

**CFTC Letter No. 00-108****December 4, 2000****No-Action****Division of Trading & Markets**Re: Electronic Trading Platform

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Dear :

This is in response to your letter dated September 27, 2000, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), on behalf of your client, (the "Company"), as supplemented by additional correspondence and telephone conversations.

In your letter of September 27, 2000, you seek confirmation that the Division will not recommend that the Commission authorize or commence enforcement action under the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (1994) (the "Act"), or the regulations thereunder,<sup>1</sup> in connection with: (i) the operation by the Company of an electronic platform for the trading of certain agreements (the "Platform"), (ii) any such agreements executed through the Platform, or (iii) any participants in such transactions. Trading through the Platform began on May 24, 2000, but U.S. persons have not been permitted to participate, pending the issuance of a no-action letter by the Division.

*Facts*

Based upon the representations made by and on behalf of the Company in written correspondence and telephone conversations with Commission staff, we understand the facts to be as follows:

The Company is engaged in the telephone brokering of over-the-counter ("OTC") derivative instruments on various physical commodities including crude oil, refined oil products, electricity, metals and natural gas. The Company is a wholly owned indirect subsidiary of "U", one of the largest securities, commodities, and derivatives brokers in the United Kingdom.<sup>2</sup> The Company was formed in 1990 under the laws of the U.K., it is authorized under U.K. law as an "arranger" for OTC derivatives transactions, and its principal place of business is located in London.<sup>3</sup>

You have represented that all persons who hold a 10%-or-greater interest in the Company, all members of the Board of Directors of the Company ("Board Members"), all officers of the Company, and all employees of the Company and its affiliates who are significant to the development or operation of the

Platform or to the enforcement of the Platform Rules<sup>4</sup> are required to complete a questionnaire that has been developed by the Securities and Futures Authority ("SFA")<sup>5</sup> to elicit information regarding the person's fitness to carry on investment business in the U.K. You have represented further that the Company will promptly provide the Commission with certain responses to the SFA questionnaire and will keep the Commission informed regarding any fitness inquiry involving such persons, made by the SFA or any successor regulatory body.<sup>6</sup> The Company also will impose and enforce requirements that its Board Members and senior executives satisfy specified fitness criteria that would preclude persons subject to any statutory disqualifications under Sections 8a(2) or 8a(3) of the Act from serving in such capacities.

You have represented that the Company will endeavor to prevent, and will by its policies, prohibit, any director, officer, employee or agent who may, in the performance of his or her duties, gain access to material nonpublic information regarding the users of, bids and offers made on, or transactions executed through the Platform from (i) trading for such person's own account or on behalf of any other account in commodities, commodity futures contracts, options on commodity futures contracts or other commodity derivatives, on the basis of such material nonpublic information, and (ii) disclosing for any purpose inconsistent with the performance of such person's official duties any material nonpublic information. In relation to this, you have represented further that the Company will endeavor to provide access to material, nonpublic information only to such of its directors, officers, employees and agents who require such access in the performance of their duties.

The Platform is an electronic trading system that permits participants to input orders on an anonymous basis, directly from their own computer terminals. It was designed and developed by "V", an independent software provider.<sup>7</sup> The Company has obtained a license from "V" to permit certain persons to use the Platform for the purpose of trading certain agreements.<sup>8</sup> The Platform supplements the Company's telephone-based brokering system.

Currently, the Platform is available only for trading "plain vanilla," fixed versus floating rate, cash-settled "swaps" on Singapore gas oil 0.5% ("Singapore Gas Oil Swaps"). The Company anticipates that in the future, it will make the Platform available for trading other agreements on physical commodities for which there is no futures contract traded on any exchange in the U.S. or any other member country of the Organisation for Economic Co-Operation and Development.<sup>9</sup> The Company has represented that any product traded on the Platform will be a "swap agreement."<sup>10</sup> This letter addresses only the trading of products described in your letter of September 27, 2000.

The Platform will be available only to persons that have executed a "User Agreement" with the Company.<sup>11</sup> Under the terms of the User Agreement, the Company grants the participant a non-exclusive license to use the Platform software in order to gain access to the Platform for the sole purpose of entering, modifying and canceling orders, and obtaining access to trade confirmations/contract notes, the participant's daily trading information, and other information and facilities offered by the Company

through the Platform. Participants are not permitted to sub-license the Platform's software for any purpose.

Persons wishing to use the Platform must satisfy specified criteria that have been designed to limit participation on the Platform to certain commercial entities. Specifically, a person may use the Platform only if it: (i) is a "commercial entity," as provided in the User Agreement; (ii) is one of the "eligible participants" listed in New Rule 35.1(b)(1), (2), (3), (6) or (8),<sup>12</sup> and was not formed solely for the purpose of constituting such an entity; and (iii) is not (a) a private investment company operating pursuant to Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, (b) a private investment company that is organized under the laws of a non-U.S. jurisdiction, or (c) a natural person. The Platform is not available to the general public. Participants will be permitted to enter into transactions through the Platform only as principals, and not as intermediaries on behalf of third parties. The Company and "V" each will maintain an updated list of participants that have access to the Platform.

Each participant will be a "commercial entity" that either (i) in connection with its business, makes and takes delivery of the physical commodity underlying each trade that it executes on the Platform and regularly incurs risks related to such commodity, or (ii) is a dealer that regularly provides hedging, risk management or market-making services to entities of the type described in clause (i) above.<sup>13</sup>

The Company permits participants to access the Platform indirectly by requesting that a broker at the Company or "W"<sup>14</sup> enter orders into the Platform on their behalf.<sup>15</sup> Brokers do not have the right to access the Platform for the purpose of entering into transactions on their own behalf. A broker enters an order as if it were the participant on whose behalf it is acting (*e.g.*, the credit checks that are in place reflect the credit of the participant, trade confirmations/contract notes are received in the name of the participant, and the identity revealed to the counterparty following the execution of a trade is that of the participant).

The Platform contains several security features designed to prevent unauthorized access. For example, a participant can enter the Platform only by means of encrypted software that can be accessed only through the use of a SmartCard, a company identification number, and a personal identification number that have been provided to the participant and are subject to validation by the Platform's main server. The integrity of data passing through the Internet between the Platform's main server and a participant's computer terminal is maintained through the use of encryption and a firewall.

By means of the Platform's "credit interface," each participant may specifically identify those other participants with whom it approves trading.<sup>16</sup> This information may be modified at any time. The approval of other participants as counterparties, as well as the establishment of standards to be applied in making such determinations (which may include credit or other considerations), are left to each participant, in its discretion. The Platform will not permit a trade to be executed between parties unless each of the parties has approved the other as a counterparty. Participants remain anonymous to each other until their orders are matched and executed.

The Platform operates as follows: Each participant is permitted to post bids and offers to enter into transactions. The participant may specify the following terms: commodity,<sup>17</sup> bid or offer, pricing period, quantity, fixed price, and order expiration conditions. Orders are submitted to the Platform's main server via the Internet. When an order has been confirmed to be valid and complete, the Platform's order matching process is invoked. If another participant has entered an opposite bid or offer, and that participant has been approved by the posting participant as a counterparty, a trade is executed between the parties. Bids and offers are matched based on a time and price priority. Orders may be partially filled or filled by multiple transactions with different counterparties. All orders are capable of being withdrawn from the market at any time before a match is completed. An order is automatically cancelled if it has expired in accordance with the order expiration information entered by a participant or if the Platform has detected that a participant's trading terminal has lost contact with the main server.

The Platform permits a participant to view all unmatched ("working") orders in order of price and time priority. Working orders are color-coded to enable a viewing participant to distinguish: (i) orders that have been placed by other participants with whom the viewing participant has an "approved" credit relationship; (ii) orders that have been placed by other participants with whom the viewing participant has a "disapproved" credit relationship; (iii) orders that have been placed by the viewing participant; and (iv) fair market price estimates of the Company, acting as introducing broker.<sup>18</sup> The Platform also allows a participant to view all of the matched orders for the most recent trading session and the Platform's records of the last five trades that have been executed by the participant.<sup>19</sup>

Once a trade is executed on the Platform, the two parties to the trade immediately receive an electronic confirmation/contract note generated by the Platform, disclosing to each party the identity of its counterparty. Trade summaries are posted on the Platform automatically. Any transactions executed as a result of bids or offers posted on the Platform are entered into exclusively between the two parties to the transaction. Moreover, each participant is responsible for entering into an ISDA Master Agreement or other master or bilateral agreement with each other participant with which it trades, and for negotiating and enforcing credit and other material terms, including appropriate payment arrangements.<sup>20</sup> The Platform, therefore, serves as a vehicle for executing transactions based on posted bids and offers, and is not involved in any manner in credit or payment matters. All trades executed on the Platform are cash-settled. The Platform does not provide a mechanism for offsetting transactions.

The Platform records and maintains detailed records of all trading conducted on the Platform, and all other information entered into the Platform. Among other things, the Platform maintains records of the names and addresses of Platform participants, all bids and offers placed on the Platform,<sup>21</sup> trade details for each trade executed on the Platform, and summary end-of-day trading reports. Such records are copied on a real-time basis from the Platform's main server to its disaster recovery server, and are thereafter transferred to tamper proof CD-ROMs for deposit in a secure data warehouse facility provided by "V's" legal representatives. The CD-ROM records will be retained for at least seven years.<sup>22</sup>

You have represented that the Company and "V" will provide the Commission and its representatives with any of the foregoing information and access to any books and records relating to trading on the Platform, upon a request made to the Company.<sup>23</sup> Requests will be fulfilled within 48 hours.

The Platform is available for trading during London trading hours (Monday through Friday, 7 a.m. to 4 p. m. GMT). The technology utilized by the Platform provides all participants (subject to counterparty approval, as set forth above) with fair and impartial access to posted bids and offers. No preferential access is afforded to any participant, regardless of its geographic location. The Platform provides to participants information regarding prices, bids and offers, and other appropriate matters. The Company will post daily trading volumes and the end-of-day bid and offer rates for the trades executed on the Platform on \_\_\_\_\_.

"X", at the direction of "V", performed a very limited review of the information technology infrastructure and processes of the Platform in June 1999 (the "X Audit").<sup>24</sup> While the "X Audit" report, a copy of which has been provided to the Division, raised concerns regarding the physical security of the hardware, you have represented that those concerns were resolved in December 1999 when the Platform's main server was relocated. In addition, the Company tested the Platform at the Company's offices commencing in February 2000 and continuing until the Platform began operating in May 2000. Such testing included simulation user interface tests via a link with "V". You have represented that any deficiencies discovered as a result of the internal tests have been rectified, as confirmed by subsequent testing. You have represented further that the Platform has performed successfully since it became operational; no functional or other difficulties have been experienced.

You also have represented that the Platform will be re-audited annually by "Y" or another major, London-based auditing firm as part of the annual audit of the Company that is required by the SFA ("Annual Audit"). The next Annual Audit will be conducted after March 31, 2001 (the end of the Company's fiscal year). The auditors generally will review the Platform to determine whether it satisfies the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (the "IOSCO Principles").<sup>25</sup> Specifically, the auditors will examine, among other things: the physical security and system reliability provided by the facility housing the hardware for the Platform; the manner in which the architecture of the Platform provides for reliability, data integrity, and disaster recovery; the functional capabilities of the Platform; the operation of the Platform's price-time priority matching algorithm; the manner in which the Platform provides for logical security; the tools and procedures that enable the Company to effectively control internal changes to hardware and software; the technical support program for users, developers, and operators implemented by the Company; the test methodologies used when testing the capacity, performance, and functionality of the Platform; and the results of any tests that have been performed on the Platform. A written report of the auditors' findings will be available on or before July 31, 2001. You have represented that the Company will promptly forward to the Commission those portions of the audit report that discuss the Platform. You have further represented that, upon request by the Commission or its representatives, the Company will provide all similar portions of subsequent audit reports.

The Company has established the terms and conditions for all trading conducted through the Platform, including, but not limited to, the eligibility criteria for participants in the Platform, the procedures for posting bids and offers, and the obligations of participants with respect to matched transactions. Participants are provided with disclosure of all material aspects of the operation of the Platform and of the terms and conditions of trading. The Company monitors trading activity from its own Platform terminal to ensure participant compliance. In the event that a participant is found not to be in compliance with the terms and conditions of trading, the Company is authorized to take appropriate action, including limiting, suspending, or terminating the participant's access to the Platform.

You have represented that the Company is subject to regulation in the U.K. and that the relevant regulatory protections provided by U.K. law would accrue to U.S. Platform participants. The Company is authorized under the U.K.'s Financial Services Act of 1986 (the "FS Act") to carry on "investment business" in the U.K.,<sup>26</sup> and is subject to the FS Act and to oversight by the SFA.<sup>27</sup> In this regard, you have represented that the Company is subject to provisions of the FS Act relating to anti-manipulation, prohibition of false or misleading statements or information, and conflicts of interest. You have further represented that the Company is subject to the U.K.'s Criminal Justice Act, which prohibits insider dealing and restricts dissemination of confidential information, and the Data Protection Act, which governs access to client information and data. In addition, you have represented that because neither the Platform nor the Company takes custody of customer funds or securities and the Platform only provides a mechanism for participants to trade among themselves, certain customer protections under U.K. laws, such as those relating to client money, safe custody, best execution and suitability/customer understanding, do not apply to Platform participants.

Specifically, the Company is authorized as an "arranger" for OTC derivatives transactions. This designation requires the Company to restrict its business to (i) offering advice on certain OTC derivatives transactions and (ii) making or agreeing to make arrangements for customers to buy or sell certain OTC derivatives. The Company is prohibited from engaging in certain activities, such as offering brokering or other services to "private clients," as defined in SFA rules,<sup>28</sup> and holding customer funds.

To become authorized as an arranger, the Company was required to demonstrate that it was "fit and proper" to carry out investment business in the U.K. under the standards set forth in the FS Act (*e.g.*, standards of integrity, operating history, competence, and financial soundness). As an arranger, the Company is subject to the rules and requirements promulgated by the SFA, including capital adequacy requirements, reporting and recordkeeping requirements, rules regarding the fitness and propriety of its staff, sales practice and other conduct of business standards, provisions designed to protect the integrity of the markets, and prohibitions on fraud, abuse, and market manipulation. The Company has obtained approval from the SFA to operate the Platform and the SFA is responsible for monitoring the Company's operation of the Platform to assure its compliance with the FS Act and SFA rules.<sup>29</sup>

## *Discussion*

The Division has reviewed your representations regarding the operation of the Platform. In our view, granting your request would be consistent with the overall policies of the Act and Commission exemptions thereto. In this regard, the Division notes that the Company is authorized in the U.K., and the Platform must operate in a manner that complies with applicable laws and regulations of the U.K., a jurisdiction whose regulatory regime the Commission has found to be generally comparable to that of the U.S.<sup>30</sup> The operation of the Platform is subject to oversight by U.K. authorities, as discussed above. Moreover, your representations as to the nature of the agreements that will be traded on the Platform, the eligibility criteria for Platform participants, and other terms and conditions of trading on the Platform, are substantially similar to representations made in connection with other trading systems to which the Division has recently granted no-action relief.<sup>31</sup> In addition, the Platform is operated in a manner that is consistent with the requirements for derivatives transaction facilities under Part 37 of the New Rules.

Accordingly, the Division will not recommend that the Commission take any enforcement action against the Platform, its owners and operators or any of its participants based solely on the operation of the Platform or the execution of transactions thereon as described herein.<sup>32</sup>

The Division believes that relief is appropriate in light of the representations that have been made in your letter, as supplemented by additional correspondence and telephone conversations, including representations that the Company will promptly provide the Commission and its representatives, upon request, with additional information concerning, among other things, the terms and conditions of trading and compliance therewith, fitness criteria compliance, and the operation of the Platform, and that it will provide the Commission and its representatives with trading information and access to books and records relating to trading on the Platform within 48 hours of a request for such information or access. The Company has further represented that, following the issuance of this letter, it will promptly notify the Commission of any material change in the facts and circumstances as represented, including any material change in the User Agreement. In addition, the Company has represented that it will promptly provide the Commission with Annual Audit reports, as provided herein.

At the request of the Division, the Company has filed with the Commission the valid and binding appointment of a U.S. agent for service of process in the United States. Pursuant to this appointment, the agent is authorized to accept delivery and service of communications that are issued by or on behalf of the Commission.<sup>33</sup>

The relief provided herein is also based upon the Company's compliance with the following conditions:

- The Company will remain authorized to conduct business in the U.K., as described herein.
- The Company will adhere to the IOSCO Principles as updated, revised, or otherwise amended.
- The Company will maintain the aforementioned appointment of an agent for service of process in the United States, as long as the Company operates the Platform pursuant to the relief provided

herein.

- On an annual basis, as of the date of this letter, the Company will submit to the Commission the following information: for each agreement available for trading on the Platform, the total trade volume of U.S. participants compared to the total trade volume of all participants, worldwide.
- The Company will promptly provide the Commission with written notice of the following:
  - Any changes in the laws, rules or regulations of the U.K., which have a material effect on the Company's operation of the Platform.
  - Any matter known to the Company or its representatives that, in their judgment, may affect the financial or operational viability of the Platform, including, but not limited to, any significant system failure or interruption of service.
  - Any limitation upon, or suspension or termination of, access to the Platform with respect to any U.S. Platform participant as a result of the Company's belief that the participant has engaged in market manipulation, fraud, deceit or other prohibited activities, or has failed to comply with the terms and conditions of the User Agreement.

This no-action position is based on our understanding of the facts as represented to us. Any different, changed or omitted material facts might render this position void. Moreover, this letter does not address whether, and the Company does not concede (i) that the Platform will be a multilateral transaction execution facility for purposes of Part 35 of the Commission's regulations, or (ii) that transactions executed through the Platform will constitute futures contracts. The no-action position taken herein is solely that of the Division and does not necessarily represent the views of the Commission or those of any other division or office of the Commission. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

If you have any questions concerning this matter, please contact Phyllis Dietz, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton  
Acting Director

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1 Commission regulations are found at 17 C.F.R. Ch.1 (2000).

- 2 You have represented that "U" is not involved in the operation of the Platform, and that neither "U" nor any of its affiliates will engage in proprietary trading on the Platform or will be a party to any trade executed on the Platform.
- 3 All of the technical and operating components of the Platform are located in the U.K.
- 4 For purposes of your no-action request and the relief provided herein, the term "Platform Rules" is defined to include any rules of operation or protocols involving any aspect of trading on the Platform including, without limitation, the User Agreements executed between the Company and Platform participants and the Platform's Technical Operations Specification.
- 5 As discussed below, the SFA is responsible for the regulation of the Company in the U.K.
- 6 In the SFA questionnaire, a relevant excerpt of which has been provided to the Division, persons are asked to respond "yes," "no," or "not applicable" to inquiries regarding events that might influence an assessment of their character and reputation, *e.g.*, complaints involving the integrity, competence, or financial soundness of the person's investment business; investigations into allegations of misconduct or malpractice in connection with the person's business activities; convictions for any offenses that involve fraud or dishonesty or that relate to companies, financial services, insolvency, consumer credit, or consumer protection; convictions for any other offenses that are not "spent" in accordance with the laws of the U.K. (*i.e.*, convictions for which the persons convicted have not fully performed the relevant penalty); refusals of or restrictions upon the person's right to carry on a trade, business, or profession for which licensure, registration, or authorization is required; censure or discipline by any body in relation to the person's business or professional activities; refusals or revocations of the person's membership in a professional body; outstanding investment business obligations or judgment debts, or declarations of bankruptcy. Under certain circumstances, persons are required to disclose such events only if the events have occurred within a specified time period. You have represented that the Company will inform the Commission if any of the persons listed above provides a "yes" answer to any of the questions posed and will provide an explanation of such answer. This information would, in substantial part, reveal whether the person would be subject to the statutory disqualifications from registration listed in Sections 8a(2) or 8a(3) of the Act, 7 U.S.C. §§ 12a(2) and 12a(3) (1994).
- 7 You have represented that "V" will not engage in proprietary trading on the Platform, and that it will not be a party to any trade executed on the Platform.
- 8 Under the terms of the license agreement between "V" and the Company dated January 31, 2000 (the "License Agreement"), "V" has agreed to install the hardware and software necessary to access the Platform in the offices of the Company, and to provide preventive and remedial maintenance services for the Platform at such locations. "V" has agreed to provide similar services, as an agent for the Company, at each participant's designated trading site. The Company is, at all times, the operator and manager of the Platform. As such, it is responsible for operating the Platform in compliance with the applicable regulatory regime in the U.K.

9 The Company has represented that such physical commodities will not include any of the agricultural commodities enumerated in Section 1a(3) of the Act.

10 In your request for no-action relief, you represented that any product traded on the Platform will be a "swap agreement" as defined in Commission Rule 35.1(b)(1):

(i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (ii) Any combination of the foregoing; or (iii) A master agreement for any of the foregoing together with all supplements thereto.

On November 21, 2000, the Commission adopted changes to Part 35 of its rules in conjunction with its adoption of A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations. *See* [www.cftc.gov](http://www.cftc.gov). The new rules will become effective 60 days from the date of their publication in the *Federal Register* (the "Effective Date"). As revised and amended, Part 35, entitled "Exemption of Bilateral Transactions," no longer defines the term, "swap agreement."

The Commission's rules in effect immediately prior to the Effective Date are referred to hereinafter as "Old" rules, and the rules in effect as of the Effective Date are referred to hereinafter as "New" rules.

11 The Company has provided the Division with a copy of its User Agreement, which includes proposed amendments that are intended to conform the existing User Agreement to Part 35 of the Commission's rules and conditions imposed by the Division on other electronic trading platforms that have received no-action relief. At such time as the amended User Agreement takes effect, it will apply to both U.S. and non-U.S. participants. All references herein to the User Agreement refer to the proposed amended version submitted to the Division.

12 Your request for no-action relief identified Platform participants as "eligible swap participants" under Old Rule 35.1(b)(2)(i), (ii), (iii), (vi) or (viii).

13 This definition is consistent with the definition of an "eligible commercial participant" in New Rule 37.1(b)(2), relating to derivatives transaction facilities.

14 "W" is a wholly owned, Singapore-based subsidiary of the Company. The Company offers telephone brokering services for the trading of Singapore Gas Oil Swaps in Singapore through "W". "W" brokers input trades on the Platform on behalf of participants, as agents for the Company.

15 Participants are not permitted to provide a broker with any discretion regarding the price of a transaction to be executed through the Platform. Any order received by the Company in which the broker is provided with a "range" of prices within which the participant is willing to buy or sell can be brokered only via the Company's telephone brokerage system.

16 A facility that will enable participants to set credit limits for specific counterparties (in terms of exposure amounts) is not currently available, but is being developed.

17 As noted above, only Singapore Gas Oil Swaps are currently traded on the Platform. When additional agreements become available for trading, a participant will be able to select the underlying commodity from a drop-down box.

18 Such estimates indicate where the voice-brokered market for the relevant commodity is at that time.

19 On the last day of any particular pricing period, each open position record for that pricing period will be "closed" by the Platform and posted to a permanent archive file.

20 The trade confirmation/contract note will form part of, and be subject to, the master or bilateral agreement governing each such trade. If a participant fails to enter into a master or bilateral agreement with a particular counterparty, it is deemed to have entered into an ISDA Master Agreement with that counterparty.

21 These records indicate whether a particular bid or offer was input by a participant or by a Company or "W" broker, as well as the identity of the participant or broker.

22 You have represented that information relating to trading on the Platform is maintained in this manner and at this location regardless of whether a transaction was entered into the Platform by a participant or by a Company or "W" broker, acting on behalf of a participant.

23 Pursuant to the cooperation agreement between "V" and the Company dated January 10, 1999 (the "Cooperation Agreement"), all trading data that has been accessible through the Platform at any time is the joint property of "V" and the Company, and may be disclosed by either party to any court or governmental or administrative authority that is competent to require disclosure. Although the trading data will be housed in a facility maintained by "V's" representatives, the License Agreement requires "V" to provide the Company and its advisors, upon written request, with access to its records and copies thereof, during normal business hours in London. "V" also is required by the License Agreement to provide to the Company any information relating to the Platform that is necessary for the Company to satisfy its obligations to any regulatory, governmental, or administrative authority. You have represented that both "V" and the Company will interpret the Cooperation Agreement and the License Agreement to permit "V" and the Company to provide all information related to the operation of or trading on the Platform to the Commission and its representatives, upon request. In addition, the User Agreement permits the Company to share all information related to trading on the Platform and to the operation of

the Platform with the Commission and its representatives, upon request, and all current and future Platform participants will be subject to the information-sharing provision.

24 The "X Audit" was performed solely for the purpose of obtaining information regarding the: (i) information service applications used by the Platform to support its business functions; (ii) Platform hardware and the ownership, support, and capacity planning procedures for that hardware; and (iii) the physical security of the hardware.

25 The IOSCO Principles were adopted by IOSCO on November 15, 1990, and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of policy for the oversight of screen-based trading systems for derivative products on November 21, 1990. *See* Policy Statement Concerning the Oversight of Screen-Based Trading Systems, 55 Fed. Reg. 48,670 (Nov. 21, 1990). At its October 2000 meeting, the IOSCO Technical Committee endorsed a report, *Principles for the Oversight of Screen-Based Trading Systems (2000)*, that reaffirmed the continuing appropriateness of the IOSCO Principles, and adopted four new principles that address the supervision of exchange-operated, screen-based trading systems for derivatives in cross-border contexts.

26 The FS Act requires persons or entities that are carrying on investment business to be "authorized" or to apply for an exemption from the authorization requirement.

27 Pursuant to recently enacted legislation in the U.K., the functions of the SFA technically have been transferred to the Financial Services Authority (the "FSA") and the FSA has become the primary regulator of the Company in the U.K. In actuality, however, this transfer is not expected to occur until the spring of 2001. Until that time, the SFA remains the lead regulator of the Company, and is responsible for regulating the Company's day-to-day operations.

28 The SFA rules generally define a "private client" to mean either an individual customer or a small business investor customer who is not acting in the course of carrying on investment business.

29 You have represented that all of the rules and principles under U.K. law applicable to the Company's telephone brokering business apply equally to the Company's operation of the Platform.

30 The Commission has issued orders under Rule 30.10, exempting U.K. firms that act in the capacity of a futures commission merchant from registration under the Act and compliance with certain Commission rules. These orders were based on the Commission's determination that the U.K.'s regulatory structure offered comparable regulatory oversight with respect to such activities. *See, e.g.*, Foreign Futures and Option Transactions, 54 Fed. Reg. 21,599 (May 19, 1989).

31 *See* Commission Staff Letter No. 00-80 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,202 (June 30, 2000); Commission Staff Letter No. 00-64 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,144 (May 8, 2000). The Division notes that the Company has agreed to conditions for

relief similar to those imposed in the foregoing no-action letters, and the Company also has agreed to additional conditions that are similar to those imposed in no-action letters relating to the operation of foreign terminals for futures trading. *See, e.g.*, Commission Staff Letter to the International Petroleum Exchange of London Limited (IPE) [www.cftc.gov/tm/letters/99letters/ipenoaction.htm](http://www.cftc.gov/tm/letters/99letters/ipenoaction.htm) (Nov. 12, 1999); Commission Staff Letter No. 99-31 [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,744 (July 23, 1999).

32 In this regard, the Division recognizes that the Company has neither sought nor obtained designation as a contract market pursuant to Section 5 of the Act. The Division further notes that the relief granted herein does not alter the Commission's authority to take enforcement action with respect to fraud or market manipulation in connection with the operation of the Platform and execution of transactions thereon, to the extent that the anti-fraud and anti-manipulation provisions of the Act are applicable.

33 The term "communications" includes any summons, complaint, order, subpoena, request for information, or notice or any other written or electronic documentation or correspondence issued by or on behalf of the Commission.