

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under part 30 required to be maintained under the applicable statutes and regulations in effect in Australia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Australian laws and ASXF rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and

(g) Maintains the greater of regulatory capital as required by ASXF or four percent of funds segregated on behalf of customers resident in the United States.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.<sup>9</sup> Among other duties, the Commission authorized NFA to receive requests for confirmation of rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate rule 30.10 Order and to grant exemptive relief from registration to qualifying firms. Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

### Expanded Relief

As requested in the ASXF Petition,<sup>10</sup> this order also grants expanded relief to

permit ASXF firms to trade on other non-U.S. exchanges where such firms are authorized by the Australian Corporations Law (CL) to conduct futures business for customers, contingent upon compliance with the prior provisions of this Order and with these conditions, to the extent they impose duties additional to those already specified:<sup>11</sup>

(1) ASXF will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated ASXF members of U.S. customers for futures business on Recognized Futures Exchanges, as defined in section 9(b) of the CL,<sup>12</sup> other than a contract market designated as such pursuant to section 5 of the Act or a derivatives transaction execution facility registered as such pursuant to section 5a of the Act, to the same extent that it conducts such activities in regard to ASXF business;

(2) ASXF will cooperate with the Commission with respect to any inquiries concerning any activity that relates to expanded relief, including sharing the information specified in Appendix A to the part 30 rules on an "as needed" basis, on the same basis as set forth in the part 30 relief conditions of this Order; and

(3) Each ASXF member firm confirmed for rule 30.10 relief seeking to engage in activities that are the subject of this Order must agree to provide the books and records related to such transactions required to be maintained under the applicable statutes, regulations, and Exchange rules in effect in Australia, on the same basis as set forth in the part 30 relief conditions of this Order.

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than SFE and ASXF, whether by the ASXF firm directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, each ASXF firm must use the following procedures,

Corporation Limited ("SFE") (formerly Sydney Futures Exchange Limited) market. This is particularly relevant given many of the participants who would seek to solicit and accept orders from U.S. customers are participants on both the SFE and the ASXF market." ASXF Petition at p. 1. SFE was given expanded relief by Orders of April 13, 1993 (58 FR 19209), March 1, 1997 (62 FR 10445) and October 11, 2000 (65 FR 60560, 60562).

<sup>11</sup> These conditions are the same as those specified in the SFE original expanded relief order of April 13, 1993, 58 FR 19209.

<sup>12</sup> The term "recognised futures exchange" or "RFE" is defined in section 9(b) of the Corporations Law to mean a body corporate that conducts a futures market outside Australia. Schedule 11 of the CL contains the list of RFEs, which currently includes over 40 U.S. and non-U.S. futures exchanges. For an exchange to be included on the Schedule 11 list of RFEs, the relevant lead regulator must have an information sharing arrangement with ASIC and the applicable regulatory program must provide a comparative level of regulation, similar to the requirements for an exemption under Commission Rule 30.10.

consistent with the requirements applicable to Commission registered FCMs concerning the protection of customer funds under the provisions of Commission rule 30.7:<sup>13</sup>

(a) Comply with the terms and procedures of Commission rule 30.7, with the amount required to be segregated under ASXF rules and Australian laws to be substituted for the secured amount requirement as set forth in such paragraphs.

OR

(b)(1) Maintain in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount in an amount sufficient to satisfy all of its current obligations to U.S. customers;

(2) Not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Deposit, if it wishes, together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (b)(1) above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. If the firm chooses to do so, the amount that must be deposited in such separate account or accounts must be no less than the greater of (i) the foreign futures and foreign options secured amount required by paragraph (b)(1) above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (ii) the foreign futures and foreign options secured amount required by paragraph (b)(1) above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintain the separate account or accounts referred to in paragraph (b)(1) above under an account name that clearly identifies them as such, with any of the following depositories:

(i) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(ii) The clearing organization of any foreign board of trade;

(iii) Any member and/or clearing member of such foreign board of trade; or

(iv) A bank or trust company which any of the depositories identified in (i)-(iii) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located;

(5) Obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a

<sup>13</sup> These are the conditions imposed in the 1997 SFE Expanded Relief Order of March 1, 1997 (62 FR 10445) as amended by the Order of October 11, 2000 (65 FR 60560, 60562).

<sup>9</sup> 62 FR 47792, 47793 (September 11, 1999).

<sup>10</sup> ASXF "is essentially seeking the same level of relief as that afforded participants on the SFE