



SFE Bulletin No: 07/05

From: SFE Corporation Limited ABN 74 000 299 392

Date of Issue: 03 February 2005

Effective Date: Immediately

RECENT AMENDMENTS TO OPERATING RULES OF SYDNEY FUTURES EXCHANGE LIMITED AND SFE CLEARING CORPORATION PTY LTD

Changes have recently been made to the Operating Rules of Sydney Futures Exchange Limited and SFE Clearing Corporation Pty Ltd:

1. which obviate the need for SFE and Participants to enter into individual contracts for the provision by SFE of equipment and software licences to Participants; and
2. which provide that no liability arises on the part of SFE in respect of decisions made in good faith pursuant to the exercise of a regulatory function or power.

Incorporation of terms of licence and provision of equipment into Operation Rules

Most of the existing contractual arrangements between SFE and Participants are set out in the Operating Rules of the relevant SFE company, which constitutes an agreement between the company and its Participants. These amendments, which incorporate into the rules standard terms for licences of intellectual property and for the provision of hardware, extend these existing arrangements. The amendments provide that the terms on which SFE provides a particular service will be standard for all Participants, thus eliminating the need for separate agreements with each Participant and giving the benefits of efficiency and fairness of treatment to all Participants.

The terms which are set out in the new Rules are based on and are substantially the same as the terms of individual agreements already in place between SFE and individual Participants for the SYCOM and OM SECUR systems.

The new rules will initially apply only to new Participants. They do not supersede existing agreements (such as the SYCOM and OM SECUR agreements) and will not apply to any variation of an existing agreement. SFE will advise Participants of any wider application of the rules in due course – SFE expects that this will happen in respect of any new systems which it may introduce in the long term.

The amendments are set out in Annexure A (Exchange amendments) and Annexure B (SFE Clearing amendments).

Limitation of Liability

The Operating Rules of both the Exchange and of SFE Clearing currently exclude the relevant company from liability in respect of any losses arising from the use of Exchange or Clearing Systems (as the case may be) and, in the case of the Exchange, arising from the use of indices and other statistics provided by third parties for the calculation of settlement prices.

The new rules provide an additional exclusion from liability for losses arising from acts or omissions on the part of the Exchange or SFE Clearing, associated with the exercise, in good faith, of their regulatory powers – ie powers which are granted by legislation. This is a similar concept to that which applies to ASIC, which excludes it from liability in the same circumstances.

The amendments are set out in Annexure C (Exchange amendments) and Annexure D (SFE Clearing amendments).

Should you have any queries please contact Patricia Gilligan on 9256-0661 or pgilligan@sfe.com.au.

A handwritten signature in black ink that reads "Malcolm Starr". The signature is written in a cursive, flowing style.

MALCOLM STARR
GENERAL COUNSEL & COMPANY SECRETARY

AMENDMENTS TO RULES OF SYDNEY FUTURES EXCHANGE TO PROVIDE FOR TERMS OF SOFTWARE LICENCES AND PROVISION OF EXCHANGE EQUIPMENT

1. Delete existing definitions of 'Exchange System' and 'Licensor' and insert the following new definitions into Rule 7:

| <u>Words</u> | <u>Meanings</u> |
|----------------------------|---|
| Exchange Equipment | equipment required by a Participant in order to access the SFE System for the purpose of carrying out its activities as a Participant of the Exchange, which may be supplied from time to time by the Exchange or a Related Body Corporate. |
| Exchange Software | the software developed by or on behalf of the Exchange or a Related Body Corporate from time to time to operate the SFE System and required by a Participant in order to access the Exchange System for the purpose of carrying out its activities as a Participant of the Exchange. |
| Intellectual Property | <p>(a) any patent, trade mark (whether registered or common law), copyright, registered design or other design right, and any corresponding property right under the laws of any jurisdiction throughout the world;</p> <p>(b) any right under the laws of Australia, or of any jurisdiction throughout the world, to apply for the grant or registration of a patent, trade mark, copyright, design, or any corresponding property or right; and</p> <p>(c) any rights throughout the world in respect of an invention, discovery, trade secret, know-how, concept, idea, information, data, algorithm or formula.</p> |
| Licence | in Operating Rule 2.4 means a licence or sub-licence |
| Licensed Software | the Exchange Software which is the subject of a licence granted by Operating Rule 2.4.1(a) |
| Licensor | means any third party who as the owner of Intellectual Property rights licenses the Exchange or a Related Body Corporate to use those Intellectual Property rights in the manner set out in the relevant licence. |
| SFE System | any system, including trading system, computer system or other electronic system (including the Exchange Software and Exchange Equipment) utilised by the Exchange or any of its Related Bodies Corporate from time to time in connection with any business of the Exchange or any of its Related Bodies Corporate. |
| Trading Infrastructure Fee | any and all charges determined by the Exchange from time to time payable by a Participant to the Exchange in consideration for, or in any way connected with, the use of the SFE System. |
| Support Fee | the fee determined by the Exchange from time to time, charged by the Exchange, for providing support services in relation to the SFE System. |

2 Add a new Rule 2.2.6(e) as follows (addition underlined):

2.2.6 Trading Rights

A Full Participant shall:

- (a) be entitled to trade on the Markets of the Exchange through its Representatives in its own name, or as otherwise permitted by the Operating Rules;
- (b) be responsible for all orders entered into the Trading Platform and become a party to each trade;
- (c) subject to these Operating Rules and the Corporations Act, be entitled to deal in Contracts on behalf of Clients;
- (d) be entitled to allow the entry of orders into the Trading Platform by means of Terminals:
 - (i) in such number as shall be approved by the Exchange; and
 - (ii) in such location as shall be approved by the Exchange; and
- (e) be entitled to use Exchange Software and Exchange Equipment pursuant to Rule 2.4.

3 Add a new Rule 2.3.6(c) as follows (addition underlined):

2.3.6 Trading Rights

A Local Participant shall:

- (a) be entitled to trade on the Markets of the Exchange only on its own behalf, and
- (b) be entitled to allow the entry of orders into the Trading Platform by means of Terminals:
 - (i) in such number as shall be approved by the Exchange; and
 - (ii) in such location as shall be approved by the Exchange; and
- (c) be entitled to use Exchange Software and Exchange Equipment pursuant to Rule 2.4.

4 Add a new Rule 2.4. to read as follows:

2.4. USE OF SFE SYSTEMS

2.4.1 LICENCE OVER EXCHANGE SOFTWARE

(a) Grant of Licence

By meeting and continuing to meet the conditions set out in Rule 2.4.1(b), and subject to the Operating Rules, a Participant is granted by the Exchange and continues to hold, a non-transferable, non-exclusive Licence to use such part of the Exchange Software as is approved by the Exchange.

(b) Conditions of Licence

The conditions of a Licence granted to a Participant under Rule 2.4.1(a) are that the Participant must:

- (a) use the Licensed Software solely for purposes in the ordinary course of business directly related to the Participant's activities as a Participant;
- (b) pay to the Exchange the Trading Infrastructure Fee and any Support Fee;
- (c) not breach any Intellectual Property rights of the Exchange or any other third party in relation to the Licensed Software;
- (d) use the Licensed Software only in accordance with the Operating Rules;
- (e) not make or permit others to make any copy of the Licensed Software other than for back-up purposes and only in the ordinary course of its back-up procedures;
- (f) not sub-license or otherwise transfer, assign, disclose or otherwise make available or supply the Licensed Software, or any part, version, copy, adaptation, enhancement, amendment, modification or new release of the Licensed Software to any other person without the consent of the Exchange;
- (g) not transfer the Licensed Software to or network it with any site other than the site authorised by the Exchange from time to time;
- (h) not use the Licensed Software to process the data of any third party for the purposes of the business of such third party, except in accordance with the Operating Rules;
- (i) not change, modify, amend or alter the Licensed Software or permit, employ or contract any other party (other than the Exchange or a party authorised by the Exchange) to do so;
- (j) not remove or deface any identification of ownership of copyright, trade mark or other proprietary rights connected with the Licensed Software;

- (k) not reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify, unlock or permit, assist or cause any other person to reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify or unlock the Licensed Software;
- (l) not derive works from the Licensed Software which infringe the Copyright Act; 1968 (Cth)
- (m) not use or permit the use of the Licensed Software by any persons not authorised to do so;
- (n) not attach to the Licensed Software any item which is not Exchange Equipment or equipment approved by the Exchange;
- (o) not disseminate data or confidential information generated by the SFE System to a third party or allow a third party access to the SFE System for the purpose of dissemination of that data or confidential information to others;
- (p) install any enhancements or upgrades to the Licensed Software as the Exchange may from time to time direct;
- (q) upon the Exchange giving the Participant reasonable notice, allow the Exchange to effect any enhancements or upgrades to the Licensed Software as required by the Exchange;
- (r) only use the Licensed Software on a site or sites as the Exchange may from time to time agree to in writing;
- (s) use the Licensed Software in accordance with any operating instructions supplied by the Exchange or by any other party on behalf of the Exchange;
- (t) use all reasonable endeavours to maintain an environment suitable to keep the Licensed Software in effective working order and condition;
- (u) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Licensed Software;
- (v) bear all costs of repairing or replacing damaged Licensed Software where such damage results from negligent or reckless use or wilful abuse of the Licensed Software on the part of Participant, its officers or agents;
- (w) notify the Exchange as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Licensed Software;
- (x) not permit any unauthorised software to be installed or loaded in conjunction with the Licensed Software.

(c) Title to Licensed Software

- (i) With the exception of a non-exclusive Licence granted pursuant to Rule 2.4.1(a), use by a Participant of the SFE System will not confer upon the Participant any right, title or interest in the Licensed Software.
- (ii) Ownership of any Intellectual Property rights in
 - (A) the Licensed Software; and
 - (B) any works within the meaning of the Copyright Act 1968 (Cth) derived from the Licensed Software,
 will vest or remain vested in the Exchange or the relevant Licensor or any other entity as the Exchange or its Licensor (as the case may be) may in their sole discretion elect.

(d) Warranty as to Title

The Exchange warrants to each Participant to whom it grants a Licence in accordance with Rule 2.4.1(a) that it is authorised to grant the Licence and that the Participant is entitled to use the Licensed Software in accordance with the Operating Rules.

(e) Intellectual Property Rights Indemnity

- (i) The Exchange agrees to indemnify each Participant to whom a Licence has been granted against any loss the Participant may suffer due to any claim by any third party that the use or possession by the Participant of the Licensed Software infringes any Intellectual Property right of that third party but only to the extent to which the Exchange is actually indemnified by its Licensors under the relevant licence agreements and provided that:
 - (A) The Exchange is given notice of the claim as soon as practicable after receipt of a written claim by the Participant from any such third party;
 - (B) The Exchange or its Licensors (as the case may be) are given complete control over such claim, and the Participant fully co-operates with the Exchange at the Exchange's or its Licensor's reasonable expense in the conduct of such claim;
 - (C) the Participant does not prejudice in any manner the Exchange's or the Licensor's conduct of such claim;
 - (D) the claim is not based upon the use of the Licensed Software in a manner:
 - (I) not authorised under these Operating Rules;
 - (II) for which the Licensed Software was not designed; or
 - (III) not in accordance with the documentation provided by the Exchange or its Licensors;
 and

- (E) The Exchange will not be obliged to indemnify the Participant for any claim of infringement based on the:
 - (i) use of an altered version of the Licensed Software unless such alteration was authorised in writing by the Exchange;
 - (ii) combination, operation or use of the Licensed Software with software, hardware, equipment or other materials not supplied by the Exchange; or
 - (iii) use of a superseded version of the Licensed Software where the Participant has failed to install an upgraded or enhanced version of the Licensed Software as directed by the Exchange.
- (ii) If a final injunction is obtained against the use of any part of the Licensed Software as a result of a claim under which the Exchange is obliged to indemnify the Participant under this Rule 2.4.1(e), and provided the Participant has fully complied with its obligations regarding any such claim, the Exchange may, at its absolute option and expense either:
 - (A) procure for the Participant the right to continue to use the Licensed Software;
 - (B) modify the Licensed Software so that it becomes non-infringing;
 - (C) replace the Licensed Software with software offering substantially similar functions; or
 - (D) terminate the Licence without any further liability to the Participant.
- (iii) The Participant agrees to indemnify the Exchange for any loss or damage the Exchange may suffer due to any claim by a third party for actual or alleged infringement of any Intellectual Property right arising out of the Participant's use of the SFE System in any manner prohibited by these Operating Rules.

2.4.2 TERMS RELATING TO EXCHANGE EQUIPMENT

(a) Supply of Exchange Equipment

- (i) Any Exchange Equipment supplied to a Participant by the Exchange will be supplied, installed and serviced subject to the Participant complying with the conditions in Rule 2.4.2(b) and subject to the Operating Rules.
- (ii) The quantity and type of Exchange Equipment supplied pursuant to Rule 2.4.2(a)(i) shall be as approved by the Exchange.
- (iii) Any equipment supplied by a Participant must comply with specifications approved by the Exchange and, if the Exchange so determines, must be installed by the Exchange.

(b) Conditions of use of Exchange Equipment

The conditions applicable to the supply to and use of the Exchange Equipment by a Participant are that the Participant must:

- (i) pay to the Exchange the Trading Infrastructure Fee and any Support Fee;
- (ii) use the Exchange Equipment in accordance with any operating instructions supplied by the Exchange or by any other party on behalf of the Exchange;
- (iii) use all reasonable endeavours to maintain an environment suitable to keep the Exchange Equipment in effective working order and condition;
- (iv) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Exchange Equipment;
- (v) bear all costs of repairing or replacing damaged Exchange Equipment where such damage results from negligent or reckless use or wilful abuse of the Exchange Equipment on the part of the Participant, its officers or agents;
- (vi) notify the Exchange as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Exchange Equipment;
- (vii) insure the Exchange Equipment to its full market value, such value to be advised in writing by the Exchange;
- (viii) not permit any unauthorised software to be installed or loaded onto the Exchange Equipment.

(c) Title to the Exchange Equipment

Title to the Exchange Equipment will remain with the Exchange or a Related Body Corporate and shall not pass to a Participant upon delivery of the Exchange Equipment to the Participant at the agreed site.

(d) Insurance

A Participant must effect and maintain adequate insurance cover with a reputable insurance company with respect to loss or damage to the Exchange Equipment and for any potential liability, loss or damage arising out

of use of the Exchange Equipment and must produce on demand by the Exchange evidence of such insurance cover.

2.4.3 TERMS RELATING TO BOTH LICENSED SOFTWARE AND EXCHANGE EQUIPMENT

(a) Responsibility of the Exchange

The Exchange will:

- (i) supply and service the Exchange Equipment and the Licensed Software in the Sydney central business district, or such other location(s) as the Exchange may designate in writing, in accordance with the installation and servicing instructions for the Exchange Equipment and the Licensed Software or as otherwise provided by the Exchange from time to time;
- (ii) subject to Rules 2.4.1(b)(xxii) and 2.4.2(b)(v), as soon as reasonably possible repair or replace damaged Exchange Equipment and Licensed Software;
- (iii) liaise with the Participant concerning the Participant's requirements for Exchange Equipment and Licensed Software;
- (iv) co-ordinate additions, reductions and relocations of Exchange Equipment and Licensed Software;
- (v) maintain an inventory of Exchange Equipment and Licensed Software and provide a copy of the same to the Participant upon reasonable request;
- (vi) provide a facility for the Participant to report faults in the Exchange Equipment and the Licensed Software to operational staff;
- (vii) invoice the Participant monthly;
- (viii) provide the Participant with upgrades or enhancements of the Licensed Software as and when they become available;
- (ix) in consideration for payment by the Participant of the Support Fee, provide the Participant with on-going support services during working hours (8.00 am to 5.00 pm Monday to Friday Sydney time), which will consist of:
 - (A) telephone support;
 - (B) remote access support.
 - (C) on-site support where the Exchange determines that support cannot be provided through the use of telephone support, or remote access capability.

(b) Responsibility for Security

A Participant will be solely responsible for the use of the SFE System by any person not authorised by the Exchange or for any misuse, damage or destruction of the SFE System resulting from the use of the SFE System by the Participant.

(c) Termination of Licence

The Exchange may terminate a Licence granted to the Participant under Rule 2.4.1(a) and the Participant's access to the SFE System in the event that the Participant ceases to be a Participant of the Exchange as a result of disciplinary proceedings taken under the Operating Rules.

(d) Suspension of Licence

The Exchange may suspend a Participant's access to the SFE System in the event that:

- (i) the Participant's Participant status or trading rights have been suspended under these Operating Rules; or
- (ii) in the opinion of the Chief Executive or his or her designate, a physical emergency (as described in these Operating Rules) occurs and the Chief Executive (or in his or her absence, his or her designate) or the Board, as the case may be, determines that such suspension is necessary to deal with the emergency;
- (iii) except where such amount is disputed in good faith, and without prejudice to any other rule relating to rights for late payment of fees in these Operating Rules, the Participant fails to pay the Trading Infrastructure Fee or the Support Fee within 30 days of the due date where the Exchange has issued a notice in writing to that effect to the Participant requiring payment, the Participant has failed to pay the amount set out in that notice within thirty days, the Exchange has issued a second notice, the Participant has failed to pay the amount set out in the Exchange's second notice within a further seven days and the total amounts referred to in the second notice exceed 25% of the total amount due under that invoice.

(e) Suspension to be lifted

If:

- (a) the Participant's Participant status and trading rights in the Exchange are no longer suspended; or
- (b) a physical emergency ceases to exist; or
- (c) the Participant pays to the Exchange the amount referred to in Rule 2.4.3(d)(iii) as well as any other outstanding amount which has accrued from the date of the last notice issued by the Exchange, then the Exchange must immediately lift the suspension of the Participant's access to the SFE System.

(f) Participant's Obligations on Termination of Licence

Upon termination of a Licence granted to it under Rule 2.4.1(a), a Participant will within 7 days of termination:-

- (i) cease use of the SFE System, return all documentation relating to the SFE System to the Exchange and certify in writing to the Exchange that it has complied with the foregoing;
- (ii) return all Exchange Equipment and Licensed Software to the Exchange; and
- (iii) pay any outstanding Trading Infrastructure Fee, Support Fee and other charges and expenses.

Explanatory Note

Link to Procedures relating to Rule 2.4 – Use of SFE Systems: [Use of SFE Systems](#)

AMENDMENTS TO CLEARING RULES TO PROVIDE FOR TERMS OF SOFTWARE LICENCES AND PROVISION OF EXCHANGE EQUIPMENT

1 Insert the following new definitions into Clearing Rule 1.1:

| <u>Words</u> | <u>Meanings</u> |
|-----------------------------|---|
| Exchange Equipment | equipment required by a Clearing Participant in order to access the SFE System for the purposes of carrying out its activities as a Clearing Participant, which may be supplied from time to time by the Exchange, SFE Clearing or a Related Body Corporate. |
| Clearing Infrastructure Fee | any and all charges determined by SFE Clearing from time to time, payable by the Clearing Participant in consideration for, or in any way connected with, the use of the SFE System. |
| Clearing Software | the software developed by or on behalf of SFE Clearing or a Related Body Corporate from time to time to operate the SFE System and required by a Clearing Participant in order to access the SFE System for the purpose of carrying out its activities as a Clearing Participant. |
| Intellectual Property | <p>(d) any patent, trade mark (whether registered or common law), copyright, registered design or other design right, and any corresponding property right under the laws of any jurisdiction throughout the world;</p> <p>(e) any right under the laws of Australia, or of any jurisdiction throughout the world, to apply for the grant or registration of a patent, trade mark, copyright, design, or any corresponding property or right; and</p> <p>(f) any rights throughout the world in respect of an invention, discovery, trade secret, know-how, concept, idea, information, data, algorithm or formula.</p> |
| Licence | in Clearing Rule 16.1 means a licence or a sub-licence. |
| Licensed Software | the Clearing Software which is the subject of a licence granted by Clearing Rule 16.1 |
| Licensor | means any third party who as the owner of Intellectual Property rights licenses SFE Clearing or a Related Body Corporate to use those Intellectual Property rights in the manner set out in the relevant licence. |
| SFE System | any system, including the clearing system, computer system or other electronic system (including the Licensed Software and the Exchange Equipment) utilised by SFE Clearing or any of its Related Bodies Corporate from time to time in connection with any business of SFE Clearing or any of its Related Bodies Corporate. |
| Support Fee | the fee determined by SFE Clearing from time to time for the provision of support services in relation to the Licensed Software. |

2 Amend Clearing Rule 3.2.1 as follows (additions underlined, deletions struck through):

3.2 Fees

- 3.2.1 The Board may impose the following fees in such amount as it may determine from time to time:
- (a) an application fee for admission as a Clearing Participant, which shall be applied against the cost of investigation into the suitability of the applicant and shall not be refundable to the applicant.
 - (b) an admission fee;
 - (c) an annual fee;
 - (d) a transaction fee for each contract or transaction which is registered in the name of the Clearing Participant;
 - (e) a fee for the acceptance of securities or collateral for Initial Margins or their realisation or renewal of such securities as collateral;
 - (f) a fee for mandatory cash settlement and delivery or exercise of options;
 - (g) a Clearing Infrastructure Fee
 - (h) a Support Fee if the Clearing Participant requires support as described in Clearing Rule 16, 17 or 18:
and
 - (i) such other fees as it may determine.
- and may impose different fees on different categories of Clearing Participant. Clearing Participants shall pay any fees so imposed, upon demand unless another time is specified. Fees payable pursuant to the Clearing Rules may be deducted by SFE Clearing from any credit balance of any account of the Clearing Participant with SFE Clearing.

3 Insert new Clearing Rules 16, 17 and 18 as follows:

16 USE OF SFE SYSTEM

16.1 Licence over Clearing Software

By meeting and continuing to meet the conditions set out in Rule 16.2, and subject to the Clearing Rules, a Clearing Participant is granted by SFE Clearing and continues to hold a non-transferable, non-exclusive Licence to use such part of the Clearing Software as is approved by SFE Clearing.

16.2 Conditions of Licence

The conditions of a Licence granted by SFE Clearing under Clearing Rule 16.1 are that the Clearing Participant must:

- (y) use the Licensed Software solely for purposes in the ordinary course of business directly related to the Clearing Participant's activities as a Clearing Participant;
- (z) pay the Clearing Infrastructure Fee and any Support Fee;
- (aa) not breach any Intellectual Property rights of SFE Clearing or any other third party in relation to the Licensed Software;
- (bb) use the Licensed Software only in accordance with the Clearing Rules;
- (cc) not make or permit others to make any copy of the Licensed Software other than for back-up purposes and only in the ordinary course of its back-up procedures;
- (dd) not sub-license or otherwise transfer, assign, disclose or otherwise make available or supply the Licensed Software, or any part, version, copy, adaptation, enhancement, amendment, modification or new release of the Licensed Software to any other person without the consent of SFE Clearing;
- (ee) not transfer the Licensed Software to or network it with any site other than the site authorised by SFE Clearing from time to time;
- (ff) not use the Licensed Software to process the data of any third party for the purposes of the business of such third party, except in accordance with the Clearing Rules;
- (gg) not change, modify, amend or alter the Licensed Software or permit, employ or contract any other party (other than SFE Clearing or a party authorised by SFE Clearing) to do so;
- (hh) not remove or deface any identification of ownership of copyright, trade mark or other proprietary rights connected with the Licensed Software;
- (ii) not reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify, unlock or permit, assist or cause any other person to reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify or unlock the Licensed Software;
- (jj) not derive works from the Licensed Software which infringe the Copyright Act 1968 (Cth);
- (kk) not use or permit the use of the Licensed Software by any persons not authorised to do so;

- (ll) not attach to the Licensed Software any item which is not Exchange Equipment or equipment approved by SFE Clearing;
- (mm) not disseminate data or confidential information generated by the SFE System to a third party or allow a third party access to the SFE System for the purpose of dissemination of that data or confidential information to others;
- (nn) install any enhancements or upgrades to the Licensed Software as SFE Clearing may from time to time direct;
- (oo) upon SFE Clearing giving the Clearing Participant reasonable notice, allow SFE Clearing to effect any enhancements or upgrades to the Licensed Software as required by SFE Clearing;
- (pp) only use the Licensed Software on a site or sites as SFE Clearing may from time to time agree to in writing;
- (qq) use the Licensed Software in accordance with any operating instructions supplied by SFE Clearing or by any other party on behalf of SFE Clearing;
- (rr) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Licensed Software;
- (ss) bear all costs of repairing or replacing damaged Licensed Software where such damage results from negligent or reckless use or wilful abuse of the Licensed Software on the part of the Clearing Participant, its officers or agents;
- (tt) notify SFE Clearing as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Licensed Software;
- (uu) not permit any unauthorised software to be installed or loaded in conjunction with the Licensed Software.

16.3 Title to Licensed Software and Ownership of any Intellectual Property rights

- (a) With the exception of the non-exclusive Licence granted pursuant to Clearing Rule 16.1, use by a Clearing Participant of the SFE System will not confer upon the Clearing Participant any right, title or interest in the Licensed Software.
- (b) Ownership of any Intellectual Property Rights in:
 - (i) The Licensed Software; and
 - (ii) any works within the meaning of the Copyright Act 1968 (Cth) derived from the Licensed Software,
 will vest or remain vested in SFE Clearing or the relevant Licensor or any other entity as SFE Clearing or its Licensor (as the case may be) may in their sole discretion elect.

16.4 Warranty as to Title

SFE Clearing warrants to each Clearing Participant to whom it grants a Licence in accordance with Clearing Rule 16.1 that it is authorised to grant the Licence **and** that the Clearing Participant is entitled to use the Licensed Software in accordance with the Clearing Rules.

16.5 Intellectual Property Rights Indemnity

- (a) SFE Clearing agrees to indemnify each Clearing Participant to whom a Licence has been granted against any loss the Clearing Participant may suffer due to any claim by any third party that the use or possession by the Clearing Participant of the Licensed Software infringes any Intellectual Property right of that third party but only to the extent to which SFE Clearing is actually indemnified by its Licensors under the relevant licence agreements and provided that:
 - (i) SFE Clearing is given notice of the claim as soon as practicable after receipt of a written claim by the Clearing Participant from any such third party;
 - (ii) SFE Clearing or its Licensors (as the case may be) are given complete control over such claim, and the Clearing Participant fully co-operates with SFE Clearing at SFE Clearing's or its Licensor's reasonable expense in the conduct of such claim;
 - (iii) the Clearing Participant does not prejudice in any manner SFE Clearing's or the Licensor's conduct of such claim;
 - (iv) the claim is not based upon the use of the Licensed Software in a manner:
 - (A) not authorised under these Clearing Rules;
 - (B) for which the Licensed Software was not designed; or
 - (C) not in accordance with the documentation provided by SFE Clearing or its Licensors; and
 - (v) SFE Clearing will not be obliged to indemnify the Clearing Participant for any claim of infringement based on the:

- (A) use of an altered version of the Licensed Software unless such alteration was authorised in writing by SFE Clearing;
 - (B) combination, operation or use of the Licensed Software with software, hardware, equipment or other materials not supplied by SFE Clearing; or
 - (C) use of a superseded version of the Licensed Software where the Clearing Participant has failed to install an upgraded or enhanced version of the Licensed Software as directed by SFE Clearing.
- (b) If a final injunction is obtained against the use of any part of the Licensed Software as a result of a claim under which SFE Clearing is obliged to indemnify the Clearing Participant under this Clearing Rule 16.5 and provided the Clearing Participant has fully complied with its obligations regarding any such claim, SFE Clearing may, at its absolute option and expense either:
- (i) procure for the Clearing Participant the right to continue to use the Licensed Software;
 - (ii) modify the Licensed Software so that it becomes non-infringing;
 - (iii) replace the Licensed Software with software offering substantially similar functions; or
 - (iv) terminate the Licence without any further liability to the Clearing Participant.
- (c) The Clearing Participant agrees to indemnify SFE Clearing for any loss or damage SFE Clearing may suffer due to any claim by a third party for actual or alleged infringement of any Intellectual Property right arising out of the Clearing Participant's use of the SFE System in any manner prohibited by the Clearing Rules.

Explanatory Note

Link to Procedures relating to Rule 16 – Use of SFE Systems: [Use of SFE Systems](#)

17 TERMS RELATING TO EXCHANGE EQUIPMENT

17.1 Supply of Exchange Equipment

- (a) Any Exchange Equipment supplied to a Clearing Participant will be supplied, installed and serviced subject to the Clearing Participant complying with the conditions in Clearing Rule 17.2 and subject to the Clearing Rules.
- (b) The quantity and type of Exchange Equipment supplied pursuant to Clearing Rule 17.1(a) shall be as approved by SFE Clearing.
- (c) Any equipment supplied by a Clearing Participant in lieu of Exchange Equipment must comply with specifications approved by SFE Clearing and, if SFE Clearing so determines, must be installed by SFE Clearing.

17.2 Conditions of use of Exchange Equipment

The conditions applicable to the supply and use of the Exchange Equipment by a Clearing Participant are that the Clearing Participant must:

- (a) pay the Clearing Infrastructure Fee and any Support Fee;
- (b) use the Exchange Equipment in accordance with any operating instructions supplied by SFE Clearing or by any other party on behalf of SFE Clearing;
- (c) use all reasonable endeavours to maintain an environment suitable to keep the Exchange Equipment in effective working order and condition;
- (d) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Exchange Equipment;
- (e) bear all costs of repairing or replacing damaged Exchange Equipment where such damage results from negligent or reckless use or wilful abuse of the Exchange Equipment on the part of the Clearing Participant, its officers or agents;
- (f) notify SFE Clearing as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Exchange Equipment;
- (g) insure the Exchange Equipment to its full market value, such value to be advised in writing by SFE Clearing;
- (h) not permit any unauthorised software to be installed or loaded onto the Exchange Equipment.

17.3 Title to the Exchange Equipment and Insurance Requirements

- (a) Title to the Exchange Equipment will remain with the Exchange and shall not pass to a Clearing Participant upon delivery of the Exchange Equipment to the Clearing Participant.
- (b) A Clearing Participant must effect and maintain adequate insurance cover with a reputable insurance company with respect to loss or damage to the Exchange Equipment and for any potential liability, loss or damage arising out of use of the Exchange Equipment and must produce on demand by SFE Clearing evidence of such insurance cover.

18 TERMS RELATING TO BOTH LICENSED SOFTWARE AND EXCHANGE EQUIPMENT

18.1 Responsibility of SFE Clearing

SFE Clearing will:

- (a) supply and service the Exchange Equipment and the Licensed Software in the Sydney central business district, or such other location(s) as SFE Clearing may designate in writing, in accordance with the installation and servicing instructions for the Exchange Equipment and the Licensed Software or as otherwise provided by SFE Clearing from time to time;
- (b) subject to Clearing Rules 16.2(u) and 17.2(e), as soon as reasonably possible repair or replace damaged Exchange Equipment and Licensed Software;
- (c) liaise with the Clearing Participant concerning the Clearing Participant's requirements for Exchange Equipment and Licensed Software;
- (d) co-ordinate additions, reductions and relocations of Exchange Equipment and Licensed Software;
- (e) maintain an inventory of Exchange Equipment and Licensed Software and provide a copy of the same to the Clearing Participant upon reasonable request;
- (f) provide a facility for the Clearing Participant to report faults in the Exchange Equipment and Licensed Software to operational staff;
- (g) provide the Clearing Participant with upgrades or enhancements of the Licensed Software as and when they become available;
- (h) in consideration for payment by the Clearing Participant of Support Fee, provide the Clearing Participant with on-going support services during working hours (8.00 am to 5.00 pm Monday to Friday Sydney time), which will consist of:
 - (i) telephone support;
 - (ii) remote access support.
 - (iii) on-site support where SFE Clearing determines that support cannot be provided through the use of telephone support, or remote access capability.

18.2 Responsibility for Security

A Clearing Participant will be solely responsible for the use of the SFE System by any person not authorised by SFE Clearing or for any misuse, damage or destruction of the SFE System resulting from the use of the SFE System by the Clearing Participant.

18.3 Termination of Licence

SFE Clearing may terminate a Licence granted under Clearing Rule 16.1 and the Clearing Participant's access to the SFE System in the event that the Clearing Participant ceases to be a Clearing Participant as a result of disciplinary proceedings taken under the Clearing Rules.

18.4 Suspension of Licence

SFE Clearing may suspend a Clearing Participant's access to the SFE System in the event that:

- (a) the Clearing Participant has been suspended under these Clearing Rules or
- (b) in the opinion of the Managing Director or his or her delegate, a physical emergency (as described in these Clearing Rules) occurs and the Managing Director (or in his or her absence, his or her delegate) or the Board, as the case may be, determines that such suspension is necessary to deal with the emergency;
- (c) except where such amount is disputed in good faith and without prejudice to any other rule relating to rights for late payment of fees in these Clearing Rules, the Clearing Participant fails to pay the Clearing Infrastructure Fee or any Support Fee within 30 days of the due date where SFE Clearing has issued a notice in writing to that effect to the Clearing Participant requiring payment, the Clearing Participant has failed to pay the amount set out in that notice within thirty days, SFE Clearing has issued a second

notice, the Clearing Participant has failed to pay the amount set out in SFE Clearing's second notice within a further seven days and the total amounts referred to in the second notice exceed 25% of the total amount due under that invoice.

18.5 Suspension to be lifted

If:

- (d) the Clearing Participant's suspension is lifted; or
- (e) a physical emergency ceases to exist; or
- (f) the Clearing Participant pays to SFE Clearing the amount referred to in Clearing Rule 18.4(c) as well as any other outstanding amount which has accrued from the date of the last notice issued by SFE Clearing,

then SFE Clearing must immediately lift the suspension of the Clearing Participant's access to the SFE System.

18.6 Clearing Participant's Obligations on Termination of Licence

Upon termination of the Licence granted to it under Clearing Rule 16.1, a Clearing Participant will within 7 days of termination:-

- (a) cease use of the SFE System, return all documentation relating to the SFE System to SFE Clearing and certify in writing to SFE Clearing that it has complied with the foregoing;
- (b) return the Exchange Equipment and Licensed Software to SFE Clearing; and
- (c) pay any outstanding Clearing Infrastructure Fee, Support Fee and other charges and expenses.

AMENDMENTS TO EXCHANGE RULES RELATING TO THE LIABILITY OF THE EXCHANGE

(deletions ruled through, additions underlined)

1.5.1 Limitation of Liability

- (a) Neither the Exchange nor the developer of any trading system or of any computer system or the developer or supplier of any index or indicator for the purpose of any futures contract utilised by the Exchange for any purpose, including without limitation in connection with the Trading Platform (collectively “Exchange Systems”) will accept or bear any liability whatsoever in respect of the operation of any Exchange System or otherwise, whether for any breach of a provision of any relevant legislation, any act or omission (whether negligent or not), injury, death, damage to physical property, any direct or indirect losses including but not limited to lost profits, loss of files, loss of contracts, loss of data or use of data (including any error in information supplied or made available), loss of operation time or loss of use of equipment or process, economic loss, loss of reputation or losses or damages incidental or consequential to the installation, use or operation of the Exchange Systems. All warranties and conditions, both express and implied as to condition, description, quality, performance, durability, or fitness for the purpose or otherwise of any of the Exchange Systems or any component thereof are excluded except as required by law; and the Exchange does not warrant or forecast that the Exchange Systems or any component thereof or any services performed in respect thereof will meet the requirements of any user, or that operation of the Exchange Systems will be uninterrupted or error-free, or that any services performed in respect of the Exchange Systems will be uninterrupted or error-free. Nothing in this Rule 1.5.1 shall limit any liability of a developer of any Exchange Systems to the Exchange.
- (b) The Exchange will not accept or bear any liability whatsoever in respect of any act done or omitted, in good faith and in the performance or purported performance of a function or power conferred on it by the Corporations Act or by any other legislative instrument or direction of any legislature or government authority having jurisdiction over it.

1.5.2 Exchange Principals

Every exemption from liability, defence or immunity applicable to the Exchange or to which the Exchange is entitled under Rule 1.5.1 shall also be available and shall extend to protect everyone of the Exchange’s officers, agents or employees from time to time, and SFE Clearing and any developer of any Exchange Systems (collectively called “the principals”).

1.5.3 Exchange Bound

To the extent necessary at law, and for the purpose only of making those exemptions from liability defences and immunities available to the principals, the Exchange shall be bound by Rule 1.5 on its own behalf and as agent or trustee for the principals and each of them.

1.5.4 Exclusion of Terms

Where the Trade Practices Act 1974 of Australia or any similar State, Territorial or other legislation implies in this Rule 1.5 any term, condition or warranty, and makes void or prohibits application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in Rule 1.5.1. However, the liability of the Exchange for any breach of such term, condition or warranty shall be limited, at the option of the Exchange, to any one or more of the following:

- (a) If the breach relates to goods:
- (i) the replacement of the goods or the supply of equivalent or similar goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (b) If the breach relates to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again

AMENDMENTS TO THE OPERATING RULES OF SFE CLEARING CORPORATION PTY LTD RELATING TO THE LIABILITY OF SFE CLEARING

(additions underlined)

94 Limitation on Obligations of SFE Clearing

- 94.1 The obligations of SFE Clearing under these Clearing Rules shall not extend to the performance by Clearing Participants of obligations arising other than under Open Contracts and these Clearing Rules (whether relating to the payment of commissions or otherwise) whether or not SFE Clearing provides facilities with respect to the fulfilment of such obligations.
- 94.2 SFE Clearing in performance of its obligations is entitled to rely upon the accuracy of information provided by the Exchange and its systems and shall not be liable with respect to any loss suffered as a result of any incorrect information provided to SFE Clearing or breakdown of Exchange systems.
- 94.3 (a) Neither SFE Clearing nor the Exchange nor the developer of any trading system or of any computer system ("Clearing Systems") utilised by SFE Clearing in connection with the business of SFE Clearing will accept or bear any liability whatsoever in respect of the operation of any Clearing System or otherwise, whether for any breach of a provision of any relevant legislation, any act or omission (whether negligent or not), injury, death, damage to physical property, any direct or indirect losses including but not limited to lost profits, loss of files, loss of contracts, loss of data or use of data (including any error in information supplied or made available), loss of operation time or loss of equipment or process, economic loss, loss of reputation or losses or damages incidental or consequential to the installation, use or operation of any Clearing System. All warranties and conditions, both express and implied as to the condition, description, quality, performance, durability or fitness for purpose or otherwise of the Clearing Systems or any component thereof are excluded except as required by law; and neither SFE Clearing nor the Exchange warrants or forecasts that the Clearing Systems or any component thereof or any services performed in respect thereof will meet the requirements of any user, or that operation of the Clearing Systems will be uninterrupted or error-free, or that any services performed in respect of the Clearing Systems will be uninterrupted or error-free. Nothing in this Rule 94.3 shall limit any liability of a developer of any Clearing System to SFE Clearing.
- (b) SFE Clearing will not accept or bear any liability whatsoever in respect of any act done or omitted, in good faith and in the performance or purported performance of a function or power conferred on it by the Corporations Act or by any other legislative instrument or direction of any legislature or government authority having jurisdiction over it.
- 94.4 Every exemption from liability, defence or immunity applicable to SFE Clearing or to which SFE Clearing is entitled under Clearing Rule 94.3 shall also be available and shall extend to protect every one of SFE Clearing's officers, agents or employees, and for the purposes of Clearing Rule 94.3(a) the Exchange and any developer of any Clearing Systems shall be deemed to have been acting as and to be agents of and for the benefit of all persons who are or might be its agents or employees from time to time, as well as on its own behalf.
- 94.5 Where the Trade Practices Act 1974 of Australia or the Commerce Act of New Zealand or any similar State or Territorial legislation implies in this Agreement any term, condition or warranty, and makes void or prohibits application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included herein. Provided that, the liability of SFE Clearing or the Exchange for any breach of such term, condition or warranty shall be limited, at the option of SFE Clearing or the Exchange, to any one or more of the following:
- (a) If the breach relates to goods:
- (i) the replacement of the goods or the supply of equivalent or similar goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (b) If the breach related to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.