



COMMODITY FUTURES TRADING COMMISSION

2033 K STREET, N.W., WASHINGTON, D.C. 20581
(202) 254-8955
(202) 254-3534 FACSIMILE

DIVISION OF
TRADING AND MARKETS

June 9, 1992

Re: : Request for Relief from
Regulation § 32.2(a)

Dear :

This is in response to your letter dated April 20, 1992, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"). By your letter, you request on behalf of [redacted], Inc., (" [redacted] ") that the staff confirm that it will not recommend that the Commission take any enforcement action against [redacted] if it offers and sells options on agricultural commodities to certain commercial counterparties as more fully described below.

Based upon the representations made in your letter, we understand that the facts are as follows. [redacted] is a commodity merchant and processor having total assets and net worth in excess of \$ [redacted]. It engages in a wide variety of physical and derivative commodity transactions throughout the world. In the past, [redacted]'s activities were concentrated in energy commodities, but it has recently entered the agricultural commodity business.

In connection with its agricultural commodity business, [redacted] seeks to engage in the same type of agricultural commodity transactions as it now engages in for energy commodities. Specifically, [redacted] proposes to engage in large, customized risk reduction and risk management transactions with qualified trade member counterparties. Such transactions would include swap, spot and forward transactions, and provided the relief requested herein is granted, agricultural option transactions.

You represent that [redacted]'s proposed agricultural options (the "Options") would fully comply with the requirements of the Commission's trade option rule enumerated in Regulation 32.4,^{1/} except insofar as they would be options involving agricultural commodities. Specifically, [redacted] would offer the Options only to persons who will represent to [redacted] that they are,

^{1/} Commission rules and regulations referred to herein are found at 17 C.F.R. Ch. I (1991).

and who reasonably believes are, processors, commercial users of, or merchants handling, the agricultural product that is the subject of the Option or the products or byproducts thereof, and who are offered or entering into the Option transaction solely for purposes related to their business as such. Although Regulation 32.4(a) also includes producers of the relevant commodity and its byproducts as permissible offerees, represents that it will not offer or sell the Options to producers of agricultural products.

In further support of the requested relief, you represent that the Option transactions will be undertaken subject to the following limitations:

(a) Options will be offered only to agricultural processors, manufacturers and merchants with assets in excess of \$10 million and/or a net worth in excess of \$5 million who otherwise qualify as permissible trade option offerees under Rule 32.4(a);

(b) each Option will be customized to meet the specific needs of the counterparty;^{2/} and

(c) the minimum transaction size will be 1,000,000 bushels (or the equivalent for those agricultural commodities not measured in bushels).

As you are aware, the Commission has proposed rule amendments which would, among other things, repeal Rule 32.2, which generally prohibits option transactions involving agricultural commodities, and amend Rule 32.4(a) to permit trade options on agricultural commodities.^{3/} You state that the relief requested should not be withheld pending the Commission's determination whether to adopt the proposed rule amendments because needs to act expeditiously in order to make available a particular transaction to an agricultural commodity processor which has a time-sensitive need to cap its cost of an agricultural product for a seven-year period.

You also note that your request seeks narrower relief than would be effected by a complete repeal of the prohibition against agricultural trade options and that the requested relief would permit to "facilitate agricultural price protection programs to an extent not now possible through the use of exchange-traded options." In addition, you note that is well qualified on

^{2/} For example, the terms of the Options could provide for annual average pricing or have long durations, *i.e.*, up to 10 years, depending on the risk management needs of the counterparty.

^{3/} See 56 Fed. Reg. 43560 (Sept. 3, 1991).

the basis of financial resources and professional expertise to offer and manage the proposed Options.

Based upon the pertinent facts as represented, the staff will not recommend that the Commission take any enforcement action for violations of Rules 32.2 and 32.4 based solely upon 's offer and sale of the Options to qualified processors, manufacturers and merchants of agricultural products and byproducts with assets in excess of \$10 million and/or a net worth in excess of \$5 million, as specified above and in your letter of April 20, 1992.

The position we have taken herein relates solely to 's offer and sale of the Options as described herein and in your letter of April 20, 1992, and is based upon the representations that you have made to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. This position does not excuse from complying with any otherwise applicable provisions of the Commodity Exchange Act or the regulations promulgated thereunder. In this connection, we request that you notify us immediately in the event that the activities of change in any way from those as represented to us. It also should be noted that this position is that of the staff and is not binding upon the Commission.

Very truly yours,



Andrea M. Corcoran



Joanne T. Medero

Co-Chairmen
Task Force on Off-Exchange
Instruments