ability to compel attendance, answers to questions and production of documents. Certain considerations apply prior to their exercise, such as the degree of corresponding assistance available from the overseas regulator, the degree of parallelism in English law, and the seriousness of the offense.

Under the FSA, the Secretary of State, if it appears to him to be in the public interest, has the power to give a direction prohibiting the disclosure of specified information to any person (or to named persons) in a named country or territory outside the UK. A direction of this kind may prohibit disclosure by all persons or only by specified persons or classes of person. It may be absolute, or apply only in specified cases or subject to specified conditions (for example, requiring consent to be obtained).

These powers only apply to information which relates to a person's business or other affairs and which was obtained (whether or not by virtue of any requirement to supply it) directly or indirectly by particular financial services authorities or investigators in the exercise of particular functions (FSA, s. 181(3)). The powers cannot be used to prevent a person who is not an authority or investigator of this kind from disclosing information relating to his own affairs or information which he did not obtain directly or indirectly from such an authority or investigator (s. 181(5)). This power to restrict the disclosure of information may be exercised where it appears to the Secretary of State to be in the public interest. The penalties are criminal, with the same limits as for other restrictions on disclosure (s. 181(70).

The Companies Act adds that disclosure, to overseas regulators, of information obtained for them can in general only occur with the consent of the person from whom it was obtained. There are a number or exceptions, including disclosure, inter alia,

- to any person with a view to the institution of relevant criminal, civil or disciplinary proceedings (which may take place overseas) (Companies Act, s.87);

- to assist any relevant authority (including overseas regulatory authority) to discharge any of its relevant functions; or

- in a summary of information framed in such a way so as not to enable the identification of any person to whom the information relates (Companies Act, s.87).

In relation to ROIEs and ROCHs and as a condition of recognition, adequate arrangements must exist for co-operation between the relevant overseas supervisors and the authorities responsible in the UK for the supervision and regulation of investment business or other financial services (FSA, s.40(2)).

Customised Memoranda of Understanding may be required to address particular and unique situations such as, for example where RIEs or RCHs are closely associated with foreign entities both in terms of their financial relationship and in the context of their activities which cross national boundaries. More generally, the UK authorities consider that Memoranda of Understanding with overseas authorities are of considerable assistance in ensuring co-operation in the inter-jurisdictional discharge of their regulatory and enforcement functions.

Items which may be addressed in these circumstances may contemplate the sharing of information regarding financial resources, profitability, suspension of members, failure of systems for clearing and price transparency, serious management problems, changes in financial viability of connected companies and pending legal actions.

In the context of financial regulation, where there is a UK branch of an overseas entity and the latter is subject to lead regulation overseas, the UK regulatory authority may rely on the home state supervisor; UK capital adequacy requirements will be disapplied. Home state regulation will be accepted by, for instance, a UK SRO if the latter is satisfied of the adequacy of financial supervision in the home state and provided that the home state supervisor enters into a written agreement for the sharing of information with the UK regulator.

With respect to futures and securities firms, the home state will be required to: provide initial confirmation that the firm is fit and proper; provide periodic financial information and confirm that the financial condition of the firm is satisfactory; and provide ad hoc reports regarding the financial concerns of the institution.

In relation to overseas banks with UK branches, the same information is provided except periodic financial information; this is due to the statutory restraints on the disclosure of such information in many jurisdictions.

COB

The COB can investigate on the demand of a foreign authority having comparable powers. When this demand is formulated by an authority of a non-member State of the EEC, this investigation is subject to a reciprocity condition.

The ordinance of the 28th of September 1967, amended by the Law of the 2nd of August 1989, provides that professional secrecy does not prohibit the COB from communicating information to a requesting authority of an EEC member state having comparable powers and compelled to uphold the same professional secrecy.

Under reciprocity, the COB can also communicate information to authorities of other countries having comparable powers. This foreign authority must hold to the same professional secrecy standards with the same guarantees as in France.

Based upon these legal terms, the Law of the 2nd of August 1989 provides that the COB can conclude, with its foreign counterparts, administrative agreements in order to implement this cooperation.

CONSOB

MOF

The Securities Bureau of the Ministry of Finance has concluded MOUs with SEC and DTI (SIB), however, it does not exchange day-to-day information concerning financial data etc. at present.

NCSC

There is at present no routine sharing of information by the Commission with any agency outside Australia.

OSC

The OSC is subject to a MOU dated January 7, 1988 and entered into between the Quebec and British Columbia Securities Commissions and the Securities and Exchange Commission in the United States. The OSC is also subject to a MOU dated March 28, 1988 and entered into with the Canadian Federal Office of the Superintendent of Financial Institutions.

CVMQ

Memorandum of understanding:

The United States Securities and Exchange Commission, the Ontario Securities Commission, the Commission des valeurs mobilieres du Quebec and the British Columbia Securities Commission ("the Authorities") recognizing the increasing international activity in securities markets and the corresponding need for mutual cooperation in matters relating to the administration and enforcement of United States and Canadian securities laws, have reached understanding with respect to requests for assistance made between the United States Securities and Exchange Commission and a Canadian securities regulatory authority.

- The Authorities will provide the fullest mutual assistance, as contemplated by the Memorandum of Understanding. Such assistance will be provided to facilitate the performance of securities market oversight functions and the conduct of investigations, litigation or prosecution in cases where information located within the jurisdiction of the requested Authority is needed to determine whether, or prove that, the laws or regulations of the requesting Authority may have been violated.

- Assistance available under the Memorandum of Understanding includes but is not limited to:

  -- providing access to information in the files of the requested Authority;

  -- taking the evidence of persons; and

  -- obtaining documents from persons.

- The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Memorandum of Understanding. Subject to such limitations of legal authority, the

Authorities will use all reasonable efforts to obtain the necessary authorization to provide the assistance described in this Memorandum of Understanding.

Memorandum of Understanding between the Office of the Superintendent of Financial Institutions (OSFI) and la Commission des valeurs mobilieres du Quebec.

- The Memorandum of Understanding sets forth a statement of intent of OSFI and the Commission with respect to coordination of certain policies for the regulation of financial institutions - related dealers by the Commission and financial institutions by the OSFI.

  A "financial institution - related dealer" means a dealer in securities or advisor with respect to securities that is or will be a registrant under the Securities Act (Quebec) and in which a financial institution has or is seeking approval to have an interest, the purchase or acquisition of which requires the prior approval of the Minister of Finance of Canada.

- Each of OSFI and the Commission acknowledges that the other, in the ordinary course of carrying out its regulatory responsibilities, has the right to obtain certain information about, or access to books and records of financial institutions - related dealers or financial institutions, respectively.

Subject to applicable law, each of OSFI and the Commission will cooperate with all reasonable requests of the other for such information or access.

Each of OSFI and the Commission will use its best efforts to provide the other with information it has that a financial institution - related dealer or a financial institution, respectively, has or appears to have breached, or is expected to breach, in any material way the Securities Act or the by-laws of a self regulatory organization of which the financial institution - related dealer is a member or the governing legislation of the financial institution, respectively.

SFC

There has historically been no routine or emergency sharing of confidential reporting, fitness or financial data, but the Commission normally supplies available public information to overseas jurisdictions on request. The Commission is authorized to disclose confidential information to foreign regulatory bodies, but only if it first makes certain formal determinations. The Commission currently is discussing several information sharing arrangements and agreed to enter into a memorandum of understanding with a foreign regulatory body. The

Commission also intends to propose legislative changes to facilitate information sharing with other regulatory bodies.

2. **Sharing on request or special call basis**

CFTC

See III.A.2. above. Section 8(e) of the CEA governs the sharing of information on request or special call basis with a foreign authority.

SEC

Section 17(a) of the 34 Act provides the Commission with broad authority to request information from B/Ds.

SIB

COB

CONSOB

MOF

As to sharing on request or special call basis, we exchange surveillance and investigatory information between SEC and DTI (SIB) on a case-by-case basis according to arrangements of each agency (MOUs). [We think that before the discussion of procedure on exchange of information, the scope of information to exchange will be determined according to accumulated actual results in each case, not determined uniformly.]

We hope that arrangements between each agency (for example, MOUs) which may be necessary under such circumstances may be discussed in the IOSCO WP5.

We, MOF staffs, are under a legal obligation to keep confidential any information which MOF staffs have acquired through their official duties. Therefore, on each request, we make a judgment from the viewpoint of public interest on whether we will provide the information or not.

NCSC

Position data and other forms of information are shared on an ad hoc basis upon request if it has been demonstrated that it is in the public interest to do so.

OSC

The OSC is party to a Memorandum of Understanding between the U.S. Securities and Exchange Commission and the Quebec and British Columbia Securities Commissions. Pursuant to the MOU

each agency agrees to exchange information on an as-requested basis relating to trading, registration matters, investigations and enforcement actions. Informally, the OSC shares information with other Canadian regulators, the CFTC and international regulators on an as-requested basis with respect to investigation and enforcement matters, subject to the confidentiality rules referred to above.

CVMQ

SFC

3. Emergency sharing

CFTC

See III.A.3. above.

SEC

Section 17(a) of the 34 Act provides the Commission with broad authority to request information from B/Ds.

SIB

COB

CONSOB

MOF

The Securities Bureau of Ministry of Finance, has held a meeting with SEC in order to exchange opinions regularly since May, 1986, and we agree to keep in touch with SEC about emergent information mutually when stock prices may go down suddenly.

We, MOF, think it important to coordinate with foreign regulatory authorities to enforce any restriction on securities markets (for example, closing of the markets) on the occasion of emergency.

MOF is under a legal obligation to keep confidential any information which the MOF staff has acquired through its official duties. Therefore, on each request for information, we make a judgment from the viewpoint of public interest on whether we will provide the information or not.

NCSC

This is done by the NCSC if it is determined that it is in the public interest to do so.

OSC

CVMQ

SFC

PART TWO

CROSS REGULATORY SUMMARY CHART

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
I. Operational Definitions ("home" vs. "host")										
A. Markets and Products										
1. Jurisdictional Issue										
(a) When determining for regulatory purposes whether a market is a domestic market, do you consider:										
(i) place of incorporation?	YES	N/A	NO[1]	YES	YES	YES	NO	NO	NO	NO
(ii) location of trading floor?	YES	N/A	NO[1]	YES	YES	YES	YES[1]	YES	YES	NO
(iii) general conduct of business?	YES	N/A	NO[1]	YES	YES	N/A[1]	N/A	YES	YES	NO
(b) Once a determination is made that a market is domestic, must such market be recognized?	YES	N/A	YES[2]	YES[1]	YES	YES[2]	N/A	YES	YES	YES
(c) Once a determination is made that a product is domestic, must such product be recognized?	YES	NO	NO	N/A	YES	YES	YES	YES	YES	YES
(d) Are there statutory criteria with which an exchange must comply before recognition will be granted?	YES	N/A	YES[3]	YES	YES	YES	YES	YES	YES	YES
(e) Do these recognition criteria include:										
(i) location?	NO	N/A	NO[1]	YES	YES	YES	NO	YES	YES	N/A
(ii) antifraud provisions?	YES	N/A	YES	YES	YES	YES	NO	YES	YES	N/A
(iii) general public interest considerations?	YES	N/A	YES	YES	YES	YES	YES	YES	YES	N/A
(iv) financial stability?	YES	N/A	YES	YES[2]	YES	N/A	NO	YES	YES	N/A
(f) When determining for regulatory purposes whether a clearing house is domestic do you consider:										
(i) place of incorporation?	NO	YES	NO[4]	N/A[3]	YES	N/A	N/A	NO	NO	N/A
(ii) general conduct of business?	YES	NO	NO[4]	N/A[3]	YES	N/A	N/A	YES	YES	N/A

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(g) Once a determination is made that a clearing house is domestic must it be recognized?	YES	YES	YES[5]	YES[3]	YES	N/A	N/A	YES	YES	NO
(h) Are there statutory criteria with which a clearing house must comply before recognition will be granted?	YES	YES	YES[6]	N/A[3]	YES	N/A	N/A	YES	YES	NO
(i) Do these recognition criteria include?										
(i) location?	NO	YES	NO[4]	N/A[3]	YES[1]	N/A	N/A	NO	YES	N/A
(ii) antifraud provisions?	YES	YES	YES	N/A[3]	YES	N/A	N/A	YES	YES	N/A
(iii) general public interest considerations?	YES	YES	YES	N/A[3]	YES	N/A	N/A	YES	YES	N/A
(iv) financial stability?	N/A	YES	YES	N/A[3]	YES	N/A	N/A	YES	YES	N/A
2. Recognition										
(a) Must a foreign clearing house be recognized in order to be used on behalf of nationals of your country?	YES	NO	NO	NO	YES	N/A	N/A	NO	NO	NO
(i) Are there any exceptions?	NO	N/A	NO	N/A	YES	N/A	N/A	N/A	N/A	N/A
(ii) Are there any statutory recognition criteria?	YES	N/A	YES[7]	N/A	YES	N/A	N/A	N/A	N/A	N/A
(b) Are there other general guidelines?	YES	N/A	YES	N/A	YES	N/A	N/A	YES	N/A	N/A
Do these guidelines include:										
(i) adequate regulatory protections in foreign country?	N/A	N/A	YES[8]	N/A	YES	N/A	N/A	YES	N/A	N/A
(ii) information sharing by foreign clearing house with national regulators?	YES	N/A	YES[8]	N/A	YES	N/A	N/A	N/A	N/A	N/A
(iii) investor protection provisions?	YES	N/A	YES[8]	N/A	YES	N/A	N/A	YES	N/A	N/A

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(iv) membership access restriction by foreign clearing house?	YES	N/A	YES[8]	N/A	YES	N/A	N/A	NO	N/A	N/A
(v) adequacy of grievance procedures for customers?	YES	N/A	YES[8]	N/A	YES	N/A	N/A	NO	N/A	N/A
(c) Must a foreign market be recognized in order to be traded by or on behalf of nationals in your country?	NO	YES	NO	NO	YES	N/A[3]	N/A	YES	NO	NO
(i) Are there any exceptions?	N/A	YES	YES[9]	YES[4]	YES[2]	N/A	N/A	YES	N/A	N/A
(ii) Are there any statutory recognition criteria?	N/A	YES	YES	NO	YES	N/A	N/A	YES	N/A	N/A
(d) Are there other general guidelines?	N/A	YES	YES	YES	YES	N/A	N/A	NO	N/A	NO
Do these guidelines include:										
(i) adequate regulatory protections in foreign country?	N/A	YES	YES[10]	YES	YES	N/A	N/A	N/A	N/A	N/A
(ii) information sharing by foreign market with national regulators?	N/A	YES	YES[10]	YES	YES	N/A	N/A	N/A	N/A	N/A
(iii) investor protection provisions?	N/A	YES	YES[10]	YES	YES	N/A	N/A	N/A	N/A	N/A
(iv) membership access restriction by foreign market?	N/A	YES	YES[10]	NO[5]	YES	N/A	N/A	N/A	N/A	N/A
(v) adequacy of grievance procedures for customers?	N/A	YES	YES[10]	YES	YES	N/A	N/A	N/A	N/A	N/A
(e) Must a foreign product be recognized in order to be traded by or on behalf of nationals of your country?	N/A	NO	NO	NO	YES	N/A[3]	N/A	YES	NO	NO
(i) Are there any exceptions?	N/A	N/A	NO	YES[4]	YES[3]	N/A	N/A	YES	NO	N/A
(ii) Are there any statutory recognition criteria?	N/A	N/A	NO	NO	YES	N/A	N/A	YES	NO	N/A

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(f) Are there other general guidelines?	YES	N/A	NO	YES	YES	N/A	N/A	NO	N/A	NO
Do these guidelines include:										
(i) adequate regulatory protections in foreign country?	N/A	N/A	NO	YES	YES	N/A	N/A	N/A	N/A	N/A
(ii) information sharing by foreign market with national regulators?	N/A	N/A	NO	YES	YES	N/A	N/A	N/A	N/A	N/A
(iii) investor protection provisions?	YES	N/A	NO	YES	YES	N/A	N/A	N/A	N/A	N/A
(iv) membership access restriction by foreign market?	YES	N/A	NO	NO[5]	YES	N/A	N/A	N/A	N/A	N/A
(v) adequacy of grievance procedures for customers?	YES	N/A	NO	YES	YES	N/A	N/A	N/A	N/A	N/A
B. Financial Intermediaries										
1. Regulatory Jurisdiction										
(a) Are there differences in the applicable regulations based on the relationship of a financial intermediary to the jurisdiction?	YES	YES	YES[11]	YES	YES	YES[4]	YES	YES	YES	NO
(b) Are these differences based on:										
(i) place of business?	YES	NO	YES	YES	YES	YES	N/A	YES	YES	N/A
(ii) conducting of business in jurisdiction?	YES	YES	YES	YES	YES	YES[5]	N/A	YES	YES	N/A
(iii) solicitation of business in jurisdiction?	YES	NO	YES	NO	YES	N/A	N/A	YES	YES	N/A
(iv) customer location?	NO	NO	YES	YES	YES	NO[6]	NO	YES	YES	N/A
(v) customer sophistication?	YES	YES	YES	NO[6]	YES	NO	NO	YES	YES	N/A

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(i) affiliated?	NO	N/A	YES[17]	YES	YES	N/A	N/A	YES	YES	YES[3]
(ii) independent?	YES	N/A	YES	YES	NO	N/A	N/A	NO	YES	NO
(c) Are there any regulatory or self-regulatory operational requirements for clearing facilities?	YES	YES	YES	YES	YES	YES[11]	N/A	YES	YES	NO[3]
(d) Are there any rules or regulations governing the scope, nature and timing of guarantee of clearing members?	YES	YES	YES	YES	YES	N/A	N/A	YES	YES	YES[4]
3. Margin and Credit Extension Requirements										
(a) Are original margin requirements set by the clearing house?	YES	YES	YES	YES[9]	YES	N/A[12]	N/A	YES	YES	YES
(b) Are clearing house margin deposits collected on a:										
(i) net basis?	YES	YES	YES[18]	YES	YES	YES	N/A	YES	YES	NO
(ii) gross basis?	NO	YES	NO	YES	NO	YES[13]	N/A	YES	NO	YES
(c) Are original margin requirements calculated using:										
(i) simulated models	NO	YES	YES	YES	YES	NO	N/A	YES	YES	YES
(ii) specific margin per contract multiplied by number of contracts held (or similar simple calculation)?	YES	YES	YES	YES	NO	YES	N/A	YES	YES	YES
(d) Are settlement payments made daily?	YES	YES	YES	YES	YES	YES[14]	N/A	YES	YES	YES
(e) Do clearing houses issue intra-day variation margin calls?	NO	YES	YES	YES	YES	N/A	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(i) on a routine basis?	N/A	NO	YES	YES	NO YES	N/A	N/A	YES	NO	NO
(ii) in cases of large market moves?	N/A	YES	YES	YES		N/A	N/A	YES	YES	YES
(f) Are clearing houses required by legislation or exchange rule to segregate customer funds from any funds used in the firm's proprietary operation?	N/A	NO	YES	YES	YES	N/A	N/A	YES	YES	YES
(g) Do the clearing houses accept the following as collateral:										
(i) cash?	YES	N/A	YES	YES	YES YES	YES	N/A	YES	YES	YES[5]
(ii) securities?	YES	YES	YES	YES[10]	NO	YES[15]	N/A	YES	YES	NO
(iii) letters of credit?	NO	NO	YES	YES	YES	NO	N/A	YES	YES	NO
(iv) other?	NO	YES	YES	YES		NO	N/A	YES	YES	NO
4. Financial Compliance Programs										
(a) Are there existing programs for continous financial surveillance?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(b) If so do the entities subject to on-going surveillance include:										
(i) individual members?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(ii) clearing firms?	N/A	YES	YES	YES	YES	N/A	N/A	YES	YES	YES
(iii) non-clearing firms?	N/A	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(c) Are SROs by statute or regulation required to maintain financial surveillance programs?	NO	NO	YES[19]	YES	YES	YES	N/A	YES	YES	NO[6]
(d) Are periodic audits performed?	YES	YES	YES	YES[11]	YES	YES	YES	YES	YES	YES
(e) Are these audits required to be performed on a regular basis?	NO	NO	NO	YES[11]	NO	NO	YES	YES	NO	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
5.Customer Funds Protection										
(a) Are financial intermediaries required to segregate customer funds from their own funds?	YES	NO	YES	YES	YES	NO	YES	NO	YES	YES
(b) Is the term "customer funds" statutorily defined?	YES	NO	YES[20]	YES	YES	NO	YES	NO	NO	NO
(c) Are financial intermediaries required to keep records regarding customer funds?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(d) May customers "opt out" of the segregation requirement?	NO	N/A	YES[21]	NO	NO	N/A	N/A	N/A	NO	NO
(e) Are there other programs in existence, such as insurance or other forms of guarantee, designed to protect investors?	YES	YES	YES	NO[12]	YES	YES	YES	YES	YES	YES
(f) Are there any restrictions on where customer funds may be invested?	YES	N/A	YES	YES	YES	N/A	YES	YES	YES	YES
(g) Is there a requirement that segregated funds be maintained at a "good depository"?	NO	N/A	YES	YES	YES	N/A	N/A	YES	YES	YES
(h) Is it permissible under existing rules and regulations for a "good depository" to be:										
(i) a domestic bank?	N/A	N/A	YES	YES	YES	N/A	N/A	YES	YES	YES
(ii) a foreign bank?	N/A	N/A	YES	YES	YES	N/A	N/A	YES	YES	YES
(iii) another financial intermediary?	N/A	N/A	YES	YES	YES	N/A	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
6. Default, Insolvency or Bankruptcy Provisions										
(a) Do customers receive priority for their claims against bankrupt or defaulting firms?	YES	YES	YES[22]	YES[13]	YES	N/A	NO	NO	YES	NO
(b) Do the rules provide for the return or transfer of specifically identifiable property?	YES	YES	YES	YES	YES	N/A	YES	NO	YES	YES
(c) Does a bankruptcy trustee or other entity have authority to, e.g., close out futures and options positions or to make or accept delivery on derivative contracts?	YES	YES	YES	YES	YES	N/A	N/A	YES	YES	YES
(d) Does a bankruptcy trustee or other entity have authority to transfer customer positions?	YES	YES	YES	YES	YES	N/A	NO	YES	YES	YES
7. Market Disruptions; Firm Financial Problems										
(a) Are firms required to notify regulators when firms develop financial problems?	N/A	YES	YES	YES[14]	YES	NO	YES	YES	YES	NO[7]
(b) Are provisions in place for increased reporting in cases of market disruption?	NO	NO	YES	YES	YES	YES	NO	YES	YES	YES
(c) Do exchanges impose daily price limits on traded contracts?	NO	YES	NO	YES[15]	NO	YES[16]	N/A	YES	YES	YES
(d) Do exchange rules provide for emergency measures including cessation of trading during times of extreme volatility?	NO	YES	YES	YES[16]	YES	YES	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(e) May an exchange or clearing house call for additional margins when market conditions and price fluctuations render it necessary to maintain an orderly market or to perserve fiscal integrity?	YES	YES	YES	YES	YES	YES[17]	N/A	YES	YES	YES
(f) Other provisions to deal with market disruptions or firm financial problems?	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES
8. Recordkeeping										
(a) Does the jurisdiction have detailed rules regarding financial recordkeeping? If so, must records be kept of:	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(i) financial condition of firms and brokers?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(ii) customer funds and property and treatment of customer funds and property?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(iii) customer orders and documents related to those orders?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(b) Does the jurisdiction require the records to be retained for a specified period of time?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(c) Does the jurisdiction limit access to the financial records?	YES	YES	YES	YES	YES	NO	NO	YES	YES	YES
B. Fairness										
1. Authorization, qualification and good standing requirements other than capital adequacy										
(a) Do regulators or exchanges set qualification requirements or competency										

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
criteria for exchange members and governing members?	YES	YES	YES	YES[17]	YES	YES[18]	N/A	YES	YES	YES
(b) Do regulators or exchanges set qualification requirements for clearing members and governing members?	YES	YES	YES	YES[17]	YES	NO	N/A	YES	YES	YES[8]
(c) Does the jurisdiction set qualification requirements for other financial intermediaries such as FCMs and brokers? If so, do the qualification standards include:	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES
(i) consideration of the educational qualifications or experience of the applicant?	YES	YES	YES	YES	YES	N/A	YES	YES	YES	YES
(ii) consideration of the applicant's character and criminal record?	YES	YES	YES	YES	YES	N/A	YES	YES	YES	YES
(iii) consideration of previous refusal or revocation of license or membership in any financial services industry or association?	YES	YES	YES	YES	YES	N/A	NO	YES	YES	YES
2. Order Execution Requirements										
(a) Does the jurisdiction have competitive execution requirements such as open outcry or other methods such as posting of bids and offers which are open and competitive?	YES	YES	YES	YES	YES	YES[19]	YES	YES	YES	YES
(b) Do the regulator or SROs set priority rules for the execution of customer orders?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(c) Does the jurisdiction have restrictions on the trading activities of persons who posses material, non-public information?	YES	YES	YES	YES	YES	YES	NO	NO	YES	NO
(d) Do the regulators or the SROs restrict the practice of dual trading?	YES	YES	NO	YES	YES	NO[20]	NO	YES	YES	YES
(e) Other capacity restrictions?	YES	N/A	YES	YES	YES	YES	NO	YES	YES	YES
(f) Do the regulators or the SROs have rules which address procedures for large or small orders?	NO	YES	NO	NO[18]	YES	NO	NO	YES	YES	NO
(g) Does the jurisdiction have specific rules which prohibit fraudulent activity such as cheating, bucketing orders, fictitious trading, etc.?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
3. Sales Representations and Disclosure -- Required and Restricted										
(a) Are there prohibitions against providing a customer with false or misleading information?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(b) Are there prohibitions against failing to provide a customer with information that may have a material effect on a customer's investment decision?	NO	NO	YES	YES	YES	YES	NO	YES	YES	YES
(c) Are there other standards regarding information or representations to customers?	YES	YES	YES	YES	YES	YES[21]	NO	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(d) Are firms required, pursuant to a "know your customer," or "suitability" rule, to determine a customer's aptitude for trading or understanding of investment risks?	NO	NO	YES	YES[19]	YES	YES	NO	YES	YES	YES
(e) Must firms provide written disclosure of the risks involved in trading before they effect transactions for or on behalf of customers?	YES	YES	YES	YES	YES	YES[22]	YES	YES	YES	YES
(i) Is such disclosure document required to be signed by the customer?	YES	NO	YES[23]	YES	NO[4]	YES	YES	YES	YES	YES
(ii) Does the signature requirement vary with perceived ability or expertise of the customer?	NO	NO	YES	NO	N/A	YES	NO	NO	NO	NO
(f) Must promotional material be approved before it may be utilized?	YES	NO	YES	N/A[20]	YES	NO	NO	YES	YES	YES
(g) Is promotional material reviewed in conjunction with the supervision of firm personnel?	NO	NO	YES	YES	YES	NO	NO	YES	YES	YES
(h) Must advertisements contain risk disclosure?	NO	NO	YES	NO	YES	YES	YES	NO	NO	NO
(i) Are there any other standards governing advertisements?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(j) Do general anti-fraud provisions apply to statements made in connection with advertisements?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(k) Are there any restrictions on fees that firms may charge?	NO	NO	NO	NO[21]	NO	YES[23]	NO	NO	NO	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(l) Are there any restrictions against cold-calling or telephone solicitation of new customers?	NO	NO	YES	NO[22]	NO	NO	NO	YES	YES	YES
(m) Do anti-fraud standards apply to sales representations in general?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(n) Are procedures required regarding supervision of firm personnel?	NO	YES	YES	YES	YES	YES	NO	YES	YES	YES
(o) Are there any additional standards of review of firms' sales practices?	YES	NO	YES	YES	YES	YES	NO	YES	YES	NO
4. Product Design - delivery procedures, settlement prices										
(a) Are there requirements regarding product design?	YES	YES	NO	YES[23]	YES	YES	N/A	YES	YES	NO
(b) Are there specific requirements regarding delivery procedures?	YES	YES	NO	YES	YES	YES[24]	YES	YES	YES	NO
(c) Are there specific requirements as elements of justification for a contract's terms and conditions?	NO	NO	NO	YES	YES	N/A	NO	YES	YES	NO
(d) Are there additional elements of justification for contracts?	NO	NO	NO	YES	YES	N/A	NO	YES	YES	NO
(e) Are there specific requirements regarding settlement prices?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(i) Are settlement prices established by the clearing house?	YES	YES	YES	YES	YES	N/A	N/A	YES	YES	YES
(ii) Are settlement prices determined on a daily basis?	NO	YES	YES	YES	YES	YES	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
5. Recordkeeping -- Maintenance, Retention Period, Availability and Confidentiality										
(a) Do procedures exist to record transactions effected on the exchange?	YES	YES	YES	YES	YES	YES[25]	YES	YES	YES	YES
(b) If so, is the promulgation of such "audit trail" procedures a prerequisite to recognition of an exchange?	YES	N/A	YES	YES	YES	YES	NO	YES	YES	NO
(c) Must daily records be maintained regarding transactions?	N/A	YES	YES	YES	YES	YES	YES	YES	YES	YES
(i) Must such records be maintained for each customer?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(ii) Must such records be maintained for a specified period of time?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(iii) Must records be kept that will track a customer order from placement with the financial intermediary through execution?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(iv) Must these records also reflect factors such as:										
- transaction date or time?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
- price or premium?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
- delivery month?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
- quantity?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(v) Must each exchange maintain a single record containing all identifying information regarding a transaction?	NO	YES	YES	YES	YES	YES	N/A	YES	YES	NO

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(d) Is the volume of trading for each contract required to be made public?	NO	YES	YES	YES	YES	YES	N/A	YES	YES	NO[9]
(e) If so are the following types of information to be included:										
(i) price, volume or open interest?	N/A	YES	YES	YES	YES	YES	N/A	YES	YES	N/A
(ii) total volume of trading?	N/A	YES	YES	YES	YES	YES	N/A	YES	YES	N/A
(iii) total quantity of exchanges for physicals?	N/A	NO	NO	YES	N/A	YES	N/A	NO	NO	N/A
(iv) total gross open contracts?	N/A	NO	YES	YES	YES	YES	N/A	NO	NO	N/A
(v) highest and lowest price of offer?	N/A	NO	YES	YES	YES	N/A	N/A	NO	NO	N/A
(f) Must statements be prepared for each customer indicating the open contracts acquired?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(g) Must each financial intermediary prepare statements providing information regarding reportable positions?	YES	NO	NO	YES	YES	YES	NO	YES	YES	YES
(h) Are financial intermediaries required to provide customers with monthly statements?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
(i) Are financial intermediaries required to provide customers with confirmation statements?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(j) Are large trader reports required to be filed?	NO	NO	NO	YES	YES	NO	NO	YES	YES	YES
(k) Are reports required to be submitted by traders that hold reportable positions?	YES	NO	NO	YES	YES	YES	NO	YES	YES	YES
(l) Must each trader holding a reportable position maintain and furnish its books and records upon request?	YES	YES	N/A	YES	YES	N/A	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(m) Do standards exist that limit or restrict the dissemination of information to the public?	NO	NO	NO	YES	YES	YES	NO	YES	YES	NO
6. Market Disruption Programs										
(a) Does the regulatory authority set position limits for individual contracts?	NO	YES	NO	YES	NO	YES	NO	NO	NO	NO[10]
(b) Do the exchanges impose position limits on individual contracts?	NO	YES	NO	YES	YES	NO[26]	NO	YES	YES	YES
(c) Has the regulatory authority adopted special call procedures by which it can request specific information from certain industry participants?	NO	NO	YES	YES	YES	YES	NO	YES	YES	NO
(d) Do the exchanges provide for the temporary cessation of trading by establishing price limits for particular contracts?	NO	YES	YES	YES	NO	YES[27]	N/A	YES	YES	YES
(e) Do the exchanges have circuit breakers?	NO	YES	NO	YES[24]	YES	NO	NO	YES	YES	YES
(f) Can the regulatory authority take emergency action where appropriate to ensure inter alia that trade is conducted in an orderly manner?	YES	YES	YES	YES	YES	YES[28]	YES	YES	YES	YES
(g) Do exchange rules provide for emergency actions?	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES
7. Compliance Programs; Enforcement										
(a) Do the exchanges maintain market surveillance programs?	YES	YES	YES	YES	YES	YES[29]	YES	YES	YES	YES
(b) Does the regulatory authority conduct investigations of the derivative markets?	YES	YES	NO	YES	YES	YES	NO	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(c) Do the exchanges perform trade practice surveillance?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
(d) Does the regulatory authority have the authority to investigate exchange operations?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
8. Customer Dispute Resolution Procedures and other Forms of Customer Redress										
(a) Do the SROs have arbitration rules and procedures for the resolution of customer-member disputes?	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO
(b) Does the regulatory authority maintain a forum for customer redress?	YES	NO	YES	YES	NO	YES	NO	NO	YES	YES
(c) Does a customer have a private right of action under the relevant regulatory act?	YES	N/A	YES	YES	YES	NO	N/A	NO	YES	YES
C. MARKET EFFICIENCY										
1. Product Design										
(a) Do the regulations and legislation prescribe an economic purpose test or non-wagering criteria for individual contracts?	NO	YES	NO	YES	YES	YES[30]	N/A	YES	YES	NO[11]
(b) Are there any restrictions on the types of products?	NO	YES	NO	YES[25]	YES	NO[31]	YES	YES	YES	NO[12]
(c) Do the regulations provide for exercise and/or delivery allocation procedures?	YES	YES	YES	YES	YES	YES[32]	YES	YES	YES	YES
(d) Do the regulations or legislation provide criteria for cash settlement contracts?	YES	N/A	YES	YES	YES	YES[33]	N/A	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(e) Does the regulatory authority establish any volume requirements?	NO	NO	NO[24]	YES	NO	NO[34]	NO	NO	NO	YES
(f) If the answer is yes to the questions above, must an exchange obtain regulatory approval in order to list additional months or permit trading to recommence in any contract in which no trading has occurred for a specified period?	N/A	N/A	N/A	YES	NO	N/A	N/A	N/A	N/A	YES
(g) If the answer to the second question is yes, is the exchange required to file with the regulatory authority specific information about a low volume contract?	N/A	NO	N/A	YES	NO	N/A	N/A	N/A	N/A	NO
2. Position Limits (discussed above)										
(a) If the exchange is required to establish speculative limits, can certain positions be exempted?	N/A	N/A	N/A	YES	N/A	N/A	N/A	YES	N/A	N/A
3. Price Limits Circuit Breakers [discussed above]										
4. Order Execution										
(a) Are there rules regarding priority of order execution?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(b) Do the exchanges establish priority rules?	YES	YES	NO	YES	YES	YES	N/A	YES	YES	YES
(c) For purposes of executing orders are there any rules addressing procedures between large and/or small orders?	NO	NO	NO	NO[26]	YES	NO	NO	YES	NO	NO
(d) Are off-exchange transactions permitted?	NO	YES	YES	YES[27]	YES	YES[35]	YES	YES	YES	NO

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
(e) Do regulatory or self-regulatory rules address manipulation?	YES	YES	YES	YES	YES	YES[36]	NO	YES	YES	YES
(f) Is the regulatory authority permitted to institute enforcement proceedings if it believes an individual has manipulated or attempted to manipulate, inter alia, the market price of any derivative?	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
(g) Do exchange rules provide for market makers?	YES	YES	YES	NO[5]	YES	NO	NO	YES	YES	NO
(h) Are there any restrictions on an exchange providing for a market maker function?	NO	NO	NO	NO[5]	NO	N/A	N/A	NO	N/A	NO
III. Information Sharing and Coordination										
A. Intra-Jurisdiction										
Do exchanges routinely provide financial and fitness data to the regulatory authority?	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES
Are there restrictions on the information available to the regulatory authority that the authority may release?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Are exchanges required to make certain data regarding the markets available to the general public?	NO	YES	YES	YES	YES	YES	YES	YES	YES	NO[9]
Can the regulatory authority release information on an emergency sharing basis?	YES	YES	YES[25]	YES	YES	YES	YES	YES	YES	YES
Can the regulatory authority release confidential information upon request?	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES

	NCSC	COB	SIB	CFTC	SEC	MOF	CONSOB	OSC	CVMQ	SFC
Is such disclosure restricted?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
B. Inter-jurisdiction										
Is there routine information sharing by the regulatory authority with foreign authorities?	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO[13]
Can the regulatory authority share information with foreign authorities upon special request?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES[13]
Can the regulatory authority release information in an emergency?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES[13]
Are there exceptions?	N/A	YES	YES	YES	YES	YES	YES	YES	YES	YES[13]

FOOTNOTES TO CROSS REGULATORY SUMMARY CHART

Securities and Investments Board

1/ The location of the head office is the determining factor (The Financial Services Act 1986 ("FSA"), §§ 37 and 40).

2/ A domestic exchange must be recognised or acquire authorisation to carry on investment business in the United Kingdom ("UK").

3/ The requirements are set out in Schedule 4 to the FSA.

4/ The location of the head office is the determining factor (FSA, §§ 39 and 40).

5/ A domestic clearing house must be recognised or acquire authorisation to carry on investment business in the UK

6/ The requirements are set out in Section 39 of the FSA.

7/ The requirements are set out in Section 40 of the FSA.

8/ These are included as part of the statutory requirements.

9/ A foreign exchange must be either a Recognised Overseas Investment Exchange or a Designated Investment Exchange (a Conduct of Business Rule ("CBR") concept) to qualify as an exchange upon which margined transactions may be effected by an authorised firm on behalf of inexperienced private customers (CBR 11.04). There is a minor exception to this (CBR 11.04(e)(2)). (Note: The Companies Act 1989 has introduced a new regulatory approach to rulebooks, providing for a three tier system. The references to CBRs in this document may, therefore, change and reliance should not be placed upon them before they are verified).

10/ These are included as part of the statutory requirements.

11/ The applicability of regulations varies depending on the relationship of a financial intermediary to the jurisdiction. See particularly, paragraph 27 of Schedule 4 to the FSA in relation to I.B.1.(b)(iii).

12/ The UK has a specific regime applicable to service companies which is currently under review (CBR, 1.15(1)).

13/ A recognised exchange must have financial resources which are deemed sufficient for the proper performance of its functions (FSA, Schedule 4, paragraph 1).

14/ A recognised clearing house must have financial resources sufficient for the proper performance of its functions (FSA, § 39(4)(a)).

15/ In general, see The Financial Services (Financial Resources) Rules 1987, Chapter 2. (Note: Recent changes to the approach to rulebooks have been introduced - see note 9, above. While these and other financial supervision rules are still in force until 1 August 1991, a new set of rules was introduced on 1 August 1990. Both sets are in force and, until the original rules cease to be in effect on 1 August 1991, a firm which was authorised before 1 August 1990 may select from among the two).

16/ As a requirement of recognition, the exchange must have adequate arrangements for ensuring the performance of transactions effected on the exchange (FSA, Schedule 4, paragraph 2(4)).

17/ This is not a statutory requirement.

18/ Note, however, that in relation to the account of segregated customers, that account must be kept separate from other accounts.

19/ FSA, Schedule 2, paragraph 4, and FSA § 49c.

20/ "Client Money" is defined in Client Money Regulation 2.1.

21/ However, inexperienced private investors may not opt out of segregation.

22/ By virtue of client money being held on trust, segregated customers receive priority for their claims against defaulting firms.

23/ Inexperienced private customers must return the signed risk disclosure statement (CBRs 4.15 and 4.16).

24/ But exchanges must limit dealings on the exchange to investments in which there is a proper market.

25/ Note, however, that relevant memoranda of understanding must be in place.

Commodity Futures Trading Commission

1/ A distinction is made between the commodity exchange and the contract market. The exchange itself must have rules by which it and its members operate, many of which must be approved by the Commodity Futures Trading Commission ("Commission"). Separately, each commodity contract must be submitted to the Commission for designation (e.g., the Chicago Board of Trade ("CBT") is an exchange; it also has a separate designation as a contract market for corn).

2/ While the Commission has no minimum financial/net capital requirements for commodity exchanges, when a new exchange submits its rules for consideration, minimal review is made of its capitalization. Commodity exchanges, however, must have financial requirements for members and must audit members for compliance with such requirements.

3/ The Commodity Exchange Act ("CEA") does not require separate designation of clearing houses, however, a contract market must have a clearing arrangement to be designated. Further, for regulatory purposes, the clearing house is deemed to be subject to the same regulatory treatment as the exchange for which it clears. This means that all rules of a clearing organization are subject to the Commission review and approval process, and clearing organizations are subject to inspection and rule enforcement reviews.

4/ The Commission's Part 30 rules include a provision which, in effect, lifts the ban on foreign options on a market-by-market basis. Further, certain additional conditions are applicable before futures contracts based on foreign stock indexes and non-exempt foreign government debt instruments may be offered or sold for or on behalf of a U.S. customer.

5/ The Commission's Part 30 rules state that the Commission will consider the treatment of U.S. firms by foreign markets and jurisdictions in connection with comparability petitions.

6/ No action relief has been provided with respect to certain disclosure requirements in Part 4 of the Commission's rules with respect to institutional customers in specified circumstances.

7/ Generally, the regulations which apply to exchange trading apply to trading occurring on screen based systems. In reviewing the rules submitted by exchanges to effect screen based trading, the Commission has considered other factors such as the level of security, down time, and volatility. On April 24, 1990, the Commission issued an interpretive rule clarifying the obligations of self-regulatory organizations ("SROs") to retain documentation regarding the development, implementation and operation of their transaction-related automated systems.

8/ Although no requirements, regulatory or self-regulatory, mandate the relationship between an exchange and clearing house, the rules of the organizations will define the relationship. E.g., the CBT requires members to clear trades at the Board of Trade Clearing Corporation ("BOTCC").

9/ In addition, each commodity exchange specifies minimum margins which member futures commission merchants ("FCMs") must collect from their customers.

10/ Usually, these securities are not equity securities, however.

11/ United States SROs are required to make biennial full scale financial audits, and limited record reviews in the off-year. In addition, these are supplemented by periodic in-field debit/deficit margin reviews and "for cause" reviews.

12/ No insurance programs exist, however, in addition to the segregation protection (including priority for customers in a bankruptcy) other investor protections include: the Commission's net capital requirements; exchange guaranty funds; clearing house guaranty of contract fulfillment; SRO/Commission audit and ongoing surveillance programs; audit trail requirements.

13/ Priority exists with respect to any funds that are, or should have been, in a segregated account. Also, customers who have U.S. dollar denominated claims against an FCM have priority over funds segregated outside the U.S. The priority is over customers whose claims are denominated in other than U.S. dollars as well as over general creditors.

14/ In addition, firms are required to notify regulators when conditions exist for the development of financial problems. The Commission's rules include "early warning" provisions relating to capital levels, margin calls, recordkeeping deficiencies, and internal accounting controls.

15/ Price limits are not imposed on all contracts. For example, futures contracts on stock indices, foreign currencies, silver, gold, treasury bills, and eurodollars do not have price limits. Stock indices, however, are subject to "circuit breakers" which provide for cessation of trading for specified time periods whenever the underlying index moves a certain number of points.

16/ See n. 15 above with respect to stock index futures contracts.

17/ Commission regulation 1.63 requires self-regulatory organizations to prohibit persons with certain disciplinary histories from serving on governing boards, exchange disciplinary committees and arbitration panels.

18/ The Chicago Mercantile Exchange, however, has a proposal with the Commission which would allow the trading of large orders off the exchange floor.

19/ Commission has required National Futures Association ("NFA") to adopt a "know your customer" rule which generally requires NFA members to obtain from each customer information including, without limitation, his age, occupation and income, and to provide special risk disclosure where necessary.

20/ However, promotional material used by FCMs related to options must be reviewed by the FCMs' designated SRO. Also, NFA has an optional voluntary pre-review program.

21/ Subject to the antifraud provision of the CEA, no restrictions exist with respect to fees.

22/ Proposed legislation would require each futures association (i.e. NFA), subject to Commission approval, to adopt supervisory guidelines requiring telephone solicitations of new accounts.

23/ The Commission's Division of Economic Analysis and Division of Trading and Markets review contract specifications when new contracts are submitted. See §§ 5 and 5a, and Guideline 1.

24/ Only with respect to stock index futures contracts.

25/ For example, the term "commodities" does not include an onion.

26/ See e.g., n. 18.

27/ Id.

Securities and Exchange Commission

1/ A foreign clearing house need not be recognized if it is not operating in the U.S. or clearing and settling trades executed on a market not operating or soliciting participants in the U.S.

2/ A foreign market need not be recognized if it is not operating a market in the U.S. or soliciting participants in the U.S.

3/ A foreign product which is not offered for sale in the U.S. to U.S. customers is not required to be registered under the Securities Act of 1933.

4/ Although the disclosure document need not be signed by the customer, the disclosure document is usually given to the customer in conjunction with the account opening document, which is initialed for receipt of the disclosure document.

Ministry of Finance

1/ At present, markets operated by stock exchanges established and licensed in our jurisdiction are regarded as domestic markets. (It is prohibited to operate a market or a quasi-market in Japan without a license.)

ex) TOKYO STOCK EXCHANGE: JGB futures, T-bond futures, TOPIX futures, TOPIX options
OSAKA STOCK EXCHANGE: STOCK FUTURES 50, NIKKEI 225 futures, NIKKEI 225 options
NAGOYA STOCK EXCHANGE: OPTION 25 stock index options

2/ Licensed stock exchanges are required to obtain approval of the Finance Minister in order to open securities-related futures and options markets.

3/ Securities companies and financial institutions are required to obtain necessary licenses to trade such products. Licenses are given by each category of products.

4/ Any person who performs securities business (including futures and options) with Japanese investors must either be established or have a branch office in Japan. Any person who is established or has a branch office in Japan must get a license from the Finance Minister, in order to perform securities business.

5/ No differences exist in the regulations applied to Japanese securities companies and foreign securities companies with branch offices in Japan.

6/ No differences exist in the regulations applied to licensed securities companies, according to the type or location of their clients.

7/ When a screen-based system is operated by a licensed stock exchange, it is regulated by general rules applied to stock exchange transactions, and there are no specific rules applied only to screen-based trading. However, we have not yet reached a conclusion on the treatment of screen-based trading systems operated by foreign exchanges and other entities.

8/ No capital-based qualification is imposed on exchanges.

9/ In the case of Exchange Members, Capital-based qualifications are imposed by each exchange.

10/ Stock exchanges have clearing capabilities. (No independent clearing houses exist in Japan.)

11/ Operational requirements, and clearing guarantees: (1) 4th settlement rule, (2) guarantee by the default compensation reserve (in the case of the Tokyo Stock Exchange, 10bil yen) which is supported by the members' unlimited responsibility to replenish the reserve, and other specific requirements are set in the stock exchange rules.

12/ Margin levels, etc: In the case of domestic markets, minimum margin levels for customers are stipulated in the stock exchange rules for brokerage contracts, which, in turn, shall not be lower than the levels stipulated by an order of the Ministry of Finance.

ex) JGB futures: 3.0% of face value
T-bond futures: 4.5% of face value
stock index futures: 9.0% of contract value
stock index options: premium value+9.0% of strike price

Note)1. Minimum margin levels for stock exchange members are not regulated by MOF order. Current levels as set forth by the stock exchanges are described below.

JGB futures: 2.0% of face value
T-bond futures: 3.0% of face value
Stock index futures: 6.0% of contract value
Stock index options: premium value+6.0% of index value of the cash market

2. Minimum margin levels for domestic customers of foreign futures and options contracts are set by the Japan Securities Dealers Association in balance with those for similar domestic products.

13/ Means of collection: Margins for customers are collected on a gross basis and margins for stock exchange members on a net basis.

14/ Frequency of settlement and collection: Customer margins are collected on the 3rd day counting from the date of contract, and margins for members on the 4th day.

15/ Permitted collateral: Government securities, municipal bonds, listed stocks, etc. In the case of customer margins, one third of the required total must be cash collateral (except option margins).

16/ Price limits, etc: Stock exchanges have price limits as shown below.

JGB futures: 2.0% of last closing price.
T-bond futures: 3.0% of last closing price of CBOT
Stock index futures: 3.0% of last closing price
Stock index options: 3.0% of last index value of the cash market

Note) There are no circuit breakers. However, stock exchanges can stop trading in all of the cash, futures and options markets in case of emergency.

17/ Super margins: In case of emergency, stock exchanges can increase margin levels.

18/ Exchange members: Stock exchanges review the overall business results and competency of person applying for membership.

19/ Competitive execution requirement: Price priority and time priority are ensured under the so-called "auction system."

20/ Capacity restrictions: Although dual trading is not prohibited, the "auction system" gives little or no room for arbitrary trade execution. Insider trading is prohibited under new legislation enacted in May 1988 (an amendment of the Securities and Exchange Law). However, futures trading is exempt from this regulation, since futures trading is based only on government bonds and large baskets or indices of stocks.

21/ Price and volume dissemination, etc: Price information is disseminated every minute through quotation systems of information venders. Volume information is disseminated 4 times a day.

22/ Risk specific disclosure: Securities companies and banks with brokerage licenses must send risk disclosure documents to their customers (except securities companies and financial institutions) at least once a year.

23/ Brokerage fees: In order to protect investors from extremely high fees, the stock exchanges fix maximum levels of brokerage fees for futures and options. (In the case of futures transactions with physical delivery (JGB futures, Stock futures 50, etc.), brokerage fee schedules are fixed by the stock exchanges).

24/ Delivery procedures and the procedures for determining settlement prices are stipulated by stock exchanges rules.

25/ All the data retained by the stock exchanges. Although, some aggregate data re publicly available, specific individual data are kept in strict confidentiality.

26/ Position limits, etc: In normal situations, stock exchanges impose no position limits to their members. (The Ministry of Finance imposes position limits to securities companies etc. in order to maintain their financial soundness).

27/ Trading halts, circuit breakers: (mentioned above)

28/ Emergency procedures: Stock exchanges can take such measures as trading halts, strengthening of price limits, shortening of time limits for margin payments, increase of margin levels, position limits etc.

29/ Stock exchanges perform surveillances of the markets and trade practices every day, and inform the Ministry of Finance upon detecting any abuses or other problems.

30/ Economic purpose test (non-wagering test): In the approval process of new trade listings, stock exchanges must present to the Ministry of Finance sound purposes for introducing the new products.

31/ Restrictions on types of products: Legally, no specific futures and options products are prohibited.

32/ Exercise and/or delivery allocation procedures: No system of delivery allocation is necessary since, for futures, delivery is performed wholly on a specified date determined by stock exchange rules. Exercise allocation of options trading is done under the rules of the stock exchanges.

33/ Cash settlement: For stock index futures and stock index options, only cash settlement is permitted. For JGB futures, T-bond futures and Stock Futures 50, physical delivery is required for final settlement.

34/ Volume requirement: There are no dormancy rules.

35/ Off-exchange transactions: Permitted only in the case of correction. (Special permission of the exchange is necessary.) An over-the-counter market exists for JGB options.

36/ Anti-manipulation provisions: Manipulation is prohibited by law.

Commissione Nazionale per le Societa e la Borsa

1/ Answers to this questionnaire refer to the Italian market of on-exchange non-derivative products.

Securities and Futures Commission

1/ At this time, the law generally prohibits operation of a commodity exchange in Hong Kong other than HKFE. The definition of commodity exchange refers to an exchange trading in specified contracts. Accordingly, a screen-based system trading any other products would not necessarily be prohibited nor explicitly be required to be licensed as an exchange. A screen-based system could be required to register as a dealer if its activities included offers to make an agreement with another person in Hong Kong to enter into a futures contract.

2/ The Securities and Futures Commission (SFC) is considering introducing financial requirements for commodity dealers. (The Hong Kong Futures Exchange Clearing Corporation Ltd. (HKCC) currently impose capital-based qualification requirements on their members. See response to question II.A.1.(c)).

3/ The clearing organization, however, must obtain SFC approval of its rules and any rule changes.

4/ HKCC's rules allow margin in forms other than cash, but only cash is currently accepted.

5/ However, in order to be a member of HKCC one must also be a member of HKFE.

6/ The SFC is authorized to set position limits, but has not done so.

7/ The SFC and the Hong Kong government, however, consider economic purposes in deciding whether to approve new products.

8/ There has historically been no routine or emergency sharing of confidential reporting, fitness, or financial data, but the SFC normally supplies available public information to overseas jurisdictions on request. The SFC is authorized to disclose confidential information to foreign regulatory bodies, but only if it first makes certain formal determinations. The SFC currently is discussing several information sharing arrangements and agreed to enter into a memorandum of understanding with a foreign regulatory body. The SFC also intends to propose legislative changes to facilitate information sharing with other regulatory bodies.

GLOSSARY AND WORKING PARTY PARTICIPANTS

Commodity Futures Trading Commission, United States	--	CFTC
Securities and Exchange Commission, United States	--	SEC
Securities and Investments Board, United Kingdom	--	SIB
Commission des Operations de Bourse, France	--	COB
Commissione Nazionale per le Societa e la Borsa, Italy	--	CONSOB
Ministry of Finance, Japan	--	MOF
National Companies and Securities Commission, Australia	--	NCSC
Ontario Securities Commission, Province of Ontario, Canada	--	OSC
Commission des valeurs mobilieres du Quebec, Province of Quebec, Canada	--	CVMQ
Securities and Futures Commission, Hong Kong	--	SFC

Nothing contained herein should be taken as representing the official views and policies of the regulatory authorities whose staffs participated in the preparation of this document, or as in any other way being legally binding upon those regulatory authorities.

execute orders for Floor Members but can not execute their own orders while holding Floor Member orders.

OSC

There are no provisions in Ontario for market makers who are obliged to post a market. However, the TFE has locals and floor traders on its trading floor who provide additional liquidity.

CVMQ

TFE rules give priority to customer orders and ensure that all trading is conducted in a competitive market.

Role of market-makers, specialist/market-maker trading policy

General obligations of specialists

In order to enhance market liquidity and facilitate the handling of orders, where feasible, each exchange listing shall be assigned to a member or permit holder who has agreed to undertake specialist responsibilities. A specialist shall have the following general obligations:

- in respect of orders entrusted to the specialist as agent, it shall be his duty:

  -- to hold the interest of the persons to whom such orders pertain above his own interest; and

  -- to fulfill, in a professional manner, all other duties of an agent, including but not limited to, insuring that each such order (regardless of its size or source) receives proper representation and timely, best possible execution in accordance with the terms of the order and the rules and policies of the Exchange.

- As a principal, a specialist shall provide, to the extent reasonably practicable, a fair and orderly market in the Exchange listing(s) in which he is registered. A specialist shall be expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there is a lack of price continuity or lack of depth in the market or when a temporary disparity between supply and demand exists or is reasonably to the anticipated. Furthermore, no specialist shall effect a transaction on the Exchange for his own account in the Exchange listing in which he is registered, unless it is reasonably calculated to contribute:

  - to the maintenance of price continuity with reasonable depth; and

whereby the broker would determine either the class of option to be bought or sold, the number of contracts to be bought or sold or whether to purchase or sell the contract.

SIB

Exchange rules may provide for the presence of market makers.

COB

Market makers are charged with ensuring the liquidity of the market. They have the following obligations.

- Permanent presence on the floor.

- Continuous quotation of a given range of buyer/seller prices.

- Commitment to buy or sell on request up to 20 contracts at current displayed prices.

On the MONEP, added to the obligation of permanent presence on the floor, market makers have to answer to every order at the bid-ask spread they propose as follows:

- for 4 to 10 contracts on the 5 central series of the underlying product,

- for 1 to 5 contracts on the other extreme series.

The maximum bid-ask spread proposed by market makers is +- 15 percent of the central price and concerns the 5 central series and the 3 nearest maturities. The spread is free for other series.

Market makers must also modify their spread if they expect to trade at higher bid prices or lower ask prices than the central point of their spread.

CONSOB

MOF

There is no market maker system in Japan.

NCSC

The SFE has no paid market makers although it does have local members who fulfill that function. There is no change in the order of execution for local members.

Local members of the SFE are entitled to trade on the Floor of the Exchange on their own behalf. They have no specific market-making responsibilities but perform that role as a result of their trading activities. They are also entitled to

The Amex, NYSE, and Phix employ modified specialist systems for options trading. Each option is assigned to a specialist, who is responsible for maintaining a fair and orderly market and for handling orders placed in the limit order book. The options markets using a specialist system have the same basic rules against manipulative and fraudulent conduct as the exchange equity markets.

Specifically, the specialist's activities are circumscribed by Section 11 of the Act and the rules thereunder, and by the rules of the exchange where the specialist is registered. SEC Rule 11b-1(a)(2), which articulates the primary responsibilities of a specialist, states that a specialist's course of dealings must be designed to "assist in the maintenance, so far as practicable, of a fair and orderly market."

A specialist's dealer responsibilities are referred to as "affirmative" and negative" obligations. Pursuant to their affirmative obligations, specialists are obliged to trade for their own accounts to minimize order disparities and contribute to market continuity and depth. Additionally, "negative" obligations are designed to guard against inappropriate specialist dealer activity, i.e., the specialist is prohibited from trading for his own account unless that trading is reasonably necessary for the maintenance of a fair and orderly market.

Additional market making is provided by registered options traders ("ROTs"), who trade on the floor for their own accounts. ROTs generally are assigned by an exchange to make markets in one or more particular classes of options. Exchange rules require ROTs to engage in a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. The CBOE has also developed a specialist-type trading system that involves the use of Designated Primary Market Makers ("DPMs"). DPMs have powers and responsibilities akin to a specialist and are used to enhance market making capabilities in new options products and classes.

In contrast, the CBOE and PSE do not use specialists. Instead, each option has a crowd of competing market makers trading for their own accounts, with an exchange official, called an Order Book Official (OBO), handling the limit order book. Options market makers have affirmative obligations "to contribute to the maintenance of a fair and orderly market" and not to enter into transactions that are inconsistent with such a course of dealings.

As with stock orders, floor brokers handling option orders generally are required to use due diligence to execute orders they are handling at the best possible price available. In addition, floor brokers may not handle discretionary orders

An exchange will have rules to ensure that the orderly manner in which its market is conducted is not compromised by the incompetence or behavior of persons on the exchange floor. Restrictions are imposed by the granting of permits, rights or licences to persons who have satisfied exchange-imposed minimum competency and financial requirements.

COB

CONSOB

MOF

Direct access to exchange trading is limited to stock exchange members and so-called special participants (securities companies and banks with trading licenses).

NCSC

There are no restrictions on access.

OSC

No person may trade in a contract in Ontario unless such person is registered pursuant to the CFA. Customers and hedgers among others are exempt from this requirement. The CFA only regulates trading in contracts traded on a commodity futures exchange. OTC transactions are subject to the Securities Act. Registrants are required to address the suitability of a trade for a customer.

CVMQ

SFC

Only registered Member Representatives can trade on the HKFE floor.

(f) Role of market makers

CFTC

At this time, exchanges do not have market makers. However, the CFTC is considering a CME rule establishing a category of market makers with affirmative responsibilities to put both a bid and an offer in specified contracts for a specified percentage of a Globex session. A similar submission of the CSCE is being considered by the CFTC in connection with CSCE's pit trading.

The CFTC has approved the use of the Board Broker system at the ACC and PBOT, two exchanges with low volume. For a description of this system, see section II.B.2.(a) above.

CVMQ

SFC

See answer to II.B.2.(d) above.

(e) Access restrictions

CFTC

CEA §4(a)(1)-(2) prohibits any person from engaging in a commodity transaction unless the transaction is on or subject to the rules of an exchange and the transaction is executed through a member of an exchange.

CEA §4(a) specifically excludes from its requirements those contracts which are made on or subject to the rules of a board of trade, exchange, or market located outside of the U.S., its territories or possessions.

CEA §15 requires that the CFTC take into consideration the public interest to be protected by the antitrust laws and endeavor to take the "least anticompetitive" means of achieving the objectives of the CEA when adopting or issuing rules or orders and when requiring or approving contract market or registered futures association rules.

Rule 1.62 requires that each exchange adopt, maintain and enforce rules which say that no person may engage in the purchase or sale of a commodity future or option on or subject to the rules of that exchange in any trading area unless that person is registered as a floor broker with the CFTC.

Rule 170.15 requires that each person required to be registered as an FCM must "become and remain a member of at least one futures association which is registered under section 17 of the [CEA] and which provides for the membership therein of such FCM . . . ." NFA bylaw 1101 prohibits members from doing business with non-members.

Each exchange has promulgated rules which prohibit trading unless a person is accorded membership on an exchange.

SEC

The options exchanges require that all trading of options contracts be restricted to members of the exchange.

SIB

Beyond requiring that trading is conducted in an orderly manner and that proper protection is afforded to investors, the legislation is silent on specific constraints in relation to access.

The FSA also imposes the requirement for an exchange to have adequate arrangements for the effective monitoring and enforcement of compliance with its rules (FSA, Schedule 4, paragraph 3).

It is an offense for a person to make misleading statements or to engage in practices which create a false impression as to the value of investments (FSA, s.47). See item II.b.2(d), above.

COB

No specific provision for the futures market. The definition of the price manipulation criminal offense is general in France.

The French law of 22.01.88 provides that a price manipulation arises in case of a person who directly or through an intermediary, knowingly carries out a scheme with the objective of impeding the normal functioning of the market by misleading others. This person shall be punished through imprisonment ranging from two months to two years and/or by a fine ranging from 6 KF to 10 MF, the greater of or 10 times the amount of any profits made or to be made, with the added stipulation that in no case shall the fine be lower than said profits.

CONSOB

MOF

Manipulation is prohibited by law.

NCSC

Provisions exist within the legislation as well as within the rules of the SFE and the AFFM.

Part VIII of the Futures Industry Code has anti-manipulative provisions. The SFE in its Articles of Association at rule 3.6 provides anti-manipulative provisions.

OSC

Manipulation is an offense under the Federal Criminal Code.

The OSC is empowered to ensure that the floor trading practices of exchanges are fair and properly supervised, and to ensure that adequate measures have been taken by exchanges to prevent manipulation. The TFE's rules are designed to prevent non-competitive types of trading. As such they proscribe: frontrunning, trading against customer orders, entering into pre-arranged trades and withholding customer orders; give customer priority over firm and trader accounts; and prohibit disclosure of customer identities.

CEA §6(b) permits the CFTC to institute enforcement proceedings if it has reason to believe that any person other than an exchange is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any exchange. CEA §6(c) provides that the CFTC after notice, hearing and subject to the opportunity to appeal may make and enter a cease and desist order and may levy fines.

CEA §9(b) states that it shall be a felony for any person to manipulate or to attempt to manipulate the price of any commodity in interstate commerce or to corner or to attempt to corner any such commodity.

The statutes and regulations which set speculative limits are important to anti-manipulation regulation. They are discussed in Section II.C.2 above. It should be noted, however, that rule 150.5 provides that "[n]othing in the CEA shall be construed to affect any provisions of the CEA relating to manipulation or corners, nor to relieve any contract market or its governing board from responsibility under Section 5(d) of the CEA to prevent manipulation and corners."

SEC

Section 9(a) of the 34 Act prohibits a series of specific manipulative practices. Specifically, section 9(a)(1) prohibits wash sales and matched orders when the purpose of such transactions is to create "a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false misleading appearance with respect to the market for any such security." Section 9(a)(2) in essence addresses "chumming" and pre-arranged trading by prohibiting transactions "creating actual or apparent active trading" in a security or raising or depressing the price of a security, "for the purpose of inducing the purchase or sale of such security by others." See also the response to II.B.7.(a) above.

SIB

An exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors (FSA, Schedule 4, paragraph 2(1)). Exchanges have rules prohibiting activities which threaten the integrity of the market; these prohibited activities would include manipulation of prices and squeezes.

The provisions of section 47 of the FSA in relation to misleading statements and practices would likely capture and prohibit activities including market manipulation. The term "manipulation" is not defined in the FSA.

COB

On the MATIF, traders are allowed to negotiate contracts when the floor is closed and to get these transactions recorded with the clearing house the day after (system THS: Transactions hors seances). These are by-phone transactions whose prices are defined freely by intermediaries.

CONSOB

MOF

Permitted only in the case of correction. (Special permission of the exchange is necessary.) An over-the-counter market exists for JGB options.

NCSC

Generally, off-exchange transactions are prohibited unless the transactions are part of an exempt market.

OSC

All commodity futures transactions must take place on the trading floor except for certain kinds of cross trades permitted under the TFE rules and for the exchange of the physical commodity for the commodity futures contract which is also permitted under TFE rules. OTC transactions are subject to the provisions of the Securities Act..

CVMQ

SFC

HKFE rules require all trading in HKFE contracts to be done on the HKFE floor during normal trading hours.

(d) Anti-manipulation provisions

CFTC

The term "manipulation" is not defined in the CEA or the regulations but is defined by CFTC and court decisions. See, e.g., In re Indiana Farm Bureau Cooperative Association, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,964, (Dec. 12, 1979), aff'd. CFTC No. 75-14 (Dec. 17, 1982); In the Matter of Cox, et al. [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,786 (July 15, 1987).

CEA §5(d) requires that in order for an exchange to be designated as such, its governing board must provide for the prevention of manipulation of prices and the cornering of any commodity by the board's dealers or operators.

OSC

Large orders do not have greater or lesser priority than small orders.

CVMQ

SFC

No rules on this have been prescribed.

(c) Off-exchange transactions

CFTC

SEC

OCC will issue an option only if it is traded on an exchange. In the event the NASD recommences a standardized options program, OCC would also issue the options traded through NASDAQ. Thus off-market transactions in standardized exchange-traded options are in effect impossible. There continues to be an OTC market for conventional, privately negotiated options transactions.

Additionally, the options SROs have issued rules prohibiting prearranged trading. The execution of a prearranged trade does not expose the transaction to the market forces designed to protect the integrity of the individual order and the marketplace. Such trades are violative of just and equitable principles of trade and exchange rules, whether undertaken merely to create an artificial appearance of activity or intended to affect market prices.

SIB

In relation to margined transactions undertaken for and pursuant to instructions of inexperienced private customers, all trades must be on or subject to the rules of an RIE, ROIE or DIE (CBRs 11.04). A firm, in the provision of its services as a portfolio manager to an inexperienced private customer, may effect transactions otherwise than on or under the rules of an RIE, ROIE or DIE for hedging purposes provided that it is covered in the customer agreement (CBRs 11.04(e)).

Transactions may be effected for business, experienced or professional investors in margined transactions which are not traded on or under the rules of an exchange. A special risk disclosure document must be provided to customer for whom such trades are undertaken (CBRs 4.15(3)(b), Appendix B to Part 4).

customer orders is established in accordance with the time such orders are received by the futures floor trader. Priority among customer limit orders is established by price and time.

CVMQ

See II.B.2. above.

SFC

See answer to II.B.2.(a) above.

(b) Large orders; small orders

CFTC

See II.B.2.(c) above.

SEC

The options exchanges have special rules to permit crossing and facilitation orders that are designed, in part, to accommodate large options transactions. Generally, such orders must be within the bid/ask spreads and displayed for a reasonable period of time.

Some options exchanges have instituted special rules and procedures to facilitate the orders of small investors. The exchanges have established ten-up requirements that guarantee the execution of public customer orders up to 10 contracts. Additionally, automatic execution systems have been developed that permit investors to execute small orders. The automation of the execution of small orders, by providing computer generated trades at displayed bid and offer quotations, has provided customers with speedier executions and greater assurance as to the firmness of displayed quotations.

SIB

See II.B.2.(c) above.

COB

See II.B.2.(c) above.

CONSOB

MOF

See II.B.2.(c) above.

NCSC

There is no differentiation between large and small orders.

SEC

Options SRO regulations require execution of customer orders at the best price available at the time the order is to be executed. Section 11(a) of the 34 Act requires that exchange transactions, including options transactions yield "priority, parity and precedence in execution for members who are not members or associated with members of the Exchange." Generally, the options SRO rules provide that the highest bid and lowest offer shall have priority. In cases of more than one such bid or offer, then a bid representing an order resting on the limit order book shall have priority. If there are two or more best bids or offers and there is no order resting on the limit order book, then priority shall be afforded to such bids in the sequence that they were made. Exceptions are provided if a member holds a special order such as spread order, straddle order or combination and is bidding or offering on the basis of a total credit or debit.

SIB

See II.B.2.(a) above.

COB

See II.3.2.(c) above.

CONSOB

Rules for priority of order execution exist only as stockbrokers self-regulatory discipline.

Currently, the exchange's regulatory regime does not provide any priority rules. Nevertheless, in the closest months with the introduction of the screen based continuous trading system, a priority rule will be established by which customer orders will be executed following the order of reception by the stockbrokers.

MOF

See II.B.2.(a) above.

NCSC

Priority is on a first-come/first-served basis. The SFE has the right to change this [as the basis] if to do so is fair and equitable and would not result in preference being given to any party.

OSC

TFE rules give priority to customer orders and ensure that all trading is conducted in a competitive market. Priority among

all delivery months combined. HKCC rules also prescribe position limits an HKCC member may hold or control. The Commission is authorized to set position limits, but has not done so.

3. Price limits, circuit breakers

CFTC

See II.A.7.(b) above.

SEC

See II.A.7.(a) above.

SIB

See II.A.7.(b) above.

COB

See II.A.7.(b-d) above.

CONSOB

MOF

See II.A.7.(b) above.

NCSC

There are no restrictions in relation to price limits nor are there any requirements for circuit breakers.

OSC

OSC regulations require the TFE to have price limits on its contracts. In addition, the TFE has circuit breakers on stock index futures which track circuit breakers on the Toronto and New York stock exchanges.

CVMQ

SFC

See answer to II.A.7.(b) above.

4. Order execution

(a) Priority

CFTC

See II.B.2.(a) above.

Regulation 1.61," 52 Fed. Reg. 34633 (Sept. 14, 1987), the CFTC stated that it would be consistent with the regulation to amend exchange speculative position limit rules to exempt certain risk-management positions in debt-based, equity-based and foreign currency futures and options.

SEC

See II.B.6.(a) above.

SIB

See II.B.5.(d) and II.B.6.(a) above.

COB

See II.B.6.(c) above.

CONSOB

See II.B.6. above.

MOF

See II.B.6. above.

NCSC

There are no position limits except with certain overseas contracts e.g. COMEX in relation to which position limits are set consistent with the legislation and rules of the host country.

Position limits exist only on those overseas contracts in which the host country has established position limits.

OSC

The TFE sets limits on positions, in particular contracts held by any person acting alone or in concert with others, which are reportable positions. In addition, dealers are required to report to the TFE monthly the greater of the total long position or total short position held in client and non-client accounts for each contract; and to report daily as to any positions exceeding reportable limits established by the TFE or TCO. The OSC may also make decisions as to position limits pursuant to subsection 20(2) of the CFA.

CVMQ

SFC

HKFE rules prescribe position limits a member may hold or control in respect of any one delivery month, or in respect of

Rule 150.2 sets forth position limits for certain agricultural contracts. Rule 150.3 defines the circumstances in which the positions may exceed the limits.

Rule 1.61 requires each exchange to establish speculative limits for all commodities traded on the exchange that do not have limits imposed by CFTC rules. In addition, paragraph (b) of rule 1.61 requires each exchange to set speculative limits on any commodity options traded on the exchange. Paragraph (a)(2) outlines some of the factors upon which an exchange must base its determination of levels for speculative limits. These include position sizes customarily held by speculative traders on such market for a period of time selected by the exchange, which shall not be extraordinarily large relative to total open positions in the contract for such period. Other factors that the exchange may use include breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market underlying the futures contract.

The exchanges, pursuant to the provisions of rule 1.61, have provided rules for the petition by hedgers for exemptions from speculative limits. On a case-by-case basis, the exchanges may grant exemptions to hedgers from the position limit requirement.

Rule 1.61(a)(1) permits an exchange to exempt positions usually referred to as "spreads, straddles or arbitrage." Rule 1.61(a)(3) exempts bona fide hedging positions as defined by an exchange in accordance with rule 1.3(z)(1) unless the exchange determines that such positions are not in accord "with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion."

Rule 1.3(z)(1) defines a bona fide hedging transaction and positions as "transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transaction or positions normally represent a substitute for transactions made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise." These transactions or positions must arise from the potential change in (1) the value of a person's assets, (2) the value of a person's liabilities, or (3) the value of services which a person provides, purchases or anticipates providing or purchasing.

Rule 1.61(e) permits an exchange to provide (subject to the CFTC approval) speculative limit exemptions.

In its statement of agency interpretation of "Risk Management Exemptions for Speculative Position Limits Approved Under CFTC

purpose and the terms and conditions of the contract and has permitted the exemption, or the CFTC has approved a bylaw, rules, regulation or resolution to list additional trading months pursuant to rule 5.2(c).

SEC

Neither the federal securities laws nor the rules of the options SROs require index options to maintain a minimum trading volume in order to continue to be listed for trading.

SIB

See II.C.1.(a) above.

COB

There are no volume requirements on the French futures markets.

CONSOB

MOF

There are no dormancy rules.

NCSC

There are no volume requirements.

OSC

There are no dormancy rules in Ontario.

CVMQ

SFC

No dormancy rules have been set.

2. **Position limits**

CFTC

Section 4a of the CEA authorizes the CFTC to set limits on the amount of futures trading which may be done and the number of futures positions which may be held by any one person or "by two or more persons pursuant to an express or implied agreement or understanding." Section 4a(3) of the CEA exempts bona fide hedging transactions and positions from any limits imposed by the CFTC.

The CFTC imposes daily and special call reporting requirements on FCMs and foreign brokers carrying accounts for traders with large positions.

SFC

See answer to II.C.1.(c) above.

(e) Volume requirements (dormancy rules).

CFTC

Dormant contracts: Rule 5.2 requires that an exchange must obtain CFTC approval in order to list additional months or permit trading to recommence in any contract in which no trading has occurred in any month listed for trading for a period of six calendar months (or otherwise certified by an exchange to be dormant).

Rule 5.2(c) requires that in order to obtain CFTC approval, the exchange must designate the submission pursuant to rule 1.41(b) and submit an economic justification explaining the conditions which have changed subsequent to the time the contract became dormant and the basis which makes it reasonable to expect that the contract will be used on more than an occasional basis for hedging or price basing.

Rule 5.2(d) specifically provides that no contract shall be considered dormant until the end of 36 calendar months: following initial designation in order to permit new contracts to develop a market, following CFTC notice to the contract market that it has reviewed the economic purpose and the terms and conditions of the contract and has permitted the exemption, or following CFTC approval of a bylaw, rule, regulation or resolution to list additional trading months pursuant to rule 5.2(c).

Low-volume contracts: For purposes of rule 5.3, a low-volume contract is a futures contract in which the trading volume in all futures listed for trading falls below 1,000 contracts per month during at least four of any six consecutive calendar months.

For any low-volume contract, the exchange must file with the CFTC information with respect to (1) the proportion of trading by FBs and traders for their own accounts or accounts they control, for their clearing members' house accounts, and for any other types of accounts, (2) the identity of commercial participants holding open positions and the price risk, if any, those participants are hedging or the relevant data demonstrating that the contracts are being used for hedging purposes, and (3) any additional surveillance procedures the contract market may have instituted to monitor trade practices in the low-volume contract. See rule 5.3(b).

The CFTC does not require low-volume reports until the end of 36 complete calendar months: following designation, following CFTC notice to the exchange that it has reviewed the economic

The CFTC has also designated such cash settlement contracts as Eurodollar certificates of deposit and issuer contracts such as AMEX gold warrants.

SEC

See II.B.4. above.

SIB

See II.C.1.(a) above.

COB

Three MATIF or MONEP contracts are delivered through cash settlement:

- Eurodem 3 mois,
- PIBOR 3 mois,
- CAC 40(future and option).

CONSOB

MOF

For stock index futures and stock index options, only cash settlement is permitted. For JGB futures, T-bond futures and Stock Futures 50 physical delivery is required for final settlement.

NCSC

The matter is considered prior to approval being given.

AFFM contracts are all settled in cash. The AFFM does not envisage having contracts settled in any other manner. The SFE considers cash settlement in the same manner as noted above in relation to exercise and/or delivery allocation procedures.

OSC

The CFA does not provide separate criteria for cash-settled contracts. The TSE 35 contract which trades on the TFE is a cash-settled contract.

TCO rules state that cash settlement prices shall be determined by the exchange using closing prices. When there is no closing price the average of the closing bid and offer shall be used together with other information the exchange deems relevant.

CVMQ

determined by stock exchange rules. Exercise allocation of options trading is done under the rules of the stock exchanges.

NCSC

The matter is considered prior to approval being given.

Procedures as such do not exist. Consideration is given to these factors by means of informal canvassing of the Members, the clearing house, the NCSC and other relevant bodies.

OSC

In accordance with TCO rules, individuals and dealers with short positions in contracts are entitled, through clearing members, to make delivery of the underlying interest in the expiration month by filing a delivery notice with TCO. TCO assigns such notices to clearing members with net long positions on a random selection basis. Clearing members which are assigned such notices are required to reassign them to customers in accordance with previously approved firm procedures.

CVMQ

SFC

As both HSI and HIBOR contracts are contracts with cash settlement, delivery is by way of cash transfer to and from the clearing members' bank accounts.

(d) Cash settlement

CFTC

The CEA provides certain criteria under which the CFTC may designate contracts based on stock indexes. The criteria include the requirement that the contracts provide for cash settlement as opposed to physical delivery, that the contracts must not be readily susceptible to price manipulation with respect to the prices of the securities making up the index and that the index must be constructed from a broad group of securities.

Section 2(a)(1)(B)(iv)(II) of the CEA requires the CFTC to provide the SEC with a copy of an exchange's designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. The CFTC cannot approve the application unless the SEC determines that the contract meets the minimum requirements set forth in §2(a)(1)(B)(ii) of the CEA. Among other things, §2(a)(1)(B)(ii)(I) requires that settlement of or delivery on such stock index futures contract (or option thereon) must be in cash or by means other than transfer or receipt of any security, except an exempted security.

OSC

There are no restrictions on the types of products that may be traded in Ontario.

CVMQ

SFC

No general restrictions have been imposed on the types of products to be traded.

(c) Exercise and/or delivery allocation procedures

CFTC

Guideline No. 1 requires that the justification of individual contract terms include (1) all delivery points; (2) the nature of the cash market at the delivery point; (3) a description of the composition of the market at the delivery points; and (4) the normal commercial practice for establishing cash market value and the availability of published cash prices reflecting the value of the deliverable commodity; (5) the level of deliverable supplies normally available, including the seasonal distribution of such supplies; and (6) any locational differences for delivery points, including the economic basis for discounts or premiums, or lack thereof, applying to delivery points.

SEC

The rules of the options SROs provide that each member shall establish fixed procedures for the allocation of exercise notices assigned to a short position in options in a member's customer's account. The allocation shall be made on a "first-in, first-out" basis, an automated random selection basis that has been approved by the SRO, or on a manual random selection basis.

SIB

See II.C.1.(a) above.

COB

Option exercises: in order to get an equitable distribution of assignations among the options writers, the selection process is based upon a random drawing.

CONSOB

MOF

No system of delivery allocation is necessary since, for futures, delivery is performed wholly on a specified date

transactions would not be inconsistent with the criteria set forth in §2(a)(1)(B)(ii) of the CEA.

SEC

Although the federal securities laws place no formal restrictions on the type of index options products which may be approved for trading by the SEC, Section 2(a) of the Commodity Exchange Act provides the Commodity Futures Trading Commission with exclusive jurisdiction over options on index futures contracts.

In addition, when proposing a new index options contract for trading, the options SROs submit eligibility criteria to the SEC that pertain to the securities underlying the index option. In most instances, these criteria include minimum trading volumes for the component securities of the underlying index.

SIB

See II.C.1. (a) above.

COB

The French futures and options markets can have any legal financial product, any legal commodity and any index as an underlying instrument.

However a contract which would have directly or indirectly the consumption price index as an underlying instrument would be illegal.

CONSOB

Currently, under the Italian regulatory regime only contracts on securities are admitted.

MOF

No specific futures and options products are prohibited.

NCSC

There are no restrictions on the types of products. However, there may be types or classes of products which may not be eligible for trading as these products may be inconsistent with the protections and philosophy of the Futures Industry legislation and/or the Articles and By-laws of the exchanges and would therefore not receive the requisite approval for trading.

(b) Restrictions on types of products (based on underlying instruments or commodity or on type of derivative contract).

CFTC

§2(a)(1)(A) of the CEA excludes onions from the definition of commodity.

§2(a)(1)(A) of the CEA provides that the CFTC does not have jurisdiction over transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade. This provision, the so-called "Treasury Amendment," was most recently interpreted by the CFTC in 1985. In its 1985 statement, the CFTC reaffirmed its view that the Treasury Amendment exclusion from the CFTC's exclusive jurisdiction is not applicable when such transactions involve members of the general public. See 50 Fed. Reg. 42963 (October 23, 1985).

§2(a)(8)(B)(i) of the CEA requires the CFTC to advise the Department of Treasury, the Federal Reserve System and the SEC of CFTC activities that relate to the responsibilities of those agencies, to receive their views and to consider the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under jurisdiction of these agencies.

§2(a)(1)(B) of the CEA states that the CFTC has exclusive jurisdiction over futures contracts involving any stock index or group (and over options on those futures contracts) and to establish the conditions and procedures that must be satisfied before an exchange may be designated by the CFTC as a contract market to trade those futures. §2(a)(1)(B)(iv)(II) of the CEA requires the CFTC to provide the SEC with a copy of an exchange's designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. The CFTC may not approve the application if the SEC determines that the contract fails to meet the minimum requirements set forth in §2(a)(1)(B)(ii) of the CEA. This provision, however, also prohibits futures trading on any municipal security or any security registered pursuant to the Securities Act of 1933 or the Securities Act of 1934. See also I.A.1.(c) and I.A.2.(b) above.

The offer and sale in the United States of foreign exchange traded futures contracts based on an index of securities also is subject to special procedures. Specifically, such offers and sales are contingent upon the issuance of a "no-action" letter by CFTC staff, after it determines that such

COB

The application for the authorization of a new contract must include information regarding the economic purpose of the contract.

The economic purpose is a major criterion used by the CMT to authorize a new contract, after having received advice from the COB and, eventually, the Bank of France.

CONSOB

MOF

In the approval process of new trade listings, stock exchanges must present to the Ministry of Finance sound purposes for introducing the new products.

NCSC

There is no limit prescribed by legislation on the type of product or design in relation to non-wagering criteria. However, specialist markets e.g., Loco London Bullion Market are recognised as exempt futures markets and the contracts of such markets are not to be traded on the futures exchanges.

An example of a product which may not be eligible for trading is a contract over a portion of a Share Market Index (a portfolio) which clearly shows that breadth and depth are non-existent, thereby being prone to manipulation.

OSC

The criteria for acceptance of contracts are: more than occasional use will be made of the contract for hedging purposes; each term or condition of the contract is consistent with normal commercial practices of trade in the underlying commodity; margin levels, price limits, position limits and reporting limits are satisfactory; and the underlying interest is a commodity as defined in the CFA. An extensive body of case law has developed under Federal criminal legislation as to whether commodity futures contracts are wagering contracts (in general terms the case law suggests that they are not).

CVMQ

See I.A.1. above.

SFC

There are no specific criteria concerning an economic purpose test or non-wagering criteria. The Commission and government, however, consider economic purposes in deciding whether to approve new products.

and/or hedging. To maintain its designation a contract must be used for hedging and price-basing purposes on more than an occasional basis.

Section C of Guideline No. 1 sets forth the Economic Purpose test. An exchange must demonstrate that (1) the prices involved in transactions for future delivery of the commodity are, or reasonably can be expected to be, disseminated as a basis for determining prices to producers, processors, merchants, or consumers of such commodity or the products or by-products thereof; or (2) such transactions are, or reasonably can be expected to be utilized in interstate and foreign commerce by producers, processors, merchants or consumers who handle such commodity as a means of hedging themselves against possible loss through price fluctuations.

SEC

The federal securities laws do not contain an explicit "economic purpose" test for new options products. Pursuant to Section 6(b)(5) of the 34 Act, however, the SEC must predicate approval of any new option proposal upon a finding that the introduction of such option is in the public interest. Such a finding would be difficult with respect to an option product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. The Commission uses no set criteria in considering whether to approve a new options product. In general, an exchange which proposes to list a new option product must comply with Section 6 of the Act. See also response to II.A.1.(c) above.

SIB

There are no requirements in the applicable legislation regarding specific aspects for product design. There is no economic purpose test nor are there restrictions on types of products.

The only related requirement imposed on exchanges is the restriction that an exchange must limit dealings on the exchange to investments in which there is a proper market (FSA, Schedule 4, paragraph 2(2)).

There are no specific rules in relation to the treatment of dormant contracts and contracts with low volume. Schedule 4 of the FSA, in relation to RIEs, does require the exchange to limit dealings on the exchange to investments in which there is a proper market. The liquidity of contracts would be an important consideration in this context.

C. Market Efficiency

1. Product design

(a) Economic purpose test or non wagering criteria

CFTC

§5(g) of the CEA requires an exchange to demonstrate that transactions not be "contrary to the public interest." Guideline No. 1 requires the exchange applying for a contract market designation to submit a description of the cash market for the commodity in which the contract is based. For purposes of the Guideline, "cash market" includes "all aspects of the spot and forward markets in which the underlying commodity is merchandised and for which the contracts are used as a hedging or price-basing function." Section A of Guideline No. 1 lists information to be provided in the description as appropriate. The information includes (1) production of the underlying commodity; (2) consumption of the underlying commodity; (3) the nature and structure of the cash marketing channels; (4) the prevalent means of market communications, methods of financing commodity ownership, and for tangible commodities how they are transported and stored; and (5) statistical data regarding historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions.

Guideline No. 1 also requires a justification of individual contract terms and conditions. The purpose of this justification is to show that the contract terms do not vary from the actual cash market practice with the result that the contract might be less useful for hedging or price-basing functions or provide an increased potential for market disruption. To the extent a term or condition is not in conformity with the actual cash market practices, the exchange must provide a reason for the variance and demonstrate that it is necessary. Contract terms and conditions to be justified on an individual basis are detailed in the Guideline and include the par and non-par commodity characteristics, delivery locations, contract differentials, delivery facilities, trading months, delivery pack and size, inspection and certification procedures, and delivery instrument. Guideline No. 1 also requires that delivery months be specified and that there be a description of the relationship, if any, of delivery month to deliverable supply, warehouse space, transportation facilities, market activity, and other factors which affect delivery in each such delivery month, specifically including delivery months for existing futures contracts which rely on the same deliverable supply.

Guideline No. 1 also requires an exchange to demonstrate the extent to which the contract will be used for price-basing

When a dispute arises on the securities market the parties may apply to the exchange for mediation of the dispute.

NCSC

The SFE and the AFFM have arbitration procedures for dispute resolution which are compulsory for members and, in respect of which all decisions are binding and must be implemented (subject to any right of appeal).

The Courts, Small Claims Tribunal, Independent Mediation, and arbitration under the rules of the various state Arbitration Acts exist as forums for dispute resolution other than the arbitration of disputes provided for by the rules of the exchanges.

As each state within Australia has a different Arbitration Act access to the provisions of a particular Act will vary from one locality to another. However, in relation to the other forums mentioned above access is not dependent upon locality.

OSC

There are no arbitration or other "alternative" customer dispute resolution procedures available in Ontario pursuant to exchange or SRO rules, or Ontario commodity futures or securities legislation.

CVMQ

Each ME member must keep an up-to-date record in a central place of all written complaints received by the member that relate in any way to the conduct, business or affairs of the member or of a director, partner, officer or employee of the member.

A complaint and any reply to the complaint must be retained for twenty-four months from the date of receipt of the complaint by the member and must be made available to the Exchange's responsible officer upon request.

In accordance with the Quebec Securities Act, the Quebec Securities Commission has delegated to the ME the surveillance of its members so the complaints must be firstly examined by the ME. If a client is not satisfied with the action taken by the ME or the explanations forwarded to him then the client can make a request to the Quebec Securities Commission for a review of the complaint. The Commission has the power to investigate and deal with complaints against ME members and their employees.

SFC

No special procedures have been prescribed.

addition, a number of B/Ds include the AAA within their arbitration clauses as an alternative to SRO arbitration.

A customer generally may initiate an arbitration proceeding at any SRO at which his B/D is a member.

COB

The new general regulation established by the CMT provides the possibility of an arbitration procedure between clients and market-members. An arbitration procedure plan will be submitted to the CMT on the 19th of February 1990.

CONSOB

Customers have a private right of action only under the civil law. No relevant regulatory act is provided in this regard.

SIB

An exchange is required to have effective arrangements for the investigation of complaints with respect to business transacted by means of its facilities (FSA, Schedule 4, paragraph 4). Each exchange is required to have complaints procedures and, in practice, each also has arbitration facilities.

SROs are required to have effective arrangements for the investigation of complaints against the organization or its members (FSA, Schedule 2 6(1)). The procedures in relation to investigation of complaints include, in most circumstances, dispute settlement arrangements including the ability to arrange for an independent review of the matter.

Firms must also have complaints procedures. Generally, firms are required, in the absence of compelling reasons, to respond to customer dispute settlement arrangements where they are invoked at the request of a customer.

Generally, there is no restriction with respect to those persons who have access to any dispute settlement arrangements.

In general, customers may bring an action in a court of law for disputes arising as a result of investment business. This may be restricted where a customer has agreed to be bound by the decision of a mediator or arbitrator; in such circumstances that customer may be precluded from bringing an action in a court of law after exhausting the applicable dispute settlement arrangements.

MOF

When any dispute arises with respect to a securities transaction or other transaction effected by any securities company, the parties to such dispute may apply to the Finance Minister for mediation to resolve such dispute.

After making the required written submissions, the parties may present oral testimony (in person or by telephone) and engage in informal discovery, including examination of the parties and their witnesses. There is no requirement that the parties be represented by counsel at any stage of the proceeding. The decision of the ALJ, which may be reviewed by the CFTC and thereafter, where appropriate, a federal court of appeals, must contain a written statement of the findings of fact upon which the decision is based.

Courts

With respect to litigation in federal court, Congress amended the CEA in 1983 by adding §22, which created an express private right of action under the CEA. Such legislation confirmed that customers may file suit in federal district court for alleged violations of the CEA.

Customers may initiate action in state court on claims including common law fraud or violation of state consumer protection laws. Sate courts cannot exercise jurisdiction over a claim alleging violation of the CEA or regulations if that claim arose on or after January 11, 1983.

SEC

The options SROs have established uniform arbitration procedures for the handling of investor grievances against B/Ds. In this connection, most B/Ds have adopted mandatory pre-dispute arbitration clauses which are pre-conditions to the opening of an account.

Two SRO rules approved by the Commission in May 1989 contain restrictions applicable to pre-dispute arbitration clauses. First, B/Ds using pre-dispute arbitration clauses are required to place immediately before the clause highlighted introductory language informing customers that: (1) they are waiving their right to seek remedies in court; (2) arbitration is final; (3) discovery is generally more limited than in court proceeding; (4) the award is not required to contain factual findings or legal reasoning; and (5) the arbitration panel typically will include a minority of arbitrators associated with the securities industry. Second, SRO members are prohibited from having agreements with customers that: (1) limit or contradict the rules of any SRO; (2) limit the ability of a customer to file any claim in arbitration; or (3) limit the ability of the arbitrators to make any award.

If the customer's account with the B/D is not governed by a pre-dispute arbitration clause, then the customer may pursue his dispute with a B/D through litigation in court. The customer and B/D also could agree, after a dispute has arisen, to submit their disputes to a non-SRO affiliated arbitration forum such as the American Arbitration Association ("AAA"). In

claims or grievances against exchange members and their employees. This procedure must be fair and equitable. Its use by a customer (who is defined not to include another member of the exchange) must be voluntary, but it is compulsory for any exchange member named as a respondent in a customer initiated proceeding.

§17(b)(10) of the CEA and rule 170.8 similarly mandate the availability of an arbitration program for customer disputes through the NFA. NFA's program must be consistent with the provisions of Part 180 of the rules, which establish the standards for arbitration programs of the exchanges.

Each exchange and NFA have established rules for customer-member arbitrations which the CFTC has found to be consistent with §5(a)(11) of the CEA and Part 180 of the rules.

A predispute arbitration agreement is generally prohibited by rule 180.3(b) unless it is in writing and contains specified warnings. The predispute agreement must be specifically endorsed by the customer and may not be made a precondition to the customer obtaining the firm's services.

On November 17, 1988, NFA's Board of Directors adopted rules governing arbitration of disputes between United States customers and non-member foreign firms. In essence, this new international arbitration program would permit an "on the papers" hearing unless the foreign firm requests otherwise. NFA has clarified in a policy statement that it will reject requests for arbitration involving a claim arising primarily out of exchange floor practices.

Reparations

§14 of the CEA and Part 12 of the rules thereunder address the CFTC's reparations procedure. Reparations proceedings are actions brought by customers against a CFTC registrant in a forum provided by the CFTC. The complaint must be filed no later than two years after the cause of action accrues. The complaint must allege a violation of the CEA or any rule, regulation or order thereunder, for example, misrepresentation, unauthorized trading and failure to disclose material facts. As with arbitration, damage awards are compensatory in nature.

Where the amount of damages claimed does not exceed $10,000, exclusive of interest and costs, the parties may request an oral hearing. Under this procedure, however, the Administrative Law Judge ("ALJ") may grant on oral hearing or may, in his discretion, render a decision based solely upon the written submissions made by the parties. In either case, the decision of the ALJ may be reviewed by the CFTC and thereafter, where appropriate, a federal court of appeals.

Where the amount of damages claimed exceeds $10,000, exclusive of interests and costs, the parties may elect an oral hearing.

NCSC

The exchanges perform most of the trade practice surveillance. The NCSC conducts a routine analysis of newspaper articles and investigates all complaints that have been lodged with it.

The SFE is required to maintain an orderly and fair market by Section 55 of the FIC. The Exchange in monitoring markets is looking for any price or trading aberrations suggestive of market manipulation, pre-arrangement, wash trading, front-running or any other abuses. AFFM markets are constantly monitored on an intra day basis, daily and weekly.

All AFFM listed futures contracts derive from the sharemarket. Each contract is either based on the price of a share in a company listed on ASX or an ASX share price index. Share prices, index levels and futures prices are available on a real time basis enabling ready comparison of relationship of futures prices to the "physical".

Factors included in assessing market prices are trends in the market for the underlying security or movement in the underlying index, comparisons of actual prices with theoretical forward prices based on a cost of money calculation and market trends in similar derivative markets, i.e., The Australian Options Market and Share Price Index Contract traded on the SFE. There are no formal guidelines. Members' positions are monitored by ICCH with documentation and verbal communication occurring on a daily basis.

OSC

Futures commission merchants registered in Ontario must establish and maintain supervisory procedures. The Designated Registered Futures Principal is responsible for administering such procedures. The Audit and Compliance function of the IDA and TFE provide a check and balance to the firm's supervision of its own activities.

CVMQ

SFC

The HKFE performs trade practice surveillance reviews (also see answer to II.A.4).

8. Customer dispute resolution procedures and other forms of customer redress

CFTC

Arbitration

§5(a)(11) of the CEA requires each exchange to provide a procedure, such as arbitration, for the settlement of customer

which it has authorised. In this role SIB may make surprise visits to the authorised person in addition to periodic visits as part of normal inspection procedures.

In the event that a firm is found to have breached rules or regulations regarding unsolicited calls or employment of prohibited persons, SIB may make a public statement as to a person's misconduct (FSA, s.60). SIB may apply to court for an injunction or a restitution order under Section 61 of the FSA for breaches of CBRs. Sections 64 to 71 of the FSA vest SIB with the powers to:

- restrict the business activities of the firm (FSA, s.65);

- restrict the firm from dealing with assets (FSA, s.66);

- require the assets of the firm to be vested in a trustee (FSA, s.67); and

- require the firm to maintain assets in the UK (FSA, s.68).

Authorized persons, and their employees and appointed representatives where appropriate, who are members of a recognized SRO and who are subject to the rules of that regulatory authority are subject instead to the comparable powers of intervention provided for in the SRO's rules except where assets of the firm are committed to trustees as set forth in section 67(1)(b) of the FSA.

In respect to trade practice issues, the SROs have the primary responsibility for ensuring that their members comply with any rules relating to trade practice issues. In the case of directly authorized businesses, the responsibility falls to SIB. SROs are compelled by the provisions of Schedule 2, paragraph 7 to promote and maintain high standards of integrity and fair dealing and to cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

COB

See II. B.7.(a) above.

CONSOB

MOF

See II.B.7.(a) above.