



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC letter No. 07-05  
April 26, 2007  
No-Action  
Division of Clearing and Intermediary Oversight

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

Dear :

This is in response to your letter dated March 7, 2007, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), by which you request that the Division not recommend enforcement action be taken against "A", "B", and "C" if "A" and "B" were to introduce certain institutional customers located in the U.S. on a fully-disclosed basis to any registered futures commission merchant ("FCM") without being registered with the Commission as an introducing broker.

Based upon your representations, the facts are understood to be as follows. "C" is located in New York and is registered with the Commission as an FCM. "A" and "B" are affiliates of "C", located in the United Kingdom and Australia, respectively. "A" is registered in the United Kingdom with the Financial Services Authority ("FSA") to conduct an investment business. "B" is licensed in Australia by the Australian Securities & Investments Commission ("ASIC") to conduct investment business. Pursuant to Commission Regulation 30.10,<sup>1</sup> "A" and "B" have been granted an exemption from registration with the Commission as an FCM for purposes of offering foreign futures and options to persons located in the U.S. The relief granted to "A" and "B" pursuant to Regulation 30.10 does not extend to any activities related to trading, directly or indirectly, on U.S. exchanges on behalf of any U.S. persons. In such a case, "A" and "B" 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>

As "A" and "B" are not permitted to solicit or accept trades for U.S. persons on U.S. exchanges, you represented that customers of each firm that desire to place an order for foreign

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<sup>1</sup> Commission regulations referred to herein may be found at 17 C.F.R. CH I (2006).

<sup>2</sup> See 68 Fed. Reg. 58583 (Oct. 10, 2003) (FSA); 71 Fed. Reg. 40395 (July 17, 2006) (ASIC).

futures and options and U.S. 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 noted that this is an issue for certain institutional customers (“US 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 systems in fast-moving markets is highly inefficient and may increase both systemic and liquidity risks. Accordingly, you have proposed that “A” and “B” be permitted to introduce US Customers to “C” for purposes of trading U.S. exchange-traded futures and options consistent with prior staff letters.<sup>3</sup>

You have represented that all U.S. customers that “A” and “B” will introduce to “C” will be institutional customers as defined in Regulation 1.3(g).<sup>4</sup> You also represented that “A” and “B” will not solicit US Customers for trading on U.S. markets, nor will “A” or “B” handle any US Customer funds for trading on any U.S. market. In addition, you represented that all US Customers that “A” and “B” introduce to “C” or to another registered FCM will be introduced on a fully-disclosed basis in accordance with Regulation 1.57.

You further represented that the control functions at “D”<sup>5</sup> relevant to futures brokerage are organized across legal entities and along global reporting lines. Legal, compliance, audit, and credit personnel at “A” and “B”, therefore, have identical reporting lines to a central global head, while maintaining local day-to-day reporting lines to the local senior manager. As such, “C” is willing to accept liability for trades given up by “A” and “B” to another FCM because “C” will be subject to the same procedures and oversight designed to monitor and control risks associated with the trading of futures and options by US Customers.

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 “A”, “B”, and “C” based solely upon the failure of “A” and “B” to register as an IB for purposes of introducing US Customers, as defined herein, to “C” or any other FCM to trade US exchange-traded futures and options. This relief is conditioned upon “C”’s acknowledgment that it will be jointly and severally liable for any violations of the Act or the Commission’s regulations committed by “A” and “B” in connection with the latter’s handling of orders for US Customers for trading of futures and options on US exchanges, including those orders executed by “C” and given up to another FCM. “C” must submit such an acknowledgment in writing manually signed by a representative duly authorized to bind “C” within two weeks of the date of this letter.

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<sup>3</sup> See, e.g., CFTC Staff Letter 04-09, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. ¶29,710 (Feb. 20, 2004).

<sup>4</sup> Commission Regulation 1.3(g) defines an institutional customer as an eligible contract participant, as defined in Section 1a(12) of the Commodity Exchange Act.

<sup>5</sup> In 1998, “E” and “F” merged to form “D”. “C”, “A” and “B” are part of “D’s” “G”, one of three major business groups within “D”.

This letter does not excuse “A”, “B”, “C”, or any other FCM acting pursuant to this relief 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 “A”, “B” and “C” solely in connection with the introduction of US Customers on a fully-disclosed basis to “C” by “A” and “B” 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 “A”, “B” and “C”, or any other participating FCM 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 or Special Counsel Andrew V. Chapin at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan  
Director