



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 06-20
September 7, 2006
No-Action
Division of Clearing and Intermediary Oversight

Re:

Dear :

This is in response to your letter dated March 23, 2006, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), as supplemented by telephone conversations with Division staff. By your correspondence, you request, on behalf of "A", that the Division modify its prior relief, as set forth in CFTC Staff Letter 02-22 (the "Prior Letter").¹ Specifically, you request that the Division confirm that it will not recommend that the Commission take any enforcement action against registered broker-dealers ("BDs") or their registered representatives ("RRs") if they give "institutional customers" (as defined in the Prior Letter) executing transactions in "B"² the option either:

1. to maintain a traditional futures account at a registered introducing broker ("IB") or futures commission merchant ("FCM"), place orders with an associated person ("AP") of the IB or FCM or directly through "C", and to comply with "A"'s standard performance bond and settlement variation requirements; or

¹ [2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,955 (July 11, 2001). Pursuant to the Prior Letter, an "institutional customer" is anyone who would qualify as a "qualified institutional buyer" under Securities and Exchange Commission Rule 144A, 17 C.F.R. §230.144A, or who is a "A" member registered with the CFTC as a floor broker or as a floor trader.

² "B" are cash-settled, electronically-traded futures contracts on broad-based, dynamic indices of stocks, bonds, currencies and other financial instruments. "B" are more fully described in the Prior Letter. Both terms are service marks of "D"

2. to maintain a securities account and execute trades through a BD/FCM³ in full compliance with the Prior Letter as it relates to “B” trades by non-institutional customers.

Under the terms of the Prior Letter, institutional customers were restricted to the first of the foregoing options. You argue that the requested modification to the Prior Letter would provide an institutional customer the same ability to trade “B” through either a futures account or a securities account that is currently available to non-institutional customers, as well as the same protective measures applicable to non-institutional customers. For example, the institutional customer choosing to execute “B” transactions through a securities account will be required to deposit cash equal to 100 percent of the current “B” market value to establish a long “B” position.

Based upon the representations made in your letter, the Division believes that your request is not contrary to the purposes of the Act, the Commission’s regulations or the Prior Letter. Accordingly, the Division will not recommend that the Commission commence any enforcement action against a BD or RR that is notice-registered with the Commission for the purpose of offering and selling “B” based solely upon the BD or RR permitting an institutional customer to buy or sell “B” through either a futures account or a securities account. This position is conditioned upon the BD or RR requiring institutional customers that choose to trade “B” through a securities account to comply with the same requirements under the Prior Letter applicable to non-institutional customers.⁴

This position is further conditioned upon the inclusion in each “B” prospectus in the discussion of risk factors the following language:

This statement is furnished to you because the Commodity Futures Trading Commission requires it for reasons of fair notice unrelated to this company's current financial condition.

1. You should know that, in the unlikely event of this company's bankruptcy, **positions related to “B” and money, securities and other property margining such positions, will not be protected by the Securities Investors Protection Corporation (SIPC) .**

³ A BD/FCM is a registered broker-dealer who is also notice-registered with the Commission as a limited purpose FCM for purposes of accepting and executing orders for “B”.

⁴ In accordance with CFTC Staff Letter 02-90 ([2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,127 (July 22, 2002)), a BD/FCM notice-registered to offer and sell “B” may also offer and sell security futures products. Because of changes to the Commission’s regulations in the interim, numbered paragraph 3 of the relief granted by the Prior Letter is now moot.

2. **Positions related to “B” and money, securities and other property margining such positions may or may not be protected under the commodity broker provisions of the bankruptcy code, 11 U.S.C. §§761-767.** The Commission's regulations concerning bankruptcies of commodity brokers can be found at 17 Code of Federal Regulations Part 190.

For existing “B” customers, the text set forth above must be included with distribution of the next monthly account statement.

This letter does not absolve “A”, or any BD or RR involved in the offering or selling “B” 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 the relevant antifraud provisions of the Act and Commission regulations. This letter is applicable to “A”, BDs and RRs solely in connection with the activities described above.

The no-action position taken in this letter represents the views of this Division only and does not necessarily represent 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, an attorney on my staff, at (202) 418-5445.

Very truly yours,

Ananda Radhakrishnan
Director