COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

89-13

November 9, 1989

Dear :

This is in reference to your letter to the Division of Trading and Markets ("Division") dated October 19, 1989 on behalf of , a registered broker/dealer, in which you requested relief from certain of the regulatory requirements applicable to introducing brokers ("IBs") set forth in Commodity Futures Trading Commission ("Commission") rule 3.15. 1/ is seeking to register as an IB so that its Canadian affiliate, , may continue to be eligible for the rule 30.10 2/ relief granted to certain designated members of the Montreal Exchange on March 14, 1989. 3/

In your October 19, 1989 letter you have stated the following:

> In connection with the registration of as an IB, we are requesting a "no action" position of the [Commission] staff with regard to the failure of all persons who fall within the definition of principal as defined in [Commission] Rule 3.1 to comply with the regulatory requirements applicable to principals. We

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1/ 17 C.F.R. §3.15(a)(2) (1988). Rule 3.15 contains the IB registration requirements.

2/ 17 C.F.R. §30.10 (1988).

3/ See 54 Fed. Reg. 11,179 (March 17, 1989). In Interpretative Letter 88-3, 2 Comm. Fut. L. Rep. (CCH) ¶24,085 (1988), the Division stated that in order for a foreign firm to be eligible for the Commission's rule 30.10 relief, certain of that firm's affiliates/subsidiaries in the United States, including firms which act in the capacity of a securities broker/dealer, would be required to register as IBs.

propose to designate our President, as our principal.

In connection with our request we make the following assurances to the [Commission] staff:

That no principal of would be precluded from being registered [under Section 8a(2) of the Commodity Exchange Act, 7 U.S.C. §12a(2) (1982)];

The President will comply with the regulatory requirements applicable to principals;

Neither officers or employees will engage in any IB related activities at this time; and

will notify the [Commission] before it engages in any IB related activities and any and all persons who act in the capacity of an associated person of an IB will be registered as such.

Absent the relief requested in this letter, pursuant to rule 3.15(a)(2), all persons affiliated with who fall within the definition of a principal as set forth in Commission rule 3.1 4/ would be required to file the Form 8-R, including the requisite fingerprint cards.

In an analogous situation, the Division granted no action relief to a securities broker/dealer which was required to register as an IB so that its foreign affiliate could qualify for the Commission's rule 30.10 relief. 5/ Specifically, the securities broker/dealer was permitted to register as an IB upon the filing of a Form 7-R and a Form 8-R by one principal of the firm. No other principal of the firm was required to file the

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4/ 17 C.F.R. §3.1 (1988). Specifically, a principal is defined to include:

> (1) Any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission....

5/ See Interpretative Letter No. 89-5, 2 Comm. Fut. L. Rep. (CCH) ¶24,471 (1989).

Form 8-R and no officer or employee was required to register as an associated person ("AP"). The no action relief was granted subject to receipt of the representations and undertakings which you have provided in your October 19, 1989 letter. In view of the foregoing and, in particular, the representations and undertakings in your October 19, 1989 letter, the Division has determined to grant the no action relief which it has requested. Specifically, under the circumstances herein, the Division will not recommend enforcement action against for failure to comply with all of the provisions of rule 3.15 if President is designated as the sole principal for purposes of its IB registration.

The Division wishes to clarify that in the event wishes to act in the capacity of an IB, it must otherwise comply with all of the requirements applicable to IBs, including the requirement in rule 3.15 that all principals of the firm file the Form 8-R and the requirement in Commission rule 3.12 6/ that any person who acts in the capacity of an AP of an IB, or any person up to and including the president or chief executive officer who supervises one so engaged, register as an AP. The no action position set forth herein will not take effect until you confirm in writing that you are authorized to bind to the representations and undertakings set forth in your October 19, 1989 letter, or one who is so authorized files a notice on behalf of affirming his consent to the representations and undertakings set forth therein.

The position adopted herein is based on the information provided to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. This position is solely that of the Division of Trading and Markets and does not necessarily represent the views of the Commission or those of any other unit of its staff.

Very truly yours,

Andrea M. Corcoran
Director

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6/ 17 C.F.R. §3.12 (1988).