



September 10, 1985

NO-ACTION RE: Prepayment of Subordinated Debt

TO ALL REGISTERED FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, AND SELF-REGULATORY ORGANIZATIONS:

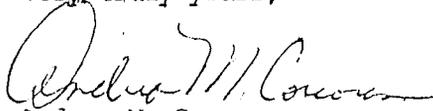
Section 1.17(h) (2) (vii) of the regulations promulgated under the Commodity Exchange Act (17 C.F.R. §1.17(h) (2) (vii) (1985)) requires a registered futures commission merchant ("FCM") or introducing broker ("IB") to obtain the written approval of its designated self-regulatory organization ("DSRO") and the Commission prior to making any prepayment of subordinated debt. The requirement for dual approval has been in effect for approximately seven years. During that time, the DSROs have gained greater familiarity regarding subordinated debt and the DSROs have also demonstrated, through various joint auditing arrangements, an ability to work together in the area of financial surveillance. The Division of Trading and Markets therefore believes that it is appropriate for the DSROs to be primarily responsible for the approval of prepayment of subordinated debt, subject to Commission oversight, principally through the Division's periodic reviews of DSRO financial audit programs. That would make the treatment of prepayment of subordinated debt consistent with the treatment of approval of new subordinated debt or amendments to subordination agreements.

The Division intends to recommend to the Commission that Rule 1.17(h) (2) (vii) be changed to require only DSRO approval of prepayment of subordinated debt, ^{1/} and perhaps certain other procedural changes in Rule 1.17 in areas such as extensions of time. The Division also recognizes, however, that there are two current rulemaking proceedings involving proposed substantive changes to an FCM's and an IB's minimum financial requirements (50 Fed. Reg. 31612, August 5, 1985 and 50 Fed. Reg. 35247, August 30, 1985). The Division believes that those proceedings should be resolved before another rulemaking proceeding in the financial area is begun. The Division further believes that the changes in the procedures for approval of prepayment of subordinated debt should be instituted as soon as possible. Accordingly, the Division will not recommend that any enforcement action be taken against any FCM or IB if it prepays subordinated debt without the prior written approval of the Commission provided the firm has a DSRO and the prior written approval of the firm's DSRO is obtained and Rule 1.17(h) (2) (vii) is otherwise complied with.

^{1/} Those few remaining registered firms without a DSRO would still need Commission approval.

This is the position of the Division of Trading and Markets and is not necessarily the position of the Commission itself or any other unit within the Commission.

Very truly yours,



Andrea M. Corcoran
Director

cc: Regional Audit Staffs
AF25/2