



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 27, 1999

Mr. Richard P. Streicher
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154-0037

Re: Tokyo Stock Exchange - Equity Options and TOPIX Options

Dear Mr. Streicher:

In your letter dated July 22, 1999, on behalf of the Tokyo Stock Exchange (the "TSE" or "Stock Exchange"), the organization responsible for the management and surveillance of the Stock Exchange, you seek relief similar to that previously granted by the Division of Market Regulation (the "Division") to other non-U.S. exchanges.¹ You request advice that, based on the circumstances stated in this letter, the Division will not recommend to the Securities and Exchange Commission (the "Commission") enforcement action (1) against the TSE, any of the officers, directors, or representatives of the TSE, regular members of the TSE ("Regular Members"), or the entities designated by the TSE as Special Participants in Equity Options or Special Participants in Stock Index Futures and Options (collectively, "Special Participants"), under Section 5 of the Securities Exchange Act of 1934 (the "Exchange Act"), by reason of the TSE not registering under Section 6 of the Exchange Act as a national securities exchange; (2) against the TSE, any of the officers, directors or representatives of the TSE, or Regular Members or Special Participants under Section 15 of the Exchange Act, by reason of the TSE or its Regular Members or Special Participants not registering under the Exchange Act as broker-dealers; or (3) against the TSE or any of the officers, directors or representatives of the TSE under Section 17A of the Exchange Act, by reason of its not registering under the Exchange Act as a clearing agency, if the TSE and its Regular Members and Special Participants as described below to familiarize certain registered broker-dealers and large financial institutions in the United States with the TSE and the equity and index options ("Options") traded on the TSE.

¹ See, e.g., SEC No-Action Letter to the Mercato Italiano dei Derivati, dated September 1, 1998; SEC No-Action Letter to the Société de Compensation des Marchés Conditionnels, available June 17, 1996; SEC No-Action Letter to the Hong Kong Futures Exchange, available September 26, 1995; SEC No-Action Letter to the London International Financial Futures Exchange, available May 1, 1992.

We understand the facts to be as follows:

Regulatory Background

Organized in its current form in 1949, the TSE traces its origins to the founding of the Tokyo Stock Exchange Co. Ltd. in 1878.

The TSE is an incorporated organization under a membership system established in accordance with the Securities and Exchange Law of Japan (Law No. 25 of 1948, as amended) (the "Securities and Exchange Law"). The Exchange is licensed to act as a stock exchange by the Minister of Finance of Japan pursuant to the Securities and Exchange Law. Under the Securities and Exchange Law, the Financial Revitalization Committee and the Minister of Finance have continuing supervisory authority over all stock exchanges in Japan including the TSE.

Under the Securities and Exchange Law, only stock corporations registered by the Financial Revitalization Committee may engage in the securities business. Only such Japanese securities companies, and foreign securities companies registered by the Financial Revitalization Committee pursuant to the Securities and Exchange Law and to the Law Concerning Foreign Securities Firms, can become Regular Members or Special Participants of the Exchange.

Market Participants

In addition to TSE Regular Members there are Special Participants. Special Participants are non-member domestic or foreign securities companies, which are permitted to participate directly in trading Equity Options or Index Options (as such capitalized terms are defined below) on the TSE. Some Special Participants may be designated by the Exchange as Special Participants in Equity Options and permitted to trade only Equity Options. Others may be designated Special Participants in the Stock Index Futures and Options Trading, authorized by the Exchange for Index Options trading and not for Equity Options trading. Some Special Participants may be designated as both. Special Participants are members of the Japan Securities Dealers Association, as are Regular Members, and thus subject to its rules. Also, Special Participants' transactions on the TSE are subject to relevant provisions of the Exchange's Constitution and its rules and regulations. To the extent Special Participants are permitted to trade Equity Options or Index Options, they function, and are subject to the Constitution, rules and regulations of the TSE, the same as Regular Members. Therefore, all Special Participants and Regular Members both as to themselves and Equity Options and Index Options are subject to similar regulatory requirements.

The Options Market

The TSE's request focuses on options on individual stocks selected by the TSE that are listed and traded on the TSE ("Equity Options") and options on stock indexes comprised

of stocks listed and traded on the TSE ("Index Options"). As of the date of the TSE's letter, the Tokyo Stock Price Index, known as "TOPIX," is the only stock index on which Index Options are traded (such Index Options, hereinafter "TOPIX Options"). Equity Options and TOPIX Options (together, the "Options") are the sole subject matter of this request.

Each Regular Member and Special Participant is required to deposit and maintain margin with the Exchange with respect to each Option for which it represents the writer. Such margin is calculated, collected and held by the Exchange in segregated accounts at designated banks. The margin required of Regular Members and Special Participants and their respective customers is calculated according to Exchange rules, taking into account the risks associated with the market volatility of both the premium for and the interest underlying any Option, and is marked to market at least daily and adjusted accordingly.

Prices on the TSE for Equity Options and Index Options are publicly quoted, and all Options are bought and sold, in Japanese yen. All transactions creating or closing positions in Options are executed and settled in Tokyo by Regular Members or Special Participants. Options are certificateless and transactions and positions are evidenced by statements from the Exchange to Regular Members and Special Participants and by them to their customers.

Equity Options and Index Options are not fungible or interchangeable with options that are traded on any other market. Thus, any Equity Options or Index Options position opened on the TSE can be closed only on the TSE or exercised only by a Regular Member or Special Participant giving an exercise notice to the Exchange.

The TSE's procedures are designed so that for every outstanding Option for which there is a buyer there is a writer of an Option of the same series who has undertaken to perform the writer's obligations in the event that an exercise is assigned to such writer. Once the exercise of an Option is allocated to a particular writer, that writer is contractually obligated to perform in accordance with the terms of the Option. These contractual obligations are secured by the securities or cash that the writer has deposited (if a customer, with a TSE Regular Member or Special Participant; if a Regular Member or Special Participant, with the Exchange).

On May 1, 1999, with respect to all Options outstanding on that date, the TSE will be interposed on a principal-to-principal basis, as the buyer to each Regular Member or Special Participant who has sold an Option and seller to each Regular Member or Special Participant who has bought an Option. As to all purchases or sales of Options after May 1, 1999, the TSE is interposed on a principal-to-principal basis as the buyer to each Regular Member or Special Participant seller of an Option and seller to each Regular Member or Special Participant buyer of an Option. As principal, the TSE in effect guarantees such trades to such Regular Members and Special Participants.

After exercise of Equity Options has been allocated, clearing and settlement of each transaction in the underlying securities takes place within the regular settlement system of

the TSE. Index Options are cash settled through (effective after April 30, 1999, with) the Exchange.

Currently, for Options trading, the TSE does not provide direct electronic access to the Stock Exchange to persons located in the United States. The TSE represents that it will not make Options trading accessible in this fashion without express approval from the Commission.

Transactions with U.S. Customers

The TSE wishes to familiarize certain registered broker-dealers and large financial institutions in the United States with the Equity and Index Options traded on the TSE, and thus 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 ("Rule 144A" and the "1933 Act," respectively), or an international organization excluded from the definition of "U.S. person" in Rule 902(k)(2)(vi) of Regulation S under the 1933 Act; and

(b) it must have had prior actual experience with traded options in the U.S. options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Exchange Act).

Regular Members and Special Participants will be required to take reasonable steps to assure themselves, before effecting any Options transaction 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 1933 Act), and that the customer has received the TSE disclosure document referred to below. The TSE will advise its Regular Members and Special Participants that, under U.S. law, Regular Members and Special 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.

The TSE will institute rules requiring Regular Members and Special Participants to furnish to Eligible Broker-Dealers and Eligible Institutions a TSE disclosure document before accepting an order from such entity to purchase or sell Options. The rules will also require that Regular Members and Special Participants obtain written representations from any Eligible Broker-Dealer or Eligible Institution, signed by an appropriate officer, to the following effect:

(1) it is an Eligible Broker-Dealer or Eligible Institution, and as such it (i) owns and invests on a discretionary basis a specified amount of eligible securities sufficient to be a qualified institutional buyer under Rule 144A under the 1933 Act (and if a bank, S&L, or other thrift institution, has a net worth meeting the requirements of Rule 144A under the 1933 Act), and (ii) has had prior actual experience in the U.S. standardized options markets and as a result thereof has received the options disclosure document entitled "Understanding the Risks and Uses of Listed Options" ("Options Disclosure Document" or "ODD") that is prepared by the Options Clearing Corporation and U.S. options exchanges;

(2) it has received the TSE disclosure document;

(3) its transactions in Equity Options or Index Options will be for its own account or for the account of another Eligible Broker-Dealer or 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 1933 Act;

(4) it will not transfer any interest or participation in a TSE Equity Option or Index Option 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) it will cause any disposition of an Option that it has purchased or written to be effected only on the TSE and to be settled on the TSE in Tokyo, and it understands that any required payments for premium, settlement, exercise or closing of any TSE Option in respect of which it has a contract with a Regular Member or Special Participant must be made in Japan and in Japanese yen. It also understands that, if in relation to an Option it has a contract with a Regular Member or Special Participant as a writer of such Option, margin must be provided to that Regular Member or Special Participant, and maintained, measured and deposited in Japanese yen or any other instrument approved by the TSE;

(6) 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 a written representation to the same effect as the foregoing and will provide it to the Regular Member or Special Participant upon demand; and

(7) it will notify the Regular Member or Special Participant of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to the Regular Member or Special Participant.

Copies of the TSE disclosure document, in the form submitted to and reviewed by the Division, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The TSE disclosure document provides an overview of the TSE 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 TSE Equity Options and Index Options.

The TSE will not engage in any general advertisement concerning TSE Equity Options or Index Options in the United States. The TSE maintains a representative office located in New York City. Representatives in this office and/or representatives of the TSE outside the United States (hereinafter each collectively referred to as a "TSE Representative"), will be available to respond to inquiries concerning the TSE from Eligible Broker-Dealers and Eligible Institutions. A TSE Representative may make personal calls on and correspond or otherwise communicate with entities such representative reasonably believes to be Eligible Broker-Dealers and Eligible Institutions in order to familiarize them with the existence and the operations of the TSE. Any Eligible Broker-Dealer or Eligible Institution would be provided, upon its first visit, communication or inquiry, with the TSE disclosure document.² The representative office will maintain a reasonable supply of that document, and of the most recently published annual report of the TSE, to respond to requests therefor from Eligible Broker-Dealers and Eligible Institutions. A TSE Representative may also participate in programs and seminars in the United States. A TSE Representative will not give investment advice or make any recommendations with respect to specific Equity Options or Index Options, nor will a TSE Representative solicit, take, or direct orders, nor recommend or refer particular Regular Members or Special Participants. If requested by an Eligible Broker-Dealer or Eligible Institution, a TSE Representative may make available to the requester a list of all Regular Members and Special Participants empowered to take orders from the public, and any registered U.S. broker-dealer affiliates of such Regular Members and Special Participants.

The TSE will require that Regular Members and Special Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in TSE Options, determine that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the TSE disclosure document and maintain a record of that determination.³ The TSE will furnish the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with a copy of any amendment made to the TSE 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.⁴

² If the first communication is by telephone, the TSE Disclosure Document will be mailed within one business day of the communication.

³ Telephone conversation between Sharon Lawson, Senior Special Counsel, and Kenneth Rosen, Attorney, Division, Commission, and Richard Streicher, Loeb & Loeb LLP, on July 26, 1999.

⁴ Telephone conversation between Sharon Lawson, Senior Special Counsel, and Kenneth Rosen, Attorney, Division, Commission, and Richard Streicher, Loeb & Loeb LLP, on July 26, 1999.

You represent that the TSE will continue to be an exchange organized, operating and regulated outside the United States and, in making its Options known to a particular, sophisticated segment of the U.S. financial community it will not be altering this fact. You also represent that the TSE will establish careful limitations to assure compliance with applicable U.S. securities laws, and that the TSE will continue as necessary to establish further limitations to assure continued compliance with applicable U.S. securities laws.

You further represent that making information concerning the TSE available in the United States as described in this letter will serve to increase, in a responsible manner, information concerning an important marketplace that will be of substantial benefit to appropriate U.S. professionals and in keeping with a U.S. desire not to restrict such professionals from global investment opportunities.

Finally, you also ask, on behalf of the TSE, that the Division confirm to you 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 (a) the furnishing of the TSE disclosure document by the TSE from outside the United States, by a TSE Representative in New York City, by a Regular Member, Special 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 Rule 9b-1(d) of the Exchange Act to furnish an options disclosure document before accepting an order from a customer to purchase or sell an Equity or TOPIX Option, and (b) that neither the furnishing of an TSE disclosure document to an Eligible Broker-Dealer or Eligible Institution by the TSE or by a TSE Representative, nor the furnishing of a TSE disclosure document by a Regular Member or Special Participant 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 Rule 15a-6(a) under the Exchange Act.

Response:

Based on the facts and representations set forth above, the Division will not recommend enforcement action to the Commission against the TSE, any of the officers, directors, or representatives of the TSE, Regular Members, or Special Participants under Section 15(a) of the Exchange Act if the TSE, Regular Members, or Special Participants act as you describe to familiarize Eligible Broker-Dealers and Eligible Institutions in the United States with Options without the TSE, Regular Members, or Special 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 the TSE, any of the officers, directors, or representatives of the TSE, Regular Members, or Special Participants under Section 15(a) of the Exchange Act if, solely in connection with the satisfaction of obligations under Exchange Act Rule 9b-1(d) and under the limited circumstances set forth above, (1) a TSE Representative, Regular Member, Special Participant, or Eligible Broker-Dealer provides the TSE disclosure

document to an Eligible Broker-Dealer and the Regular Member or Special 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) a TSE Representative furnishes a TSE disclosure document to an Eligible Institution, or a Regular Member or Special Participant furnishes a TSE disclosure document to an Eligible Institution in response to an otherwise unsolicited inquiry concerning Options, and the Regular Member or Special Participant effects transactions in Options with or for that Eligible Institution pursuant to Rule 15a-6(a)(1) under the Exchange Act. The staff notes in particular that the TSE will advise its Regular Members and Special Participants that it has been advised that, under U.S. law, Regular Members and Special 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 the Rule.

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

Finally, the Division has reviewed the proposed TSE disclosure document. Based on our review of that document, the Division wishes to advise you that it will not recommend that the Commission take enforcement action against a TSE Representative, a Regular Member, a Special Participant, or an Eligible Broker-Dealer pursuant to Rule 9b-1(d) under the Exchange Act, if the TSE Representative, Regular Member, Special Participant, or Eligible Broker-Dealer furnishes the TSE disclosure document to an Eligible Broker-Dealer or Eligible Institution before the Eligible Broker-Dealer or Eligible Institution effects a transaction in TSE Options, subject to the following conditions:

(1) the Eligible Broker-Dealer or Eligible Institution previously has received the ODD;

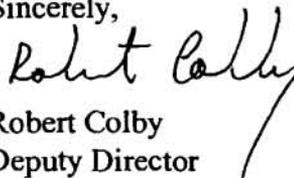
(2) the TSE requires that Regular Members and Special Participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in TSE Options, determine as described above that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the TSE disclosure document and maintain a record of that determination; and

(3) the TSE furnishes the Division, at least 30 days prior to the date definitive copies are furnished to Eligible Broker-Dealers or Eligible Institutions, with a copy of any amendment made to the TSE 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.

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 Japanese Ministry of Finance that provides a framework for mutual assistance in investigating regulatory matters,⁵ and that foreign broker-dealers, including TSE Regular Members and Special 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. Moreover, these positions are based on the understanding that under Japanese law only members licensed or registered by the competent Japanese authorities may have direct access to the TSE, which is licensed as a stock exchange and subject to regulation by the Minister of Finance and the Financial Revitalization Committee. Finally, these positions are based on your representations that the TSE currently does not provide direct electronic access for Options trading to persons located in the United States, and that the TSE will not make Options trading accessible in this fashion without 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,



Robert Colby
Deputy Director

⁵ See, Memorandum of the United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on Sharing Information (May 23, 1986).

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SECURITIES AND EXCHANGE COMMISSION
RECEIVED

JUL 23 1999

DIVISION OF MARKET REGULATION

1934 Act/5
/6
/15(b)
/17A
/Rule 9b-1

Mr. Michael Walinkas
Associate Director
Office of Market Supervision
Division of Market Regulation
Securities and Exchange Commission
450 5th Street, N.W.
Judiciary Plaza
Washington, D.C. 20549

Dear Mr. Walinkas:

On behalf of the Tokyo Stock Exchange (the "TSE" or the "Exchange"), we request your advice, based on this letter, and in view of the relief granted by the Division of Market Regulation (the "Division") to the Hong Kong Futures Exchange Limited,¹ the London International Financial Futures Exchange and the London Clearing House limited,² and the Société de Compensation des Marchés Conditionnels³, (a) that the Division will not recommend to the Securities and Exchange Commission (the "Commission") any enforcement action (i) against the TSE, any of the officers, directors or representatives of the TSE, regular members of the TSE ("Regular Members"), or entities designated by the TSE as Special

¹ See Hong Kong Futures Exchange limited--Hang Seng Index Options, available September 26, 1995.

² See London International Financial Futures Exchange, available May 1, 1992.

³ See Société de Compensation des Marchés Conditionnels, available June 17, 1996.

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Participants in Equity Options or Special Participants in Stock Index Futures and Options (collectively, "Special Participants") by reason of the TSE not registering under Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") as a securities exchange, (ii) against the TSE, any of the officers, directors or representatives of the TSE, or Regular Members or Special Participants, by reason of the TSE, the Regular Members and Special Participants not registering under Section 15(b) of the Exchange Act as broker-dealers, and (iii) against the TSE or any of the officers, directors or representatives of the TSE by reason of the TSE not registering under Section 17A of the Exchange Act as a clearing agency, if the TSE and its representatives and the Regular Members and Special Participants act as described below to familiarize certain registered broker-dealers and large financial institutions in the United States with the TSE and its equity and index options, and (b) as set forth in the penultimate paragraph of this letter.

The TSE is one of the largest stock exchanges in the world and is the principal exchange for Japanese stocks. Organized in its current form in 1949, the Exchange traces its origins to the founding of the Tokyo Stock Exchange Co. Ltd. in 1878.

The TSE is an incorporated organization under a membership system established in accordance with the Securities and Exchange Law of Japan (Law No. 25 of 1948, as amended) (the "Securities and Exchange Law"). The Exchange is licensed to act as a stock exchange by the Minister of Finance of Japan pursuant to the Securities and Exchange Law. Under the Securities and Exchange Law, the Financial Revitalization Committee and the Minister of Finance have continuing supervisory authority over all stock exchanges in Japan including the TSE.

Under the Securities and Exchange Law, only stock corporations registered by the Financial Revitalization Committee may engage in the securities business. Only such Japanese securities companies, and foreign securities companies registered by the Financial Revitalization Committee pursuant to the Securities and Exchange Law and to the Law Concerning Foreign Securities Firms, can become Regular Members or Special Participants of the Exchange.

Special Participants are non-member domestic or foreign securities companies, which are permitted to participate directly in trading Equity Options or Index Options (as such capitalized terms are defined below) on the TSE. Some Special Participants may be designated by the Exchange as Special Participants in Equity Options and permitted to trade only Equity Options. Others may be designated Special Participants in the Stock Index Futures and Options Trading, authorized by the Exchange for Index Options trading and not for Equity Options trading. Some Special Participants may be designated as both. Special Participants are members of the Japan

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Securities Dealers Association, as are Regular Members, and thus subject to its rules. Also, Special Participants' transactions on the TSE are subject to relevant provisions of the Exchange's Constitution and its rules and regulations. To the extent Special Participants are permitted to trade Equity Options or Index Options, they function, and are subject to the Constitution, rules and regulations of the TSE, the same as Regular Members. Therefore, all Special Participants and Regular Members both as to themselves and Equity Options and Index Options are subject to similar regulatory requirements.

Two basic types of options are discussed in the disclosure document materials submitted to and reviewed by the Division: options on individual stocks selected by the TSE that are listed and traded on the TSE ("Equity Options") and options on stock indexes comprised of stocks listed and traded on the TSE ("Index Options"). As of the date of this letter, the Tokyo Stock Price Index, known as "TOPIX," is the only stock index on which Index Options are traded (such Index Options, hereinafter "TOPIX Options"). Equity Options and TOPIX Options (together, the "Options") are the sole subject matter of this request.

Each Regular Member and Special Participant is required to deposit and maintain margin with the Exchange with respect to each Option for which it represents the writer. Such margin is calculated, collected and held by the Exchange in segregated accounts at designated banks. The margin required of Regular Members and Special Participants and their respective customers is calculated according to Exchange rules, taking into account the risks associated with the fluctuations in the premium for an Option, and is marked to market at least daily and adjusted accordingly.

Prices on the TSE for Equity Options and Index Options are publicly quoted, and all Options are bought and sold, in Japanese yen. All transactions creating or closing positions in Options are executed and settled in Tokyo by Regular Members or Special Participants. Options are certificateless and transactions and positions are evidenced by statements from the Exchange to Regular Members and Special Participants and by them to their customers.

Equity Options and Index Options are not fungible or interchangeable with options that are traded on any other market. Thus, any Equity Options or Index Options position opened on the TSE can be closed only on the TSE or exercised only by a Regular Member or Special Participant giving an exercise notice to the Exchange.

The TSE's procedures are designed so that for every outstanding Option for which there is a buyer there is a writer of an Option of the same series who has undertaken to perform the writer's obligations in the event that an exercise is assigned

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to such writer. Once the exercise of an Option is allocated to a particular writer, that writer is contractually obligated to perform in accordance with the terms of the Option. These contractual obligations are secured by the securities or cash that the writer has deposited (if a customer, with a TSE Regular Member or Special Participant; if a Regular Member or Special Participant, with the Exchange).

On May 1, 1999, with respect to all Options outstanding on that date, the TSE was interposed on a principal-to-principal basis, as the buyer to each Regular Member or Special Participant who has sold an Option and seller to each Regular Member or Special Participant who has bought an Option. As to all purchases or sales of Options after May 1, 1999, the TSE is interposed on a principal-to-principal basis as the buyer to each Regular Member or Special Participant seller of an Option and seller to each Regular Member or Special Participant buyer of an Option. As principal, the TSE in effect guarantees such trades to such Regular Members and Special Participants.

After exercise of Equity Options has been allocated, clearing and settlement of each transaction in the underlying securities takes place within the regular settlement system of the TSE. Index Options are cash settled through (effective after April 30, 1999, with) the Exchange.

The TSE wishes to familiarize certain registered broker-dealers and large financial institutions in the U.S. with Equity Options and Index Options and 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, as amended ("Rule 144A" and the "Securities Act," respectively), or an international organization excluded from the definition of "U.S. person" by Rule 902(k)(2)(vi) under the Securities Act, and

(b) it must have had prior actual experience with traded options in the United States options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Exchange Act).

Regular Members and Special Participants will be required to take reasonable steps to assure themselves, before effecting any Options transaction 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) under the Securities Act), and that the customer has received the TSE disclosure document referred to below. The TSE will advise its Regular Members and Special Participants that it has been advised that, under U.S. law, Regular Members and Special 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.

The TSE will institute rules requiring Regular Members and Special Participants to furnish to Eligible Broker-Dealers and Eligible Institutions a TSE disclosure document before accepting an order from such entity to purchase or sell Options. The rules will also require that Regular Members and Special Participants obtain written representations from any Eligible Broker-Dealer or Eligible Institution, signed by an appropriate officer, to the following effect:

1. it is an Eligible Broker-Dealer or Eligible Institution, and as such it (i) owns and invests on a discretionary basis a specified amount of eligible securities sufficient to be a qualified institutional buyer under Rule 144A (and if a bank, S&L, or other thrift institution, has a net worth meeting the requirements of Rule 144A), and (ii) has had prior actual experience in the U.S. standardized options markets and as a result thereof has received the options disclosure document entitled "Understanding the Risks and Uses of Listed Options" that is prepared by the Options Clearing Corporation and U.S. options exchanges;
2. it has received the TSE disclosure document;
3. its transactions in Equity Options or Index Options will be for its own account or for the account of another Eligible Broker-Dealer or Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) under the Securities Act;
4. it will not transfer any interest or participation in a TSE Equity Option or Index Option it has purchased or written to any other U.S. person, or to any person in the U.S., who is not an Eligible Broker-Dealer or Eligible Institution;
5. it will cause any disposition of an Option that it has purchased or written to be effected only on the TSE and to be settled on the TSE in Tokyo, and it understands that any required payments for premium, settlement, exercise or closing of any TSE Option in respect of which it has a contract with a Regular Member or Special Participant must be made in Japan and in Japanese yen. It also understands that, if in relation to an Option it has a contract with a Regular Member or Special Participant as a writer of such Option, margin must be provided to that Regular

Member or Special Participant, and maintained, measured and deposited in Japanese yen or any other instrument approved by the TSE;

6. 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 a written representation to the same effect as the foregoing and will provide it to the Regular Member or Special Participant upon demand; and

7. it will notify the Regular Member or Special Participant of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to a Regular Member or Special Participant.

A TSE disclosure document, in the form submitted to and reviewed by the Division, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The TSE disclosure document provides an overview of the TSE 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 Equity Options and Index Options.

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

The TSE maintains a representative office located in New York City. Representatives in this office and/or representatives of the TSE outside the United States (hereinafter each collectively referred to as a "TSE Representative"), will be available to respond to inquiries concerning the TSE from Eligible Broker-Dealers and Eligible Institutions. A TSE Representative may make personal calls on and correspond or otherwise communicate⁴ with entities such representative reasonably believes to be Eligible Broker-Dealers and Eligible Institutions in order to familiarize them with the existence and the operations of the TSE. Any Eligible Broker-Dealer or Eligible Institution would be provided, upon its first visit, communication or inquiry, with the TSE disclosure document. The representative office will maintain a reasonable supply of that document, and of the most recently published annual report of the TSE, to respond to requests therefor from Eligible Broker-Dealers and Eligible Institutions. A TSE Representative may also participate in programs and seminars in the United States. A TSE Representative will not give investment advice or make any recommendations with respect to specific Equity Options or Index Options, nor will a

⁴ If the first communication is by telephone, the TSE disclosure document will be mailed within one business day of the communication.

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TSE Representative solicit, take, or direct orders, nor recommend or refer particular Regular Members or Special Participants. If requested by an Eligible Broker-Dealer or Eligible Institution, a TSE Representative may make available to the requester a list of all Regular Members and Special Participants empowered to take orders from the public, and any registered U.S. broker-dealer affiliates of such Regular Members and Special Participants.

Currently, for Options trading, the TSE does not provide direct electronic access to the Stock Exchange to persons located in the United States. The TSE represents that it will not make Options trading accessible in this fashion without express approval from the Commission.

The TSE will continue to be an exchange organized, operating and regulated abroad, and in making its Options known to a particular, sophisticated segment of the U.S. financial community it will not be altering this fact. The TSE will establish careful limitations in order to assure compliance with applicable U.S. securities laws, and the TSE will continue as necessary to establish further limitations to assure continued compliance with applicable U.S. securities laws.

Making information concerning the TSE available in the United States as described in this letter will serve to increase, in a responsible manner, information concerning one of the most important world marketplaces that will be of benefit to appropriate U.S. professionals and in keeping with a U.S. desire not to restrict such professionals from global investment opportunities.

We therefore respectfully request on behalf of the TSE 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, and that you advise us (a) that furnishing of the TSE disclosure document by the TSE from outside the United States, by a TSE Representative in New York City, by a Regular Member, Special Participant or by an Eligible Broker-Dealer, in each case, to an Eligible Broker-Dealer or Eligible Institution will satisfy any obligation of a broker or dealer under Rule 9b-1(d) under the Exchange Act to furnish an options disclosure document before accepting an order from a customer to purchase or sell an Equity Option or TOPIX Option, and (b) that neither the furnishing of a TSE disclosure document to an Eligible Broker-Dealer or Eligible Institution by the TSE or by a TSE Representative, nor the furnishing of a TSE disclosure document by a Regular Member or Special Participant to an Eligible Broker-Dealer or, in response to an unsolicited inquiry concerning Options, to an Eligible Institution, will constitute solicitation or provision of a research report, as such terms are used in Rule 15a-6(a) under the Exchange Act.

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If you need any further information concerning this request, please do not hesitate to call the undersigned, Richard P. Streicher, at (212) 407-4860.

Sincerely,

Richard P. Streicher

Richard P. Streicher
of Loeb & Loeb LLP