



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC letter No. 07-20  
October 18, 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 October 2, 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", and its affiliates "B", "C", "D", and "E" (collectively, the "Affiliates"), if the Affiliates 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 ("IB").

Based upon your representations, the facts are understood to be as follows. "A" and the Affiliates are wholly-owned subsidiaries of "F", a bank headquartered in Switzerland. "A" is located in Connecticut and is registered with the Commission as an FCM. "B" and "C" are authorized by the United Kingdom's Financial Services Authority ("FSA") to conduct investment business. "D" has received a Capital Market Services license from the Monetary Authority of Singapore and is authorized to trade in futures contracts and to clear member companies of the Singapore Exchange Derivatives Trading Division ("SGX"). "E" has been granted an Australian Financial Services License by the Australian Securities and Investments Commission and is a clearing member on the Australian Securities Exchange.<sup>1</sup> Pursuant to Commission Regulation 30.10,<sup>2</sup> the Affiliates 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.<sup>3</sup> The relief granted to the Affiliates pursuant to Regulation 30.10 does not

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<sup>1</sup> In 2006, the Sydney Futures Exchange ("SFE") merged with the Australian Stock Exchange, and now operates under the name of the Australian Securities Exchange.

<sup>2</sup> Commission regulations referred to herein may be found at 17 C.F.R. CH I (2007).

<sup>3</sup> See 68 Fed. Reg. 58583 (October 10, 2003) (FSA); 72 Fed. Reg. 50645 (September 4, 2007) (SGX); 71 Fed. Reg. 40395 (July 17, 2006) (SFE).

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, an Affiliate 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.

As the Affiliates 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 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 (“U.S. 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 the Affiliates be permitted to introduce U.S. Customers to “A” or to another registered FCM for purposes of trading U.S. exchange-traded futures and options consistent with prior staff letters.<sup>4</sup>

You have represented that all U.S. customers that the Affiliates will introduce to “A” or to another registered FCM will be “institutional customers,” as that term is defined in Regulation 1.3(g).<sup>5</sup> You also represented that each Affiliate will not solicit US Customers for trading on U.S. markets, nor will any Affiliate handle any U.S. Customer funds for trading on any U.S. market. In addition, you represented that all U.S. Customers that an Affiliate introduces to “A” or to another registered FCM will be introduced on a fully-disclosed basis in accordance with Regulation 1.57.

You also represented that the control functions at “A” and the Affiliates relevant to futures brokerage are coordinated across legal entities. Although legal, compliance, audit, and credit personnel at “A” and the Affiliates do not report to a central global head, all relevant entities within the “A” brand of companies nonetheless adhere to essentially the same methods of operation and supervision. For these reasons, “A” is willing to accept liability for trades given up by an Affiliate to another FCM, because “A” and the Affiliates will be subject to essentially the same procedures and supervision designed to monitor and control risks associated with the trading of futures and options by U.S. 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” or the Affiliates based solely upon the failure of the Affiliates to register as IBs for purposes of

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<sup>4</sup> See, e.g., CFTC Letter 07-17, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶\_\_\_\_ (August 21, 2007).

<sup>5</sup> Commission Regulation 1.3(g) defines the term “institutional customer” as an eligible contract participant, as defined in Section 1a(12) of the Commodity Exchange Act (“Act”).

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

This letter does not excuse “A”, the Affiliates, 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” and the Affiliates solely in connection with the introduction of U.S. Customers on a fully-disclosed basis to “A” or any other FCM by the Affiliates for purposes of executing trades on U.S. 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”, the Affiliates, 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