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DIVISION OF  
TRADING AND MARKETS

COMMODITY FUTURES TRADING COMMISSION

2033 K STREET, N.W., WASHINGTON, D.C. 20681

*FCM Registration Regarding Non-Proprietary  
Branch Offices.*

September 26, 1984

Dear

This is in response to your letter of August 6, 1984, in which you requested the Division of Trading and Markets ("Division") to adopt a no-action position with respect to the activities of "A", an applicant for registration as a futures commission merchant ("FCM"), its affiliated companies and their respective employees. For the reasons set forth herein, the Division has determined to adopt the no-action position you requested, subject to the condition that "A" and its affiliated companies comply with the undertakings proposed in your letter.

Based upon the representations set forth in your letter and in subsequent telephone conversations with you, we understand the facts to be as follows:

"A" is a wholly-owned subsidiary of The "B" Corporation ("B"), a bank holding company, as defined in the Bank Holding Company Act of 1956, and the activities of "A" contemplated here are permitted by Regulation Y of the Board of Governors of the Federal Reserve System (12 C.F.R §225.25(b)(18)). "A" intends to solicit and accept orders primarily from non-affiliated, major corporate customers of the "B" Bank, N.A. (the "Bank"), a national banking association and wholly-owned subsidiary of "B", for futures contracts on securities issued or guaranteed by the U.S. Government, money market instruments, bullion, foreign exchange and options on futures contracts for securities issued or guaranteed by the U.S. Government. "A" will also accept orders for such futures contracts and options for the accounts of the Bank itself and other direct and indirect "B" subsidiaries.

It is intended that "A" will have a close operational relationship with the Bank, which will on a contractual basis provide "A" with necessary "back office" services and customer credit analysis. Moreover, "A" will -- at least initially -- have only a minimum sales force of its own, as it intends to rely principally upon personnel of the Bank and other "B" subsidiaries to solicit orders.

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Accordingly, most salespersons who will solicit and accept orders on behalf of "A" will be employed not by "A", but by the Treasury Department of the Bank and by other "B" subsidiaries, including "B" Government Securities, Inc., "B" Capital Markets Corporation, or "B" Treasury Corporation, all of which are wholly-owned subsidiaries of "B" or the Bank (which salespersons are collectively referred to as the "Affiliated Salespersons," and their employers are collectively referred to as the "Affiliated Employers"). The offices of "A" and of the Affiliated Employers generally are located at the corporate headquarters of "B". However, certain offices, designated Regional Treasury Offices, are located elsewhere in the United States. The Affiliated Employers will be compensated, on a basis yet to be determined, by "A" in consideration of the solicitation and acceptance of orders by the Affiliated Salespersons in their employ and the performance of related services.

The activities of the Affiliated Employers and their Affiliated Salespersons are similar to those conducted by persons formerly designated "agents" of FCMs. As you know, Congress amended the Commodity Exchange Act ("Act") in 1982 to eliminate this category and to require those persons who performed the types of activities traditionally engaged in by agents generally to register with the Commodity Futures Trading Commission ("Commission") as introducing brokers. <sup>1/</sup> In promulgating regulations to implement this provision of the Act, the Commission noted:

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<sup>1/</sup> Futures Trading Act of 1982, Pub. L. No. 97-444, §201 96 Stat. 2294 (1982).

[P]ersons who formerly operated as agents of an FCM must elect either to operate as an introducing broker or as a branch office of an FCM. . . .  
[This] is more fully consonant with the requirements of the Futures Trading Act of 1982 which specifically contemplate the separate existence and business identity of introducing brokers. 2/

As further interpreted by the Division, this amendment to the Act generally requires a separately incorporated branch office of an FCM either to register as an introducing broker or forsake its separate corporate identity. 3/

Because the Affiliated Employers are separate corporations, they ordinarily would not be permitted to operate as branch offices of . . . .  
Rather, each firm would be required to register as an introducing broker, and the Affiliated Salespersons would be required to register as associated persons of their respective Affiliated Employer. You have recognized that such registration may be required but have asserted that this result is neither necessary to satisfy the Commission's regulatory purposes nor appropriate in these circumstances. In particular, you have stated that, with respect to bank holding companies or national banks and their affiliates, the imposition of introducing broker registration would not further the Commission's regulatory objectives but would simply add another layer of operational, minimum capital, recordkeeping and reporting requirements upon a national bank and its affiliates.

As an alternative to registration as an introducing broker, you have suggested the following operational structure:

1. All Affiliated Salespersons will be registered with the Commission as associated persons of "A" .
2. Each office of each Affiliated Employer in which Commission-regulated activity will be conducted will be identified on "A" 's registration application or a supplement thereto as a branch office of "A" .
3. A supervisor with respect to the Commission-regulated activities of the Affiliated Salespersons will be designated for each branch office. Such supervisor will be listed as a principal and be registered as an associated person of "A" .

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2/ 48 Fed. Reg. 35248, 35252 (August 3, 1984).

3/ See CFTC Interpretative Letter 84-10 (May 29, 1984) 2 Comm. Fut. L. Rep. (CCH) ¶22,252.

4. An officer of at least the level of Vice President for each Affiliated Employer will also serve as an officer or director of "A" and will be listed as a principal and registered as an associated person of "A". Such officer will be vested by the relevant Affiliated Employer with final supervisory authority, including the authority to hire and fire, with respect to the Commission-regulated activities of the Affiliated Salespersons. Appropriate documents evidencing such authority will be furnished to the Commission.

5. To the extent that any other officer or employee of the Affiliated Employers has supervisory authority with respect to the Commission-regulated activities of the Affiliated Salespersons, such officer or employee will be listed as a principal and registered as an associated person of "A".

6. Each Affiliated Employer will disclose to the Commission the names of those employees and officers (up to at least the level of Senior Vice President) with supervisory authority over the non-Commission-regulated activities of the Affiliated Salespersons and their supervisors. Each Affiliated Employer will disclose the names of such other senior officers as the Commission may request.

7. The Commission will be furnished with a letter from the President, Chief Executive Officer or other officer with authority to sign on behalf of and bind the Affiliated Employer certifying as to the status, duties and responsibilities of its Affiliated Salespersons, setting forth a list of officers (up to at least the level of Senior Vice President) responsible for supervising the Affiliated Salespersons and their supervisors and specifying the activities for which they have responsibility. The President, Chief Executive Officer or other officer will also certify that none of the Affiliated Salespersons, their supervising officers or any director of the Affiliated Employer could be refused registration with the Commission on the grounds stated in §8a(2) of the Act. Appropriate documents evidencing the authority of the certifying officer to sign on behalf of and bind the Affiliated Employer will be furnished to the Commission.

8. In addition, the Commission will receive from each Affiliated Employer an undertaking to the effect that it will be jointly and severally liable with "A", both to the customer of the Affiliated Salesperson and (in respect of fines) to the Commission, for any violations of the Act and the regulations thereunder committed by any Affiliated Salesperson employed by such employer. "A" may agree to indemnify each Affiliated Employer in respect of such liability. Appropriate documentation of the authority to enter such undertaking and to bind the Affiliated Employer will also be furnished to the Commission.

9. On a basis consistent with that described in this letter, "A" and the other "B" subsidiaries will from time to time inform the Commission of any changes in personnel referred to herein or changes in any information furnished pursuant to the above paragraphs and will, as appropriate, register new personnel with the Commission.

In essence, you have asked the Division to adopt a no-action position with respect to the failure of "A" and its Affiliated Employers to comply with the Commission's prohibition on "non-proprietary" branch offices and with the provisions of Commission rule 166.4 which requires "[e]ach branch office of each Commission registrant [to] use the name of the firm of which it is a branch for all purposes, and [to] hold itself out to the public under such name." This no-action position would be adopted subject to the condition that "A" and its Affiliated Employers comply with the undertakings you proposed.

When the Division published its interpretative letter on non-proprietary branch offices, it recognized that there may be times when a separately incorporated branch office may be authorized. As an example, the Division noted that certain state laws may require a branch office located in that state to incorporate there. In such circumstances, the Division stated that it would grant appropriate relief. The Division has determined that this is a similar case. In particular, the Division notes that, in the conduct of the principal activities for which they were established, the Affiliated Employers will be receiving funds from their corporate customers to effect certain transactions on their behalf. By definition, however, the Affiliated Employers could not accept funds from these same customers to hedge their transactions in the futures markets if the employers were registered as introducing brokers. <sup>4/</sup> Thus, "A" would be required to create a

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<sup>4/</sup> Section 2(a)(1)(A) of the Act, 7 U.S.C. §2 (1982). See also, CFTC Interpretative Letter 83-15 (December 1, 1983) [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (OCH) ¶21,968.

separate sales force to effect what would be essentially the second half of one transaction. Such a result would be duplicative and unnecessarily burdensome.

Moreover, the Division has concluded that, because of the close relationship between "A" and its Affiliated Employers, registration of the Affiliated Employers as introducing brokers is not necessary in this case. The Division notes that both "A" and the Affiliated Employers are wholly-owned subsidiaries of the "B" Corporation or the Bank. In addition, many of the officers of "A" are also officers of the Affiliated Employers. This close relationship contrasts sharply with the separate relationships which generally existed between FCMs and their former agents. Indeed, it was because FCMs generally sought to disavow any responsibility for the conduct of their agents that Congress, at the urging of the FCM community, created the introducing broker category of registrant.

"A", however, is not seeking to disavow responsibility for the conduct of its Affiliated Employers and the Affiliated Salespersons. To the contrary, "A" and its Affiliated Employers have agreed to be jointly and severally liable for the commodity-related activities of the Affiliated Salespersons. The relationship between "A" and its Affiliated Employers, therefore, is not unlike the relationship between an FCM and a guaranteed introducing broker. In this instance, however, the protections afforded customers by this relationship are, if anything, greater, since the Affiliated Employers may actually have greater net capital than "A".

Finally, the Division notes that "A" intends to solicit and accept orders primarily from non-affiliated major corporate customers of the Bank and for the accounts of the Bank itself and other direct and indirect subsidiaries of the parent bank holding company. Thus, the risk of customer confusion is greatly reduced.

For all of the reasons set forth above, the Division has concluded that it will not recommend any enforcement action against "A" and its Affiliated Employers and their Affiliated Salespersons for their failure to comply with the Commission's prohibition against non-proprietary branch offices and with the provisions of Commission rule 166.4. This no-action position is subject to the condition that "A" and its Affiliated Employers continuously comply with the undertakings set forth in your letter of August 6, 1984.

This no-action position is the position of the Division of Trading and Markets only and is not necessarily the position of the Commission or any other division or office of the Commission's staff. Nor has the Division sought to determine whether the operational structure which "A" and its Affiliated Employers intend to implement is authorized under the provisions of the Bank Holding Company Act and any rules, regulations or orders thereunder. Moreover, the Division understands that certain futures exchanges may have rules which prohibit non-proprietary branch offices. "A" will have to review the rules of the exchanges of which it intends to become a member to determine whether relief from such rules is necessary.

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If you have any questions, please feel free to contact me or Kevin M. Foley, the Division's Chief Counsel, at 202/254-8955.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Andrea M. Corcoran". The signature is written in black ink and is positioned above the printed name and title.

Andrea M. Corcoran  
Director