

CFTC letter No. 03-13

March 19, 2003

No-Action

Division of Clearing and Intermediary Oversight

Re: Section 4d(1) -- Request for No-Action Relief from Introducing Broker Registration

Dear :

This is in response to your letter dated February 24, 2003, to the Division of Clearing and Intermediary Oversight ("Division") at the Commodity Futures Trading Commission (the "Commission"). By your correspondence, you request that the Division not recommend enforcement action be taken against "V" or "W", a registered futures commission merchant ("FCM") and affiliated company, based upon the Bank's introduction of commodity customers to "W" without being registered with the Commission as an introducing broker ("IB") under the Commodity Exchange Act (the "Act").^[1]

Based upon your representations, the relevant facts are understood to be as follows. The Bank and "W" are each a wholly-owned subsidiary of "X", a bank holding company. The Bank is a commercial bank chartered under the laws of New York State and regulated by the New York State Superintendent of Banking and the Federal Reserve Board. A limited number of employees of the Bank will refer customers to "W" for the purpose of trading futures. You represent that, while such Bank employees will refer customers to "W", they will not handle customer orders. These Bank employees will be registered as associated persons "APs" of "W" and, as such, "W" will be responsible for the futures-related activities of these APs. The futures-related activities of these APs will take place in branch offices of "W", identified as such in forms filed with the National Futures Association. An AP appropriately registered with the Commission and designated as a branch office manager will supervise the futures-related activities of that branch office, and of each AP in that branch office.

You represent that it will be made clear to any customers, or prospective customers, that all futures-related activities will be conducted through "W" and not the Bank. "W", and not the Bank, will issue all statements and reports that are required to be provided to commodity customers under the relevant sections of the Act and Commission rules.

The financial activities of "X", the Bank, and "W" are reported on a fully consolidated basis for accounting and tax purposes. You represent that, "as a matter of internal accounting," a certain proportion of the revenues generated by customers referred by the Bank to "W" will be allocated to the Bank. In your letter, you indicate that, because the Bank and "W" are wholly-owned subsidiaries of "X" and because their financial reports are consolidated, the revenues generated by customer accounts introduced by the Bank to "W" are, ultimately, the revenues of "X". Accordingly, the allocation of these revenues to the Bank is "merely a matter of internal accounting for the parent company's management purposes."

Based upon the representations contained in your letter and consistent with the Division's prior precedent in this area,^[2] the Division will not recommend that the Commission take enforcement action against the Bank or "W" based solely upon the Bank's referral of customers to "W", in the manner described in your letter, and the Bank's failure to register as an IB. This no-action position is based upon, among other things: (1) the Bank being subject to Federal and New York State banking regulations; (2) all employees of the Bank that introduce customers to "W" being registered as APs of "W"; (3) each office where the activities described herein will take place being a branch office of "W" and listed as such in the appropriate forms filed with the National Futures Association; (4) a registered AP of "W", appropriately designated as a branch office manager, supervising the futures-related activities of the Bank employees registered as APs of "W"; and (5) "W" being liable for the activities of such APs, as provided for under the Act and Commission rules.

The position taken herein is based upon the representations that have been made to the Division. Any different, changed, or omitted facts or circumstances might require the Division to reach a different conclusion. You must notify the Division immediately in the event the operations or activities of the Bank or "W" change in any material way from those represented to us. Further, this letter represents the position of this Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

This letter does not excuse the Bank or "W" from compliance with any other applicable requirements contained in the Act or in the Commission's rules issued thereunder. For example, they both remain subject to all antifraud provisions of the Act and the Commission's rules issued thereunder and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's rules.^[3]

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe
Director

^[1] 7 U.S.C. § 1 *et seq.* (2000).

^[2] See CFTC Interpretative Letter No. 97-85, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,182 (Oct. 8, 1997).

^[3] Commission rules referred to herein are found at 17 C.F.R. Ch. 1 (2002).