



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5438  
Facsimile: (202) 418-5547  
*jcarley@cftc.gov*

Division of Clearing and  
Intermediary Oversight

James L. Carley  
Director

CFTC letter No. 05-06  
March 14, 2005  
No-Action  
Division of Clearing and Intermediary Oversight

Re: No-Action Relief from Introducing Broker Registration

Dear :

This is in response to your letter dated February 10, 2005, to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), by which you request that the Division not recommend that enforcement action be taken against “U”, an affiliate of “V”, if “U” were to execute on an internet-based order entry system certain transactions on U.S. markets for certain customers located in the U.S. without being registered with the Commission as an introducing broker (“IB”).

Based upon your representations, the facts are understood to be as follows. “V” is a wholly-owned subsidiary of “W”, a world leader in agricultural processing. “V” is registered with the Commission as a futures commission merchant (“FCM”) and is a member of [several U.S. exchanges]. “U” is an indirect subsidiary of “W” incorporated in the U.K. and authorized to conduct an investment business by the Financial Services Authority (“FSA”). “U” is a member of [several U.K. exchanges]. Pursuant to Commission Rule 30.10,<sup>1</sup> “U” has been granted exemption from registration as an FCM for purposes of offering foreign futures and options to customers located in the U.S. (“Rule 30.10 relief”). The Rule 30.10 relief granted to “U” does not extend to any activities related to trading, directly or indirectly, on U.S. exchanges on behalf of U.S. customers. Accordingly, to engage in such activities, “U” would be required to comply with all applicable U.S. laws and regulations, including the requirement to register with the Commission in the appropriate capacity.<sup>2</sup>

“U” maintains an internet-based order entry system in London, known as “X”, that provides access to most U.K., European, and U.S. markets. The “X” system is available only to

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<sup>1</sup> Commission rules referred to herein may be found at 17 C.F.R. Ch. I (2004).

<sup>2</sup> See 68 Fed. Reg. 58583, 58586 (October 10, 2003).

institutional and commercial clients. When an order is placed via “X”, it is seen by the appropriate market as emanating from “U” in London. “V” currently is connected to “X” for the purpose of gaining direct access to non-U.S. exchanges for its U.S. customers. For trading on U.S. exchanges, “V” has been using a separate order entry system and has reconciled customer statements on the back end. “V” permits all of its customers, including institutional and commercial clients, to access its electronic order entry system. “V” would like to eliminate the need to use multiple order entry systems and, instead, provide access to all markets for its institutional and commercial U.S. customers, including U.S. exchanges, via “X”. You note that the consolidation of all “V” institutional and commercial customer orders via a single trading platform would improve the efficiency of trading on behalf of these customers in fast-moving global markets and, as a result, decrease systemic and liquidity risks. In addition, the cost for “V” to replicate the “X” infrastructure in the U.S. with direct connections to each of the relevant markets would be prohibitive.

An IB is defined as a person engaged in soliciting or in accepting orders for futures and options contracts listed on any U.S. contract market or derivatives transaction execution facility that does not accept any money, securities, or property to margin any trades that result from such trades.<sup>3</sup> Although each order on behalf of a U.S. institutional and commercial customer for trading on a U.S. exchange would be entered into the order entry system via “V”, the execution would be conducted by “U” because the transaction would flow through the latter’s server before being submitted to the appropriate market. “U” would not solicit any U.S. customers for trading on any U.S. market or handle any U.S. customer funds related to trading on any U.S. market, and all trades in U.S. contracts would be cleared by “V”. Due to its limited participation in trade execution, however, “U” would be required to register with the Commission as an IB.

Based upon the representations in your letter, the Division believes that granting the requested relief would not be contrary to the public interest. In addition, the Division previously has granted no-action relief from IB registration to a firm with Rule 30.10 relief with respect to its participation in the order flow of contracts traded by U.S. customers on U.S. exchanges.<sup>4</sup> Accordingly the Division will not recommend that the Commission commence any enforcement action against “U” for violations of section 4d of the Act based solely upon the failure of “U” to register as an IB for purposes of executing transactions via its internet-based order entry system on behalf of “V’s” institutional and commercial customers in the U.S. for trading on U.S. exchanges. This relief is conditioned upon “V’s” acknowledgement that it will be jointly and severally liable for any violations of the Act or the Commission’s rules committed by “U” in connection with the latter’s execution of orders for customers located in the U.S. for trading on futures and options of U.S. exchanges. “V” must submit such an acknowledgement in writing

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<sup>3</sup> See Section 1a(23) of the Commodity Exchange Act (the “Act”); *see also* Commission Rule 1.3(mm).

<sup>4</sup> See CFTC Letter No. 04-09, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,710 (February 20, 2004) (granting no-action relief to permit a foreign firm with Rule 30.10 relief to act as an IB so as to introduce institutional U.S. customers to U.S. FCMs for purposes of trading U.S. exchange-traded futures and options).

manually signed by a representative duly authorized to bind “V” within two weeks of the date of this letter.

This letter does not excuse “V” or “U” from compliance with any other applicable requirements contained in the Act or in the Commission’s rules 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 “V” and “U” solely in connection with “U’s” execution of transactions via its internet-based order entry system on behalf of “V’s” institutional and commercial customers in the U.S. for trading on U.S. exchanges. The relief set forth herein does not extend to any other activities related, directly or indirectly, to the trading of contracts listed on U.S. exchanges on behalf of U.S. customers.

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 that the operations or activities of “V” or “U” change in any material way represented to us. Further, this letter represents the position of the Division only and does not necessarily reflect the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Andrew Chapin, an attorney on my staff, at (202) 418-5465.

Very truly yours,

James L. Carley  
Director