

August 13, 2007

Mr. David Yeres  
Clifford Chance  
31 West 52<sup>nd</sup> Street  
New York, NY 10019-6131

Re: ASX Limited--Options on Certain Australian Equities and on the S&P<sup>TM</sup>/ASX 50 Index, S&P<sup>TM</sup>/ASX 200 Index, and S&P<sup>TM</sup>/ASX 200 Property Trusts Sector Index

Dear Mr. Yeres:

In your letter, dated August 8, 2007, you request advice that, based on the circumstances stated in your letter, the Division of Market Regulation (“Division”) will not recommend to the Securities and Exchange Commission (“Commission”) any enforcement action against:

- (1) ASX Limited (“ASX” or the “Exchange”), any of the officers, directors, or representatives of ASX, or ASX market participants (each a “Participant” or an “ASX Participant”), under Section 5 of the Securities Exchange Act of 1934 (the “Exchange Act”), by reason of ASX not registering as a national securities exchange under Section 6 of the Exchange Act;
- (2) ASX, any of the officers, directors, or representatives of ASX, or ASX Participants, under Section 15(a) of the Exchange Act by reason of ASX and ASX Participants not registering under Section 15(b) of the Exchange Act as broker-dealers; or
- (3) the Australian Clearing House (“ACH”) and ASX Settlement and Transfer Corporation Pty Limited (“ASTC”), or any of the officers, directors, or representatives of ACH or ASTC, by reason of ACH and ASTC not registering as clearing agencies under Section 17A of the Exchange Act, if ASX and its representatives and Participants act as described below to familiarize certain registered broker-dealers and large financial institutions in the United States with ASX and certain equity and index options traded on ASX, as described below.

The following equity and index options traded on ASX are the sole subject matter of this request:

- (1) Certain options based on Australian equity securities, as described below (“Equity Options”); and
- (2) Options based on the Standard and Poor’s (“S&P”)/ASX 50 Index, the S&P™/ASX 200 Index, and the S&P™/ASX 200 Property Trusts Sector Index (collectively, the “Index Options”).

The Equity Options and Index Options may be referred to, collectively, as the “Options.”

The relief you seek is similar to that granted previously by the Division to other non-U.S. exchanges.<sup>1</sup>

We understand the facts to be as follows:

### **Background**

ASX operates Australia’s primary national exchange for equities, equity options, index options, and equity structured products. ASX’s equity market has operated as a fully electronic exchange since 1987, and ASX’s options market has been fully electronic since 1997. ASX’s offices and facilities are located in Australia, primarily in Sydney, and ASX is subject to Australian law. ASX is the holder of an Australian Markets Licence issued by the Parliamentary Secretary to the Treasurer under the Corporations Act 2001 (Cth) (the “Corporations Act”). Under the terms of the Corporations Act, ASX is subject to regulation by the Australian Securities and Investments Commission (“ASIC”).

On July 25, 2006, ASX merged with SFE Corporation Ltd, the parent company of the Sydney Futures Exchange Ltd (“SFE”), which operates the Sydney Futures Exchange. On December 5, 2006, the merged entity changed its name from “Australian Stock Exchange Limited” to “ASX Limited.” The merged group operates under the brand “Australian Securities Exchange.” You represent that ASX and SFE continue to operate separate markets under separate market licenses. You note, further, that your request for no-action relief relates solely to the ASX options market, and not to the Sydney Futures Exchange or products offered on the Sydney Futures Exchange.

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<sup>1</sup> See, e.g., letter from Elizabeth K. King, Associate Director, Division, Commission, to J. Eugene Marans, Cleary, Gottlieb, Steen & Hamilton, dated July 27, 2005; letter from Elizabeth K. King, Associate Director, Division, Commission, to Michael M. Philipp, Katten Muchin Zavis Rosenman, dated September 24, 2004; letter from Elizabeth K. King, Associate Director, Division, Commission, to Derek Oliver, Director of Legal Affairs, EDX London Limited and OM London Exchange Limited, dated October 29, 2003; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jane Kang Thorpe, Orrick, Herrington, & Sutcliffe, dated December 6, 1999; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Richard P. Streicher, Loeb & Loeb LLP, dated July 27, 1999; and letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Nancy Jacklin, Clifford Chance, dated July 23, 1999.

You note that the Sydney Futures Exchange allows U.S. participants of the Sydney Futures Exchange to trade certain futures contracts and futures options contracts from terminals located in the United States pursuant to no-action relief granted by the Commodity Futures Trading Commission (“CFTC”).<sup>2</sup> You represent that the trading system of the Sydney Futures Exchange will not be made available for the trading of any Equity Options or Index Options that are the subject of this request.

You note that Equity Options can be traded on most of Australia’s largest companies. The eligibility criteria for Equity Options require that the underlying stock be widely held and actively traded. Equity Options have a standard contract size of 1,000 securities.

Index Options are based on the S&P<sup>TM</sup>/ASX 50 Index, the S&P<sup>TM</sup>/ASX 200 Index, and the S&P<sup>TM</sup>/ASX 200 Property Trusts Sector Index (collectively, the “Indexes”). The S&P Australian Index Committee, a team of representatives from S&P and ASX, determines the components of the Indexes. The Indexes are comprised solely of stocks listed and traded on the ASX.

ASX is the primary market for most of the stocks underlying the Equity Options and for most of the component stocks of the Indexes underlying the Index Options.<sup>3</sup> You represent that

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<sup>2</sup> See letter from Richard A. Shilts, Acting Director, Division of Market Oversight, CFTC, to Philip McBride Johnson, Esq., dated October 25, 2004 (CFTC No-Action Letter No. 04-32), and the letters referenced therein.

<sup>3</sup> You note that the construction rules for the Indexes permit the inclusion in an Index of a company with a home exchange other than the ASX, so long as the company’s shares also have sufficient liquidity on ASX. You state that, as of the date of this letter, only one company included in the S&P<sup>TM</sup>/ASX 50 Index, Telecom New Zealand, has a home exchange other than the ASX, and that Telecom New Zealand’s home exchange is the New Zealand Stock Exchange (“NZSE”). You note that, as of April 11, 2007, Telecom New Zealand represented less than 1% of the weight of the S&P<sup>TM</sup>/ASX 50 Index. You represent that ASX intends to enter into an information sharing arrangement with the NZSE that will allow ASX to obtain information from the NZSE required to investigate a suspected manipulation or other trading abuse relating to Telecom New Zealand. You represent that when foreign stocks are included in the Indexes, it will be ASX’s practice, among other things, to confirm that information sharing arrangements are available through the ASX that will enable ASX to obtain information from the foreign markets on which the underlying component securities principally trade sufficient to conduct surveillance for a suspected manipulation or other trading abuse in the trading of the Index’s underlying component stocks. You further represent that ASX has agreed to notify the Commission if the composition of the Indexes changes to include additional foreign stocks traded on a market with which the ASX does not have an information sharing arrangement.

ASX will adopt rules and procedures that prohibit Participants from accepting orders in Equity Options from Eligible Broker-Dealers or Eligible Institutions (as defined below) in the United States unless: (1) ASX is the primary market for the stock underlying the Equity Option; or (2) if ASX is not the primary market for the stock underlying an Equity Option, ASX has in place a market-to-market information sharing arrangement with the primary market for the underlying stock that would allow ASX to obtain information necessary to investigate a suspected manipulation or other trading abuse in connection with the Equity Option.<sup>4</sup> You represent that ASX monitors all trading activity in Options and the underlying stocks through a surveillance computer system that monitors all trading information in real time and highlights any unusual price or volume movements.

### **ASX Participants**

You note that participation in ASX, and thereby status as an ASX Participant, is available to companies and individuals, subject to a number of criteria. A company must either be incorporated in Australia or registered as a foreign company under the Corporations Act. Individuals must be resident in Australia and must meet a good character and high business integrity test. You state that Participants will be granted trading permission with respect to Options if they have in place adequate clearing and settlement arrangements; have the technical capacity and knowledge required to trade Options without prejudice to the integrity of the ASX market; and comply with any applicable capital requirements.

ASX Participants located outside of Australia may initiate transactions from a location outside Australia. You note that such Participants must demonstrate to the satisfaction of ASX that they are subject to an appropriate level of regulation with respect to their ASX-related activities and that they comply with local regulatory requirements.

You represent that, under ASX's rules, Participants are obligated to provide information or assist ASX otherwise in relation to activities carried out on ASX. ASX may disclose information provided by Participants to a regulatory authority in another country (such as the Commission) in the proper exercise of ASX's powers relating to the order and good government of Participants and the efficient, honest, fair, competitive, and informed trading, clearing, and settlement of financial products (in Australia and elsewhere). Such information may include, but is not limited to, any information that ASX has the authority to obtain from a Participant. Each Participant is required to provide information and assistance to ASX in connection with the Participant's obligations under the ASX Market Rules.

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<sup>4</sup> You represent that ASX will not begin to familiarize Eligible Broker-Dealers or Eligible Institutions with Equity Options until ASX has adopted these rules and procedures. You represent, further, that ASX will maintain a list, which Participants will be able to access through ASX's Internet web site, identifying the Equity Options for which Participants will be able to accept orders from Eligible Broker-Dealers and Eligible Institutions. You state that ASX will update this list as necessary.

## **ASX Options Market**

You state that Options are traded on a screen-based trading system called the Integrated Trading System. ASX Participants have terminals in their offices from which they may view all open orders and execute trades. ASX's order-driven trading system executes trades automatically on a price/time priority basis.

After a customer order is executed, the relevant Participant must produce a confirmation detailing the terms of the execution and provide the confirmation to its customer immediately. At the same time, the trade information is announced automatically through the trading platform.

Options traded on ASX are either American-style or European-style, and all Options are bought and sold in Australian dollars. ASX Options are not fungible or interchangeable with options that are traded on any other market. Thus, any Option position opened on ASX can be closed only on ASX or exercised through ASX.

## **Clearance and Settlement**

ACH, a wholly-owned subsidiary of ASX, acts as the central counterparty for all transactions on the ASX markets and undertakes the registration and clearing of all Options traded on ASX's options market. ACH is subject to the Financial Stability Standards established by the Reserve Bank of Australia for clearing houses and settlement systems. ACH fulfills its primary role of counterparty risk management through a capital liquidity framework that defines minimum capital and risk measurement standards that all Participants must comply with, and through active risk management in the form of daily margin requirements.

You note that ACH undertakes a comprehensive set of risk management activities and provides certainty, flexibility, and transparency to those activities. You note, further, that the primary objective of these activities is to ensure that financial difficulties encountered by any one Participant are prevented from affecting other Participants or the market generally (*i.e.*, that counterparty and systemic risks are minimized).

ASTC, a wholly-owned subsidiary of ASX, operates the settlement system. ASTC is not a party to any transactions to be settled within the system. The settlement of an exercised Equity Option is made by delivery of the underlying stock at the exercise price, and settlements of stock and cash are made through the settlement system. Index Options are cash-settled. The amount of the cash settlement is based on the first traded price of each constituent stock in the relevant Index on the expiration date. Both Equity Options and Index Options must be settled on the third business day following the day of exercise (T+3).

You note that ASX and ACH utilize certain financial measurements and reporting processes designed to ensure that they can effectively monitor the capital and general financial position of all Participants whose customers trade and/or clear with them. All Participants have self-reporting obligations to ASX and ACH in relation to the financial parameters set out in the

relevant rule book. You note that active oversight involves query and follow-up on monthly reports or wherever financial parameters are breached.

ACH requires Participants to promptly meet all ACH margin obligations to ensure that risks are appropriately covered. Margin obligations are calculated at the end of trading each day and ACH notifies each Participant of its margin obligations based on the aggregate of the Participant's customer accounts. ACH calculates margin using the Theoretical Intermarket Margining System ("TIMS"), which takes into account the volatility of the underlying security when calculating margin obligations. If a Participant is or is expected to be in default, ACH may suspend the Participant's admission and undertake a number of actions to mitigate damage to the market and/or for purposes of client protection.

### **Transactions with U.S. Customers**

You represent that only ASX Participants have direct access to ASX. Currently, for Options trading, ASX does not provide direct electronic access to ASX to persons located in the United States.<sup>5</sup> ASX represents that it will not make options trading accessible in this fashion to persons located in the United States without express approval from the Commission.

ASX wishes to familiarize certain registered broker-dealers and large financial institutions in the United States with Options traded on ASX. To do this, ASX proposes to take the limited steps described below with respect only to "Eligible Broker-Dealers" and "Eligible Institutions." To be Eligible, each such entity must meet the following standards:

- (a) it must be a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act of 1933 (the "Securities Act"), or an international organization excluded from the definition of "U.S. person" in Rule 902(k)(2)(vi) of Regulation S under the Securities Act; and
- (b) it must have had prior actual experience with traded options in the U.S. options markets, and, therefore, have received the options disclosure document for U.S. standardized options required by Rule 9b-1 under the Exchange Act.

Participants will be required by ASX to take reasonable steps to assure themselves, before effecting any Options transactions for or with a customer located in the United States, that the customer is an Eligible Broker-Dealer or an Eligible Institution, that the customer is acting for its own account or the account of another Eligible Broker-Dealer or Eligible Institution or the managed account of a non-U.S. person (within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act), and that the customer has received the ASX Disclosure Document referred to below. ASX will advise Participants that, under U.S. law, Participants which are not U.S. registered broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers as provided in such Rule.

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<sup>5</sup> See also supra note 2 and accompanying text.

You represent that ASX will institute rules requiring its Participants to furnish each Eligible Broker-Dealer and Eligible Institution with an ASX Disclosure Document before accepting an order from that Eligible Broker-Dealer or Eligible Institution to purchase or sell an Option contract. These ASX rules also will require each Participant to obtain from each Eligible Broker-Dealer or Eligible Institution the following written representations, signed by an appropriate officer of the Eligible Broker-Dealer or Eligible Institution:

- (1) that it is an Eligible Broker-Dealer or Eligible Institution, and that as such (a) it owns and invests on a discretionary basis a specified amount of eligible securities sufficient for it to be deemed a qualified institutional buyer under Rule 144A under the Securities Act and, if it is a bank, savings and loan association, or other thrift institution, that it has a net worth meeting the requirements of Rule 144A under the Securities Act, and (b) it has had prior actual experience in the U.S. standardized options markets, and as a result thereof has received the options disclosure document entitled "Characteristics and Risks of Standardized Options" ("Options Disclosure Document" or "ODD") that is prepared by the Options Clearing Corporation and U.S. options exchanges;
- (2) that it has received the ASX Disclosure Document;
- (3) that its transactions in Options will be for its own account or for the account of another Eligible Broker-Dealer or another Eligible Institution, or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act;
- (4) that it will not transfer any interest or participation in an Option contract that it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer or Eligible Institution;
- (5) that (a) it will cause any disposition of an Option that it has purchased or written to be effected only on ASX and to be settled on ASX in Sydney; (b) it understands that any required payments for premiums, settlement, exercise, or closing of any Option contract must be made in Sydney and in Australian dollars; and (c) it understands that, if it is a writer of an Option contract, margin must be provided to that Participant and maintained, measured, and deposited in Australian dollars or any other instrument approved by the ACH, such as ASX-traded securities or bank guarantees from ACH-approved banks.
- (6) that, if it is an Eligible Broker-Dealer or Eligible Institution acting on behalf of another Eligible Broker-Dealer or Eligible Institution that is not a managed account, it has obtained from the other Eligible Broker-Dealer or Eligible Institution written representations to the same effect as these representations, and that it will provide the written representations to the Participant on demand; and
- (7) that it will notify the Participant of any change in the foregoing representations prior to placing any future order, and that the foregoing representations will be deemed to be made with respect to each order that it gives to the Participant.

You represent that an ASX Disclosure Document, which is included with your letter, as amended from time to time as discussed further below, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The document provides an overview of ASX and the Options, with attention to significant differences from standardized options in the U.S. domestic options market, and sets forth special factors relevant to U.S. entities transacting in Options.

ASX will appoint certain officers located in Sydney to act as the ASX's representatives in the United States (the "ASX Representatives" or "Representatives"). ASX Representatives will be available to respond to inquiries concerning ASX from Eligible Broker-Dealers and Eligible Institutions. ASX Representatives may make personal calls on and correspond or otherwise communicate with entities whom the Representatives reasonably believe to be Eligible Broker-Dealers and Eligible Institutions to familiarize them with the existence and the operations of ASX. Any Eligible Broker-Dealer or Eligible Institution would be provided with the ASX Disclosure Document upon its first visit, communication, or inquiry.<sup>6</sup> ASX Representatives located in Sydney will maintain a reasonable supply of that document, and of the most recently published annual financial report of ASX, for distribution to Eligible Broker-Dealers and Eligible Institutions upon request. An ASX Representative may also participate in programs and seminars in the United States.

ASX Representatives will not give investment advice or make any recommendations with respect to specific Options, nor will ASX Representatives solicit, take, or direct orders, nor recommend or refer Eligible Broker-Dealers or Eligible Institutions to particular ASX Participants. If requested by an Eligible Broker-Dealer or Eligible Institution, the ASX Representatives may make available to the requester a list of all ASX Participants permitted to take orders from the public and any registered U.S. broker-dealer affiliates of such ASX Participants. ASX will not engage in any general advertisement concerning Options in the United States.

You represent that ASX will require that Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Options traded on ASX, determine as described above that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the ASX Disclosure Document and maintain a record of that determination. You also represent that ASX will furnish the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with five copies of any amendment made to the ASX Disclosure Document because the information contained in that document becomes or will become materially inaccurate or incomplete, or because there is or will be an omission of material information necessary to ensure that the document is not misleading.

You represent that ASX will continue to be an organized exchange operating and regulated outside the United States, and that making its Options known to a particular, sophisticated segment of the U.S. financial community will not substantially alter that fact.

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<sup>6</sup> If the first communication is by telephone, the ASX Disclosure Document will be mailed within one business day of the communication.



Careful measures also will be taken to assure compliance with applicable U.S. securities laws, and ASX will continue as necessary to take further measures to assure continued compliance with applicable U.S. securities laws.

Finally, you ask on behalf of ASX and ACH that the Division confirm that it will not recommend that the Commission take enforcement action of the nature set forth in the opening paragraph of this letter, and that the Division confirm (a) that furnishing the ASX Disclosure Document by ASX Representatives from outside the United States, by an ASX Participant, or by an Eligible Broker-Dealer, in each case, to an Eligible Broker-Dealer or Eligible Institution will satisfy the obligation of a broker or dealer under Exchange Act Rule 9b-1(d) to furnish an options disclosure document before accepting an order from a customer to purchase or sell an Option, and (b) that neither the furnishing of the ASX Disclosure Document to an Eligible Broker-Dealer or an Eligible Institution by ASX Representatives from outside the United States, nor an ASX Participant's furnishing of the ASX Disclosure Document to an Eligible Broker-Dealer or, in response to an unsolicited inquiry concerning Options, to an Eligible Institution, will constitute solicitation or the provision of a research report, as those terms are used in Exchange Act Rule 15a-6(a). In each case, the Eligible Broker-Dealer or Eligible Institution will have received the ODD. In addition, ASX will require that Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Options determine, as described above, that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the ASX Disclosure Document and maintain a record of that determination.

*Response:*

Based on the facts and representations set forth above, the Division will not recommend enforcement action to the Commission against ASX or its officers, directors, Representatives, or Participants, under Section 15(a) of the Exchange Act if ASX, ASX Representatives, and Participants act as you describe to familiarize Eligible Broker-Dealers and Eligible Institutions in the United States with Options without ASX or its Participants registering with the Commission as broker-dealers under Section 15(b) of the Exchange Act. Also, the Division will not recommend enforcement action to the Commission against ASX or its directors, officers, Representatives, or Participants under Section 15(a) of the Exchange Act if, solely in connection with the satisfaction of obligations under Rule 9b-1(d) of the Exchange Act and under the limited circumstances set forth above, (1) an ASX Representative, an ASX Participant, or an Eligible Broker-Dealer provides the ASX Disclosure Document to an Eligible Broker-Dealer and the ASX Participant effects transactions in Options with or for that Eligible Broker-Dealer pursuant to Rule 15a-6(a)(4) under the Exchange Act, or (2) an ASX Representative furnishes an ASX Disclosure Document to an Eligible Institution, or an ASX Participant furnishes an ASX Disclosure Document to an Eligible Institution in response to an otherwise unsolicited inquiry concerning Options, and the ASX Participant effects transactions in Options with or for that Eligible Institution pursuant to Rule 15a-6(a)(1) under the Exchange Act. The Division notes, in particular, that ASX will advise Participants that it has been advised that, under U.S. law, Participants that are not U.S. registered broker-dealers may deal with Eligible Broker-Dealers and Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers as provided in that Rule.

Based on the foregoing, the Division also will not recommend that the Commission take enforcement action against ACH, ASTC, or their officers, directors, or representatives under Section 17A of the Exchange Act if ACH and ASTC operate solely in the manner described above for the Options without registering with the Commission as a clearing agency. In addition, the Division will not recommend that the Commission take enforcement action against ASX or its officers, directors, Representatives, or Participants under Section 5 of the Exchange Act if ASX operates solely in the manner described above with respect to the Options without ASX registering with the Commission as a national securities exchange under Section 6 of the Exchange Act.

Finally, the Division has reviewed the proposed ASX Disclosure Document. Based on our review of that document, the Division will not recommend that the Commission take enforcement action against an Eligible Broker-Dealer, Representative, or Participant if an Eligible Broker-Dealer, Representative, or Participant, in compliance with Exchange Act Rule 9b-1(d), furnishes the ASX Disclosure Document to an Eligible Broker-Dealer or Eligible Institution before the Eligible Broker-Dealer or Eligible Institution effects a transaction in Options, subject to the following conditions:

- (1) the Eligible Broker-Dealer or Eligible Institution previously has received the ODD;
- (2) ASX requires that Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Options, determine, as described above, that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the ASX Disclosure Document and maintains a record of that determination; and
- (3) if the information contained in the ASX Disclosure Document becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the ASX Disclosure Document not misleading, ASX will amend or supplement the ASX Disclosure Document by filing five copies of the amendment or supplement to the ASX Disclosure Document with the Division at least 30 days prior to the date definitive copies are furnished to customers, unless the Division determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors.<sup>7</sup>

These positions of the Division concern enforcement action only and do not represent conclusions on the applicability of statutory or regulatory provisions of the federal securities laws. The Division has taken these positions based, in part, on the fact that the Commission has entered into a Memorandum of Understanding with the ASIC regarding the sharing of

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ASX should provide the Division with any material amendments to its disclosure document sufficiently in advance of the planned distribution date to provide the Division with time to review the proposed amendments and ASX to make any necessary revisions.

investigative information,<sup>8</sup> and that foreign broker-dealers, including ASX Participants, electing to deal with U.S. institutional investors pursuant to Rule 15a-6(a)(3) under the Exchange Act are required to provide directly to the Commission, upon request, information, documents, testimony, and assistance in taking the evidence of persons that relate to transactions pursuant to Rule 15a-6(a)(3) under the Exchange Act. You have represented that only Participants have direct access to ASX and that, under ASX rules, Participants are obligated to provide information or assist ASX otherwise in relation to activities carried out on ASX. You also have represented that ASX may disclose information provided by Participants to a regulatory authority in another country, such as the Commission, in the proper exercise of ASX's powers relating to the order and good government of Participants and the efficient, honest, fair, competitive, and informed trading, clearing, and settlement of financial products. In addition, you have represented that ASX will not begin to familiarize Eligible Broker-Dealers and Eligible Institutions with Equity Options until ASX has adopted rules and procedures prohibiting Participants from accepting orders in Equity Options from Eligible Broker-Dealers or Eligible Institutions in the United States unless: (1) ASX is the primary market for the stock underlying the Equity Option; or (2) if ASX is not the primary market for the stock underlying an Equity Option, ASX has in place a market-to-market information sharing arrangement with the primary market for the underlying stock that would allow ASX to obtain information necessary to investigate a suspected manipulation or other trading abuse in connection with the Equity Option.

Finally, our response is based on your representations that ASX does not provide direct electronic access for trading options to persons located in the United States, and that ASX will not make options accessible in this fashion absent express approval from the Commission.

The positions of the Division in this letter are based on the representations that you have made; any different facts or conditions might require a different response, and these positions are subject to modification or revocation if the facts and representations set forth above are altered.

Sincerely,

Elizabeth K. King  
Associate Director

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<sup>8</sup> See Memorandum of Understanding Between the United States Securities and Exchange Commission and the Australian Securities Commission Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws (October 20, 1993), available at: [http://www.sec.gov/about/offices/oia/oia\\_bilateral/australia.pdf](http://www.sec.gov/about/offices/oia/oia_bilateral/australia.pdf).

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August 8, 2007

Division of Market Regulation  
Office of Market Supervision  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Attention: Elizabeth King, Associate Director

**Re: Trading of Equity and Stock Index Options on the ASX Limited**

Dear Ms. King:

Our clients, the ASX Limited (“**ASX**” or the “**Exchange**”), on behalf of the ASX options market, the Australian Clearing House (“**ACH**”) and ASX Settlement and Transfer Corporation Pty Limited (“**ASTC**”), are requesting your advice that, based on the circumstances stated in this letter, and in view of the relief granted by the Division of Market Regulation (the “**Division**”) to other non-United States exchanges<sup>1</sup> (collectively, the “**Options No-Action Letters**”), the Division will not recommend enforcement action to the Securities and Exchange Commission (the “**Commission**”) against: (i) ASX, any of the officers, directors or representatives of ASX, or ASX market participants (each a “**Participant**” or an “**ASX Participant**”), under Section 5 of the Securities Exchange Act of 1934 (the “**Exchange Act**”), by reason of the ASX not registering as a national securities exchange under Section 6 of the Exchange Act; (ii) against ASX, any of the officers, directors or representatives of ASX, or ASX Participants under Section 15(a) of the Exchange Act by reason of ASX and ASX Participants not registering under Section 15(b) of the Exchange Act as broker-dealers; or (iii) against ACH, ASTC or any of the officers, directors or representatives of ACH or ASTC, by reason of ACH or ASTC not registering as a clearing agency under Section 17A of the Exchange Act; if ASX and its representatives and Participants act as described below to familiarize certain registered broker-dealers and large financial institutions in the U.S. with ASX and its equity and index options. The following options listed and traded on ASX are the sole subject matter of this request: certain options on individual equities listed and traded on ASX (“**Equity Options**”), as described below; and index options based on the S&P<sup>TM</sup>/ASX 50, S&P<sup>TM</sup>/ASX 200 and S&P<sup>TM</sup>/ASX 200 Property Trusts Sector (collectively, “**Index Options**”).

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<sup>1</sup> See Borsa Italiana S.p.A. (available September 24, 2004); EDX London Limited and OM London Exchange Limited (available October 23, 2003); Tokyo Stock Exchange, Inc. (available November 15, 2002); ParisBourse SA (available December 6, 1999); Tokyo Stock Exchange (available July 27, 1999); Osaka Securities Exchange (available July 23, 1999); Société de Compensation des Marchés Conditionnels (available October 26, 1998); Mercato Italiano dei Derivati (available September 1, 1998); Société de Compensation des Marchés Conditionnels (available June 17, 1996); London International Financial Futures and Options Exchange (available March 6, 1996); Hong Kong Futures Exchange Limited - - Hang Seng Index Options (available September 26, 1995); London International Financial Futures Exchange (available May 1, 1992).

The Equity Options and Index Options may be referred to collectively as the “**Options**” (all Options are discussed more fully below).

ASX was formed in 1987 through the amalgamation of six independent stock exchanges. Each of those exchanges had a history of share trading dating back to the 19th century. ASX was originally a mutual organisation of stockbrokers. In 1996, its members decided to demutualise and become a listed company, the change of status took place on 13 October 1998, and the following day ASX shares were listed for trading on ASX’s own market.

ASX operates Australia’s primary national exchange for equities, equity options, index options and equity structured products. It also provides comprehensive market data and information to a range of users. ASX’s equity market has operated as a fully electronic exchange since 1987, and ASX’s options market has been fully electronic since 1997.

ASX’s offices and facilities are located in Australia, primarily in Sydney. ASX is subject to Australian law and is the holder of an Australian Markets Licence issued by the Parliamentary Secretary to the Treasurer under the Corporations Act 2001 (Cth) (the “**Corporations Act**”) and under the terms of the Corporations Act, ASX is subject to regulation by the Australian Securities and Investments Commission (ASIC).

On 25 July 2006 ASX merged with SFE Corporation Ltd, the parent company of Sydney Futures Exchange Ltd (“**SFE**”) which operates the Sydney Futures Exchange. The new merged entity changed its name from Australian Stock Exchange Limited to ASX Limited on 5 December 2006, and the merged group operates under the brand “Australian Securities Exchange”. ASX and SFE continue to operate separate markets under separate market licences. This application for no-action relief relates only to the ASX options market and does not relate to the Sydney Futures Exchange or the products offered on the Sydney Futures Exchange.<sup>2</sup> The merger has not affected the products offered by ASX, the participation structure or risk management arrangements of the ASX market or any other matter discussed in the ASX disclosure document. If there are any changes in the future which would have a material effect on the accuracy or completeness of the ASX disclosure document ASX will amend the document and inform the Commission, as discussed below.

In 1976, the Australian Options Market, the predecessor options exchange to the ASX, commenced trading in stock and index options. Currently, Equity Options and Index Options are traded on ASX. Equity Options can be traded over most of Australia’s largest companies based on an eligibility criteria - the underlying stock must be widely held and actively traded. All underlying securities for Equity Options are stocks listed and traded on ASX and have a standard contract size of 1,000 securities.

Index Options are based on the S&P<sup>TM</sup>/ASX 50 (includes the 50 largest stocks by market capitalization in Australia), S&P<sup>TM</sup>/ASX 200 (includes approximately 90% of the Australian equity market capitalization) and S&P<sup>TM</sup>/ASX 200 Property Trusts Sector (includes the vehicles classified

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<sup>2</sup> We note that the Sydney Futures Exchange allows U.S. participants of the Sydney Futures Exchange to trade certain futures contracts and futures options contracts from terminals located in the United States pursuant to no-action relief granted by the Commodity Futures Trading Commission (“**CFTC**”). See letter from Richard A. Shilts, Acting Director, Division of Market Oversight, CFTC, to Philip McBride Johnson, Esq., dated October 25, 2004 (CFTC No-Action Letter No. 04-32), and the letters referenced therein. ASX represents that the Sydney Futures Exchange trading system will not be made available for the trading of any Equity Options or Index Options that are the subject of this no-action request. As noted above, ASX and SFE will operate separate markets and ASX Participants (as defined below) will not be able to use the Sydney Futures Exchange trading platform to trade ASX Equity Options or Index Options.

as property trusts listed on the ASX) (these indices are sometimes collectively referred to as the “S&P™/ASX indices”). The constituents for the S&P™/ASX indices are determined by the S&P Australian Index Committee, a team of representatives from both Standard and Poor’s and ASX. Further, the S&P™/ASX indices are comprised solely of stocks which are listed and traded on the ASX.<sup>3</sup> Equity Options and Index Options traded on ASX are either: American style, which means the option can be exercised at any time prior to expiration; or European style, which means the option can only be exercised on the expiration date.

All Options are bought and sold in Australian dollars. ASX options are not fungible or interchangeable with options that are traded on any other market. Thus, any ASX option positions opened on the ASX can be closed only on the ASX or exercised through ASX.

Market participation (and thereby status as an ASX participant (a “Participant”)) in ASX is available to companies and individuals subject to a number of criteria. A company must either be incorporated in Australia or registered as a foreign company under the Corporations Act. Individuals must be resident in Australia, meet a good character and high business integrity test. Participants will be granted trading permission in respect of Equity Options and Index Options if they have in place adequate clearing and settlement arrangements; have the technical capacity and knowledge required to trade Equity Options and Index Options without prejudice to the integrity of the ASX market and comply with any applicable capital requirements. Further, under ASX rules, ASX Participants are obligated to provide information or assist ASX otherwise in relation to activities carried out on the ASX. ASX Participants who are located outside of Australia may initiate transactions from a location outside of Australia, and must demonstrate to the satisfaction of ASX that they are subject to an appropriate level of regulation with respect to their ASX-related activities and that they comply with local regulatory requirements. ASX may disclose information provided by ASX Participants to a regulatory authority in another country (such as the Commission) in the proper exercise of ASX’s powers relating to the order and good government of ASX Participants and the efficient, honest, fair, competitive and informed trading, clearing and settlement of financial products (in Australia and elsewhere). Such information may include, but is not limited to, any information that ASX has the authority to obtain from an ASX Participant. Each ASX Participant is required to provide information and assistance to ASX in connection with the Participant’s obligations under the ASX Market Rules.

Options are traded on a screen based trading system for derivatives and equities called the Integrated Trading System (“ITS”). Participants have terminals in their office from which they can

<sup>3</sup> The construction rules for the indices allow for the inclusion of companies with a home exchange other than the ASX, so long as there is also sufficient liquidity of such company's shares on the ASX. As of the date of this letter, there is only one company (Telecom New Zealand) included in the S&P™/ASX 50 that has a home exchange other than the ASX. Telecom New Zealand’s home exchange is the New Zealand Stock Exchange (the “NZSE”). This is only one of the 50 companies in the S&P™/ASX 50 and as of April 11, 2007, New Zealand Telecom represented less than 1% of the weight of the S&P™/ASX 50. ASX has represented that it intends to enter into information sharing arrangements with the NZSE, whereby ASX will be able to obtain information required to investigate suspected manipulation or other trading abuses in trading of Telecom New Zealand from the NZSE. The ASX Listing Rules also require continuous disclosure of information by listed companies, whereby once a company becomes aware of any information that would have a material effect on the price of its securities, it must immediately inform ASX. ASX has agreed that when foreign stocks are included in the S&P™/ASX indices, it will be ASX’s practice, among other things, to confirm that information sharing arrangements are available through the ASX that will enable the ASX to obtain information from the foreign markets on which the underlying component securities principally trade sufficient to conduct surveillance for suspected manipulation or other trading abuses in the trading of the index’s underlying component stocks. ASX has agreed to notify the Commission if the composition of the S&P™/ASX indices changes to include additional foreign stocks traded on a market with which the ASX does not have information sharing arrangements.

view the market and execute trades. ITS is a modified version of the CLICK™ system developed by OM AB, a company that provides exchange technology to over 24 international exchanges and clearing houses.

The order-driven trading system executes trades automatically on a price/time priority basis. Orders are entered into a Participant's terminals and transmitted to the market via the ASX's host computer which in turn sends the order to the hardware gateway for each Participant. Each Participant's terminals display all open orders. Orders are then executed on a price and time priority basis. Execution is performed by responding to a bid or offer that appears on the screen in the current market.

After a customer account order is executed a confirmation must be produced by the relevant Participant detailing the terms of the execution. This confirmation must be provided to the customer immediately. Simultaneously, the trade information is announced automatically through the trading platform. All trading activity in Equity Options, Index Options and the underlying stocks is monitored and observed by ASX through the use of a surveillance computer system which monitors in real-time all trading information and highlights any unusual price or volume movements. ASX is the primary market for most stocks underlying the Equity Options and stocks included in the indexes underlying the Index Options. ASX also lists certain Equity Options where the primary market for the stock underlying the Equity Option is an exchange other than the ASX. In this regard, ASX will adopt rules and procedures that prohibit Participants from accepting orders from Eligible Broker-Dealers or Eligible Institutions (as these terms are defined below) in the United States for Equity Options unless: (1) ASX is the primary market for the stock underlying the Equity Option, or (2) if ASX is not the primary market for the stock underlying an Equity Option, ASX has in place a market-to-market information sharing arrangement with the primary market for the underlying stock that would allow ASX to obtain information necessary to investigate a suspected manipulation or other trading abuse.<sup>4</sup>

The Australian Clearing House ("ACH") is a wholly-owned subsidiary of ASX and acts as the central counterparty for all transactions on the ASX markets and undertakes the registration and clearing of all options traded on ASX's option market. ACH is subject to the Financial Stability Standards established by the Reserve Bank of Australia for clearing houses and settlement systems. In general, ACH is responsible for providing the framework of rules and systems as the central counterparty. ACH's primary role is counterparty risk management through a capital liquidity framework that defines minimum capital and risk measurement standards that all Participants must comply with, and active risk management in the form of daily margin requirements.

The ASX Settlement and Transfer Corporation ("ASTC") is a wholly-owned subsidiary of ASX and is the operator of the settlement system. ASTC is not a party to any transactions to be settled within the system. The settlement of an exercised equity option is made by delivery of the underlying stock at the exercise price. Settlements of stock and cash are made through the settlement system. Settlement must be made on the third business day following the day of exercise (T+3). Index options are cash settled. The amount of the cash settlement is based on the first traded price of each constituent stock in the index on the expiration date. Settlement must be made on the third business day following the day of exercise (T+3). ACH undertakes a comprehensive set of risk management activities and provides certainty, flexibility and transparency to those activities. The prime objective of these activities is to ensure that financial difficulties encountered by any one Participant

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<sup>4</sup> ASX represents that it will not begin familiarizing Eligible Broker-Dealers or Eligible Institutions with these Equity Options until ASX has adopted these rules and procedures. ASX will maintain a list of these Equity Options, which Participants can access through the ASX website. This list will be updated as necessary.

are prevented from affecting other Participants or the market generally (i.e. counterparty and systemic risks are minimised).

ASX and ACH utilize certain financial measurements and reporting processes designed to ensure that it can effectively monitor the capital and general financial position of all Participants whose customers trade and/or clear with them. All Participants have self reporting obligations to ASX and ACH in relation to the financial parameters set out in the relevant rule book. Active oversight involves query and follow-up on the monthly reports or wherever financial parameters are breached.

ACH monitors the individual Participant and overall market counterparty risks in the market to ensure risk issues are addressed early, and requires Participants to promptly meet all ACH margin obligations (cash or securities lodged as collateral) to ensure risks are appropriately covered. Margin obligations are calculated at the end of trading each day and ACH notifies each Participant of its margin obligations, based on the aggregate of the Participant's customer accounts, which must be lodged with ACH by 11 a.m. Sydney time the same day. A margin is the amount calculated by ACH as necessary to cover the risk of financial loss on an option contract due to an adverse market movement. Margin is designed to protect the financial security of the market.

ACH calculates margin using a system known as Theoretical Intermarket Margining System ("TIMS"). TIMS takes into account the volatility of the underlying security when calculating margin obligations. The total margin for options is made up of two components:

1. Premium Margin: The premium margin is the market value of the position at the close of business each day. It represents the amount that would be required to close out the customer's option position.
2. Risk Margin: The risk margin covers the potential change in the price of the option contract assuming the maximum probable inter-day movement (daily volatility) in the price of the underlying security. The daily volatility figure, expressed as a percentage of the price of the underlying security, is known as the margin interval.

If a customer has a number of option positions open, TIMS on a customer basis will evaluate the risk associated with the entire options portfolio and calculate the total margin obligation accordingly. It is possible that some option positions may offset others, leading to a reduction in a customer's overall obligation. Participants will then require the client to provide cash or collateral to cover the margin obligations. There is a range of collateral that is acceptable to ACH. This includes certain shares, installment warrants, bank guarantees and certain money market instruments. ACH applies a "haircut" in relation to the value of some collateral to protect against a sudden fall in the value of collateral held. Margin is recalculated on a daily basis to ensure an adequate level of margin cover is maintained. As a result, Participants may have to increase their level of margin cover if the market moves against their customer, or the margin may be reduced if the market moves in their client's favour.

Customers are expected to meet any option margin calls promptly, usually within 24 hours of being advised of the margin call by Participants. If a customer does not meet the margin call in time, the Participant can take action to close out the customer's position without further reference to the client.

Participants are required by ASX Rule to maintain monies and securities deposited as customers' margin separately from their own monies and securities. If a customer defaults on its obligations under an options contract, the Participant may take any action, or refrain from taking action, which



it considers reasonable in the circumstances in connection with the options contract and with out limitation the Participant may close out the options contract, exercise the options contracts or exercise any other rights conferred on the Participant. If a Participant is or is expected to be in default, ACH may suspend the Participant's admission and undertake a number of actions in order to mitigate any damage to the market and/or client protection.

In addition to Participant application fee which contributes to the equity of ASX, and ASX's rights to appropriate a defaulting Participant's rights to monies or securities held in or transferred through ASX, the National Guarantee Fund ("NGF") can, in certain circumstances, meet losses arising from a Participant's default. The Securities Exchanges Guarantee Corporation ("SEGC") administers the NGF. SEGC is a subsidiary of ASX, but operates independently and in accordance with the Corporations Act.

The NGF was established in 1987 when the six state stock exchanges merged to form the ASX and the assets of the fidelity funds of those state exchanges were also merged to form the NGF. Options were specifically covered by the NGF in the following ways:

1. Client protection - If an exchange traded option is exercised the resulting purchase and sale of a security is covered by the contract completion provisions. Further, if a client entrusts property to a participant in the course of dealing in exchange traded options the NGF provides compensation for the loss of that property if the participant becomes insolvent; and
2. Clearing support - the options market has netting arrangements for obligations between ACH Participants and ACH. If an ACH Participant did not meet a net payment obligation to ACH for any settlement day (in accordance with the netting arrangements and the net claims provisions of the legislation), ACH was entitled to make a claim on SEGC. Payment by SEGC of valid claims by ACH under this Subdivision would result in ACH funds being replenished, so that other Participants in the options clearing system may be paid as required.

Until March 2005, the NGF fulfilled the two roles described above—clearing support and investor protection. On 31 March 2005, SEGC was directed to make a payment out of the NGF to ACH. The effect of this direction is that from 31 March 2005 onwards ACH will be responsible for clearing support while the NGF continues to provide investor protection. The SEGC retains its existing fidelity and client protection responsibility, backed up by the residual NGF. NGF amounts may be applied by ACH to the default of a clearing participant. The funds are in ACH's control and are to be used to cover ACH's clearing obligations only.

In addition, ACH can seek contributions from Participants. Contributions will be held by ACH as its absolute legal and beneficial property. If a Participant has made a contribution and fails to meet any clearing obligation ACH may apply the contribution to discharge, or to compensate ACH for the discharge of the clearing obligation. ACH may also apply a Participant's contribution against the default of another Participant subject to a priority of the application of relevant assets. Finally, ACH also may use its Emergency Assessments power to require each non-defaulting Participant to pay to ACH an Emergency Assessment to be applied to a clearing loss.

Only ASX Participants have direct access to the ASX. Currently, for options trading, ASX does not provide direct electronic access to ASX to persons located in the U.S. ASX represents that it will not make options trading accessible in this fashion to persons located in the U.S. without express approval from the Commission.

The ASX wishes to familiarize certain registered broker-dealers and large financial institutions in the United States with Equity Options and Index Options traded on the ASX. To do this, the ASX proposes to take the limited steps described below with respect only to “Eligible Broker-Dealers” and “Eligible Institutions”. Accordingly, to be Eligible, each such entity must meet the following standards:

- (a) it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the Securities Act of 1933 (the “**Securities Act**”), or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act; and
- (b) it must have had prior actual experience with traded options in the U.S. options markets, and, therefore, have received the options disclosure document for U.S. standardized options required by Rule 9b-1 under the Exchange Act.

Participants will be required by ASX to take reasonable steps to assure themselves, before effecting any ASX Equity Options or Index Option transactions for or with a customer located in the United States, that the customer is an Eligible Broker-Dealer or an Eligible Institution, that the customer is acting for its own account or the account of another Eligible Broker-Dealer or Eligible Institution or the managed account of a non-U.S. person (within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act), and that the customer has received the ASX option disclosure document referred to below. The ASX will advise Participants that it has been advised that, under U.S. law, Participants which are not U.S. registered broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers as provided in such Rule.

ASX will institute rules requiring its Participants to furnish each Eligible Broker-Dealer and Eligible Institution with an ASX option disclosure document before accepting an order from that Eligible Broker-Dealer or Eligible Institution to purchase or sell an ASX option contract. These ASX rules also will require each Participant to obtain from each Eligible Broker-Dealer or Eligible Institution the following written representations, signed by an appropriate officer of the Eligible Broker-Dealer or Eligible Institution:

- (1) that it is an Eligible Broker-Dealer or Eligible Institution, and that as such (a) it owns and invests on a discretionary basis a specified amount of eligible securities sufficient for it to be deemed a qualified institutional buyer under Rule 144A under the Securities Act and, if it is a bank, savings and loan association, or other thrift institution, that it has a net worth meeting the requirements of Rule 144A under the Securities Act, and (b) it has had prior actual experience in the U.S. standardized options markets, and as a result thereof has received the options disclosure document entitled “Characteristics and Risks of Standardized Options” (“**Options Disclosure Document**” or “**ODD**”) that is prepared by the Options Clearing Corporation and U.S. options exchanges;
- (2) that it has received the ASX option disclosure document;
- (3) that its transactions in ASX Equity Options and Index Options will be for its own account or for the account of another Eligible Broker-Dealer or another Eligible Institution, or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act;

- (4) that it will not transfer any interest or participation in a ASX Equity or Index Option contract that it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer or Eligible Institution;
- (5) that (a) it will cause any disposition of an ASX option that it has purchased or written to be effected only on the ASX and to be settled on the ASX in Sydney; (b) it understands that any required payments for premiums, settlement, exercise, or closing of any ASX option contract must be made in Sydney and in Australian dollars; and (c) it understands that, if it is a writer of an ASX option contract, margin must be provided to that Participant and maintained, measured and deposited in Australian dollars or any other instrument approved by the ACH, such as ASX-traded securities or bank guarantees from ACH-approved banks.
- (6) that, if it is an Eligible Broker-Dealer or Eligible Institution acting on behalf of another Eligible Broker-Dealer or Eligible Institution that is not a managed account, it has obtained from the other Eligible Broker-Dealer or Eligible Institution written representations to the same effect as these representations, and that it will provide the written representations to the Participant on demand; and
- (7) that it will notify the Participant of any change in the foregoing representations prior to placing any future order, and that the foregoing representations will be deemed to be made with respect to each order that it gives to the Participant.

An ASX option disclosure document, in the form of Exhibit A hereto submitted for Division review, as amended from time to time as discussed further below, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The document provides an overview of that part of the ASX which consists of an Equity Options and Index Options market, with attention to significant differences from standardized options in the U.S. domestic options market, and sets forth special factors relevant to U.S. entities transacting in ASX Equity Options and Index Options.

ASX will appoint certain officers located in Sydney to act as the ASX's representatives in the United States (the "**ASX Representatives**"). ASX Representatives will be available to respond to inquiries concerning the ASX from Eligible Broker-Dealers and Eligible Institutions. ASX Representatives may make personal calls on and correspond or otherwise communicate with entities whom the representatives reasonably believe to be Eligible Broker-Dealers and Eligible Institutions to familiarize them with the existence and the operations of the ASX. Any Eligible Broker-Dealer or Eligible Institution would be provided with the ASX option disclosure document upon its first visit, communication, or inquiry.<sup>5</sup> ASX Representatives located in Sydney will maintain a reasonable supply of that document, and of the most recently published annual financial report of the ASX, for distribution to Eligible Broker-Dealers and Eligible Institutions upon request. An ASX Representative may also participate in programs and seminars in the U.S.

ASX Representatives will not give investment advice or make any recommendations with respect to specific ASX Equity Options or Index Options, nor will ASX Representatives solicit, take, or direct orders, nor recommend or refer Eligible Broker-Dealers or Eligible Institutions to particular ASX Participants. If requested by an Eligible Broker-Dealer or Eligible Institution, the ASX Representatives may make available to the requester a list of all ASX Participants permitted to take orders from the public and any registered U.S. broker-dealer affiliates of such ASX Participants.

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<sup>5</sup> If the first communication is by telephone the ASX option disclosure document will be mailed within one business day of the communication.

The ASX will not engage in any general advertisement concerning ASX Equity Options or Index Options in the United States.

ASX will continue to be an organized exchange operating and regulated outside the U.S., and making its ASX Equity Options and Index Options known to a particular, sophisticated segment of the U.S. financial community will not substantially alter that fact.

Careful measures also will be taken to assure compliance with applicable U.S. securities laws, and ASX will continue as necessary to take further measures to assure continued compliance with applicable U.S. securities laws.

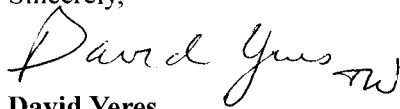
Making information concerning ASX available in the U.S. as described in this letter will serve to increase, in a responsible manner, information concerning an important and growing marketplace in Australia that will be of substantial benefit to appropriate U.S. professionals and institutions.

We therefore respectfully request on behalf of ASX and ACH that you confirm to us that the Division will not recommend that the Commission take enforcement action of the nature set forth in the opening paragraph of this letter. In addition, we also request that the Division confirm (a) that furnishing the ASX option disclosure document by ASX Representatives from outside the United States, by an ASX Participant or by an Eligible Broker-Dealer, in each case, to an Eligible Broker-Dealer or Eligible Institution will satisfy the obligation of a broker or dealer under Exchange Act Rule 9b-1(d) to furnish an options disclosure document before accepting an order from a customer to purchase or sell an ASX Equity or Index Option, and (b) that neither the furnishing of the ASX option disclosure document to an Eligible Broker-Dealer or Eligible Institution by ASX Representatives from outside the United States nor an ASX Participant's furnishing of the disclosure document to an Eligible Broker-Dealer or, in response to an unsolicited inquiry concerning Equity Options or Index Options, to an Eligible Institution, will constitute solicitation or the provision of a research report as those terms are used in Exchange Act Rule 15a-6(a). In each case the Eligible Broker-Dealer or Eligible Institution will have previously received the ODD. In addition, ASX will require that ASX Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Equity Options or Index Options traded on ASX, determine as described above that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the ASX option disclosure document and maintain a record of that determination.

ASX will furnish the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with five copies of any amendment made to the ASX disclosure document because the information contained in that document becomes or will become materially inaccurate or incomplete, or because there is or will be an omission of material information necessary to ensure that the document is not misleading.

If you need additional information concerning this request, please call Tina Woo at (212) 878-4977 or me at (212) 878-8075.

Sincerely,



**David Yeres**

enclosure

cc: Sally Palmer, ASX Limited