

**CFTC letter No. 03-28**  
**July 25, 2003**  
**No-Action**  
**Division of Clearing and Intermediary Oversight**

July 17, 2003

Re: Section 4d -- Request for No-action Relief from Introducing Broker Registration

Dear :

This is in response to your letter dated June 6, 2003, to the Division of Clearing and Intermediary Oversight (the "Division") at the Commodity Futures Trading Commission (the "Commission") by which you request that the Division not recommend enforcement action be taken against "X" and "Y" if "X" were to introduce customers located in the United States ("US Customers") to "Y" without being registered with the Commission as an introducing broker ("IB").

Based upon your representations, the facts are understood to be as follows. "Z" is a wholly-owned subsidiary of "V" and appropriately registered in France with the Comité des Etablissements de Crédit et des Entreprises d'Investissement as a credit institution and with the Conseil des Marchés Financiers to provide investment services. "X" is a branch of "Z" located in London. "X" acts as a broker of, among other things, futures and options. "X" is appropriately registered in the United Kingdom with the "U" to conduct an investment business. Pursuant to Commission Rule 30.10,<sup>[1]</sup> "X" has been granted an exemption from registration with the Commission as a futures commission merchant ("FCM") for purposes of offering foreign futures and options to US Customers. "Y" is a wholly-owned subsidiary of "Z" located in New York and is registered with the Commission as an FCM.

As "X" is not permitted to execute trades for US Customers on US exchanges, you represented that US Customers of "X" that desire to place an order for foreign futures and options and US exchange-traded futures and options must use two or more entry systems or place two or more phone calls to execute such trades. In particular, you indicated that this is an issue for "X's" institutional customers who, as part of their trading strategies, are increasingly conducting business on numerous worldwide exchanges. You further stated that requiring the use of multiple order entry systems or phone calls could be inefficient in fast moving global markets and increase systemic and liquidity risks. Accordingly, "X" is proposing to act as an IB<sup>[2]</sup> to "Y" so as to introduce institutional US Customers to "Y" for purposes of trading US exchange-traded futures and options.

Commission Rule 1.3(g) defines an institutional customer as an eligible contract participant, as defined in Section 1a(12) of the Act.<sup>[3]</sup> You have represented that all US Customers that "X" will introduce to "Y" will be institutional customers as defined in Rule 1.3(g). Additionally, all US Customers that "X"

introduces to “Y” will be introduced on a fully-disclosed basis in accordance with Commission Rule 1.57.<sup>[4]</sup> “X” and “Y” will enter into a three-party agreement with joint US Customers to facilitate the movement of excess funds from such customers’ “X” accounts to meet their margin calls at “Y” as well as to transfer excess funds at “Y” to meet their margin calls at “X”. In further support of your request, you represented that “U” will continue to supervise “X’s” sales practice activities related to all customers including US Customers, and the appropriate French regulators will continue to supervise “X’s” overall regulation and financial adequacy.

Based upon the representations in your letter, the Division believes that granting the requested relief would not be contrary to the public interest. Accordingly, the Division will not recommend that the Commission commence any enforcement action against “X” or “Y” based solely upon the failure of “X” to register as an IB for purposes of introducing institutional US Customers to “Y” to trade US-exchange traded futures and options. This relief is conditioned upon “Y’s” acknowledgment that it will be jointly and severally liable for any violations of the Act or the Commission’s rules committed by “X” in connection with the latter’s handling of orders for US Customers for trading on futures and options on US exchanges. “Y” must submit such an acknowledgment in writing manually signed by a representative duly authorized to bind “Y” within two weeks of the date of this letter.

This letter does not excuse “X” or “Y” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, each remains subject to all applicable antifraud provisions of the Act. Moreover, the position taken in this letter is applicable to “X” and “Y” solely in connection with “X’s” introduction of institutional US Customers on a fully-disclosed basis to “Y” for purposes of executing trades on US exchanges.

The position taken in this letter is based upon the representations that have been made to the Division. Any different, changed, or omitted facts or conditions might render this position void. You must notify the Division immediately in the event the operations or activities of “X” or “Y” 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. If you have any questions concerning this correspondence, please contact Deputy Director Lawrence B. Patent at (202) 418-5439.

Very truly yours,

Jane Kang Thorpe  
Director

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<sup>[1]</sup> Commission rules referred to herein may be found at 17 C.F.R. CH I (2003).

<sup>[2]</sup> An IB is defined as a person engaged in soliciting or in accepting orders for futures that does not

accept any money, securities, or property to margin any trades that result from such trades. *See* Section 1a(23) of the Commodity Exchange Act (the "Act"); *see also* Commission Rule 1.3(mm).

<sup>[3]</sup> 7 U.S.C. § 1, *et seq.* (2000).

<sup>[4]</sup> "X" will continue to carry proprietary accounts, US Customer accounts for purposes of trading foreign futures and options, and non-US Customer accounts for purposes of trading futures and options on both foreign and US exchanges.