



COMMODITY FUTURES TRADING COMMISSION

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93-80

**DIVISION OF
TRADING AND MARKETS**

July 21, 1993

Re: Request for Relief from Associated
Person Re-Registration Requirements

Dear :

This is in response to your letters dated May 3, 1993 and June 21, 1993, as supplemented by telephone conversations with Division staff, in which you request on behalf of "X",^{1/} a registered futures commission merchant ("FCM"), that the Division of Trading and Markets (the "Division") not recommend that the Commission commence enforcement action against certain associated persons ("APs"), if such APs use a procedure similar to that provided by Rule 3.12(i)^{2/} to transfer their registrations from "Y",^{3/} a registered FCM, to "X" as a result of "X"'s acquisition (the "Acquisition") of certain of "Y"'s assets during the third quarter of 1993.^{4/}

^{1/} In connection with the transaction referred to herein, "X"'s name will change to "W".

^{2/} All references to rules herein are to Commission rules found at 17 C.F.R. Ch.I (1993).

^{3/} In connection with the transaction referred to herein, "Y" will change its name to "Z".

We also note that "Y" is a participant in the National Futures Association's ("NFA") Program for the Direct Electronic Entry of Registration Data. As a part of the direct entry program, NFA Registration Rule 801 provides, among other things, that Form 8-T or Form U-5 filings for APs of participating firms may be made by means of electronic filings without supplemental paper filings. Pursuant to the rule, "Y" may file by electronic means the Forms 8-T or Forms U-5 required with respect to the Transferring APs.

^{4/} It is anticipated that the Acquisition will close in July, 1993 (the "Closing Date").

"Acquisition") of certain of "Y"'s assets during the third quarter of 1993.^{4/}

Based upon the representations made in your letters, as supplemented, we understand the material facts to be as follows. On March 12, 1993, "Y" and "X" entered into an Asset Purchase Agreement which contemplates the transfer to "X" on or after the Closing Date of approximately 18,000 of "Y"'s commodity customer accounts (the "Accounts"), which are located in approximately 400 branch offices (the "Branch Offices"). The Acquisition does not include "Y"'s "Z" division, the retail branch offices of "Z" or "Y"'s international branches. "Z" will continue to conduct its capital markets and investment banking business and the "Z" retail branch business.^{5/}

Approximately 5,200 of "Y"'s APs (the "Transferring APs") will transfer their AP registrations in conjunction with the transfer of the Accounts to "X". You represent that it would be unduly burdensome for "X" to file a Form 8-R with respect to the Transferring APs where the only change in their status will be the change of sponsoring firm. You request that "X" be permitted to provide to NFA a single hardcopy written certification containing the certifications set forth in Rule 3.12(i) with respect to the Transferring APs who will be listed on an attachment or exhibit to the certification and a list of the names of such APs will also be supplied on computer media compatible with NFA's computers.^{6/}

As you may know, Commission Rule 3.12(i) was recently amended to permit an abbreviated registration process for APs under certain circumstances. Specifically, Rule 3.12(i) states that "[a]ny person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an [AP] of the new sponsor upon the mailing by that new sponsor to the National Futures Association" of certain written certifications. Thus, registration as an AP of a new sponsor is granted upon the mailing to NFA of the certifications specified under the rule by the new sponsor and no new filing of a Form 8-R or fingerprint card is required. The rule, however, does not appear to contemplate relief in the instant

^{4/} It is anticipated that the Acquisition will close in July, 1993 (the "Closing Date").

^{5/} As previously noted, "Y" is required to file Forms 8-T or Form U-5 with respect to the Transferring APs and, pursuant to Rule 3.31, "Y" and "X" must file Forms 3-R to report the change in their names in connection with the Acquisition.

^{6/} NFA will retain the hardcopy certification and list of the Transferring APs in its registration records.

sored by an entity other than its current sponsor through no choice or action by the AP.^{1/} The Commission stated that this could occur, for example, if the sponsor engages in a corporate reorganization or if the sponsor is merged with or acquired by another company, and noted that "[i]n any of these instances, the AP may still be dealing with the same customers, have the same supervisor, and even operate out of the same physical location (albeit with a new name on the door)."^{2/}

In the instant case, the Transferring APs will become associated with "X" after implementation of the Asset Purchase Agreement as described above, apparently through no choice or action by the Transferring APs. Additionally, "X"'s business operation will be operated from the same physical locations as was "Y"'s business,^{3/} and you anticipate that the majority of "Y"'s customers will become customers of "X".

Based on the foregoing, the Division believes that the situation presented with respect to the Transferring APs referred to herein is analogous to the circumstances addressed in Rule 3.12(i), and that granting the requested relief would not be contrary to the public interest or the purpose of the provisions from which relief is sought. Accordingly, the Division will not recommend that the Commission take enforcement action against the Transferring APs as to whom "X" as sponsor provides the certifications set forth in Rule 3.12(i) or against "X" pursuant to Section 4k(1) of the Commodity Exchange Act ("Act")^{10/} or Commission Rule 3.12(d) based solely upon such APs' failure to file a Form 8-R and fingerprint cards in connection with their registration as APs of "X" or "X"'s employment of such APs. This relief is, however, subject to the condition that "X" files with the NFA the written certifications required by Rule 3.12(i) with respect to the Transferring APs, who may be identified on an attachment or exhibit to such certifications.^{11/}

^{1/} 56 Fed. Reg. 37026, 37034 (August 2, 1991).

^{2/} Id.

^{3/} In this regard, you state that certain supervisory APs located in New York City will be changing the location of their operations in Manhattan. However, the location of those APs that interact directly with customers will not change.

^{10/} 7 U.S.C. § 6k (1988 & Supp. IV 1992).

^{11/} With respect to the Rule 3.12(i) certifications, "A"'s letter, as supplemented by telephone conversations with Division staff, states that "X"'s certifications will be based upon the available records and information provided by "Y" to "X" and "X"'s examination of the public files of the Office of Proceedings of the CFTC and the Registration Department of the NFA. "A" also states

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The position taken herein is based on the representations you have made to us, and is subject to the condition stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. The relief granted herein applies only to the registration application requirements with respect to the Transferring APs certified by "X" as sponsor as set forth above and does not relieve such APs, "Y" or "X" from any other responsibilities or liabilities under the Act or the rules promulgated thereunder. In this regard, we request that you notify us immediately in the event the above facts change in any way from those represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission.

If you have any questions regarding this letter, please contact me or George G. Wilder, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

that "X" will promptly notify the CFTC and NFA should "X" learn that an event has occurred within thirty days of the Closing Date which would cause any of the certifications with respect to the Transferring APs to be inaccurate.