

CFTC letter No. 04-04
January 15, 2004
Interpretation
Division of Clearing and Intermediary Oversight

James L. Carley
Director

Re: Rule 1.57(a)(1) – Request for Relief from Requirement that a Guaranteed Introducing Broker Must Open and Carry All Customer Accounts with the Guarantor Futures Commission Merchant

Dear :

This is in response to a letter from your firm's former Director of Compliance dated September 4, 2003, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letter dated December 11, 2003 and by telephone conversations with Division staff. By this correspondence, you request, on behalf of "V", relief from the requirement in Commission Rule 1.57(a)(1)^[1] that a guaranteed introducing broker ("IB") must open and carry each customer account with the IB's guaranteeing futures commission merchant ("FCM").

Based upon the representations made in your correspondence, we understand the facts to be as follows. "V" is registered under Section 4d^[2] of the Commodity Exchange Act (the "Act") as an FCM. "W" maintains an account with "V" that is introduced by "X", an IB that is guaranteed by "V". Heretofore, all trades entered by "W" with "X" have been executed and cleared by "V". "W" has requested that orders it places be executed by "V", but cleared through "Y", another registered FCM with which "W" maintains an account. "V" will "give up" these trades to "Y". "X" will not be compensated by "Y" in connection with orders that "W" enters with "X" and that are cleared through "Y", but will be compensated solely by "V".

You represent that to the best of your knowledge "V" has sufficient adjusted net capital to meet all obligations that "V" may have to "X's" customers, without regard to whether those customers' accounts are carried by "V". Specifically, you represent that, as of September 30, 2003, "V" had adjusted net capital of _____ and excess net capital of _____. Further, you affirm that "V" accepts liability for obligations of "X" under the Act and the regulations thereunder with respect to the solicitation of, and transactions involving all customers of "X", including "W".

Commission Rule 1.57(a)(1) provides that an IB that has entered into a guarantee agreement with an FCM must open and carry customer accounts with such guarantor FCM on a fully-disclosed basis.

Accordingly, in order to protect the customers of the IB, an FCM that has entered into a guarantee agreement with an IB must carry all of the customer accounts introduced by the IB.^[3]

Based upon the foregoing and consistent with prior positions taken by the Division in this area, the Division believes that granting your request would not be contrary to the “customer protection” objective of Rule 1.57(a)(1).^[4] This is based principally upon your representation as to the substantial capital held by “V” and that “W”^[5] has requested to have its trades cleared through “Y”.

This letter, and the relief issued herein, are based upon the representations that have been made to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify the Division immediately in the event that the operations or activities of “X” or “V” change in any material respect from those as represented to us. Further, this letter represents the position of this Division only and does not necessarily reflect the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

James L. Carley
Director

^[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2003).

^[2] 7 U.S.C. §6d (2000).

^[3] See 57 Fed. Reg. 23136, 23137 (June 2, 1992).

^[4] See, e.g., CFTC Staff Letter No. 01-20, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28502 (March 26, 2001).

^[5] “W’s” quarterly report on Form 10-Q for the period ended September 30, 2003 indicated total assets of _____. Pursuant to Section 1a(12)(A)(v)(I) of the Act, a corporation with total assets in excess of _____ is an Eligible Contract Participant.