

88-11

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

2033 K Street, N.W.
Washington, D.C. 20581



July 13, 1988

[ADDRESSEE]

Dear :

By letter dated June 28, 1988, you request, on behalf of [The Underwriter] and [The Issuer] that the staff of the Commodity Futures Trading Commission confirm that it will not recommend to the Commission that any enforcement action be taken in connection with the proposed issuance and offering of notes, designated as . . . ("Notes"). In your letter, you represent that the proposed Notes differ from those which were the subject of an earlier no-action letter from Commission staff, dated June 20, 1988, in the following respects: the identity of the issuer, the coupon interest rate, and the formula for determining the principal amount payable upon maturity. Based upon the characteristics of the Notes, which resemble yen-denominated debt instruments, and the other matters discussed below, the staff has determined that it will not recommend to the Commission any enforcement action under Section 4(a) of the Commodity Exchange Act based upon the issuance of the proposed Notes.

. . . the proposed issuer, is a Delaware corporation, with total stockholders' equity of approximately \$. . . engaged in the manufacture and sale of . . . and other products. In addition, . . ., a wholly-owned non-consolidated subsidiary, offers various financial and insurance services and, through its subsidiaries, engages in mortgage banking operations.

From your letter, we understand that the Notes will be registered with the Securities and Exchange Commission and will be marketed to the public as debt securities, not having the beneficial characteristics of commodity option or futures contracts. We further understand that the Notes will be issued in denominations of U.S. \$. . . and integral multiples of U. S. \$. . . above that amount, with a term to maturity of five years. Interest will be payable in U. S. dollars, based upon the face amount of the Notes, at a rate of . . ., per annum, payable semi-annually in arrears (or such other rate determined at the time of issuance).

Repayment at maturity of the Note's principal will be, for each \$. . . face amount of the Note, an amount in United States dollars equal to the formula of U.S. \$. . . minus the

U.S. dollar equivalent of approximately . . . Japanese Yen (or such other rate determined as of the date of the offering). The determination of the U.S. dollar equivalent of the yen amount will be determined by an average dealer price on approximately the second business day preceding the maturity date. Finally, your letter compares the salient features of the Notes to the criteria identified in the Commission's pending Advance Notice of Proposed Rulemaking, 52 Fed. Reg. 47022 (Dec. 11, 1987), under which certain otherwise regulated instruments with "incidental" commodity option components are proposed to be exempt from the Commission's rules.

Based upon the representations in your letter it appears that the commodity interest component of the Notes distribute returns between the lender and the borrower based upon the direction and magnitude of the price change in the Japanese yen relative to the U.S. dollar. As with the Notes which were the subject of the June 20, 1988, staff no-action letter, the Notes can be viewed as a coupon-bearing instrument where repayment of the principal has been indexed to the yen on a one-to-one basis. Thus, the commodity-related component of the transaction resembles a foreign currency-denominated debt instrument, or an instrument in foreign currency repayable in dollars which bears interest and as with the instruments which were the subject of the earlier staff letter, their other characteristics preclude ready characterization of the Notes as futures equivalents.

Accordingly, the staff will not recommend to the Commission any enforcement action under Section 4(a) of the Commodity Exchange Act based upon the issuance of the proposed Notes. The staff position is based upon the representations in your letter including those relating to the marketing and disclosure that will accompany the proposed offering, the particular terms and conditions of the proposed Notes, and upon the agreement of the issuer to submit to special calls for information with respect to the Notes and the matters addressed herein.

This position does not excuse the issuer from complying with any otherwise applicable provisions of the Commodity Exchange Act and is based upon the facts and representations contained in your letter. Any different, omitted or changed facts or conditions might require a different conclusion. Moreover, it should be noted that this position is that of the staff and is not binding upon the Commission and that any subsequent determination by the Commission with regard

to the outstanding Advance Notice may require a reconsideration of this position for subsequent offerings.

Sincerely,

Marshall E. Hanbury
Co-Chairman
Commodity Futures
Trading Commission
Off-Exchange Task Force

Paula A. Tosini
Co-Chairman
Commodity Futures
Trading Commission
Off-Exchange Task Force

cc: