



**COMMODITY FUTURES TRADING COMMISSION**

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93-88

**DIVISION OF  
TRADING AND MARKETS**

July 23, 1993

Re: Request for no-action relief with  
respect to Sections 4d(2), 4f(b) and  
4g of the Commodity Exchange Act

Dear :

This is in response to your letter dated June 18, 1993, to the Division of Trading and Markets (the "Division"), as supplemented by your letter dated July 15, 1993 and by telephone conversations with Division staff, wherein you request regulatory relief on behalf of "T" and "U", registered futures commission merchants ("FCMs"), with respect to the performance by "T" of certain execution and clearance services during an interim period following a bulk transfer of customer accounts from "T" to "U", as more fully described below.

Based upon the representations made in your letters, as supplemented, we understand the facts to be as follows. "T" and "U" have entered into an asset purchase agreement, dated March 12, 1993 ("Asset Purchase Agreement"), whereby "T" will sell certain assets of its "X" Divisions to "U". The Asset Purchase Agreement contemplates that approximately [n] customer accounts (the "X Accounts") located in approximately [n] "T" branch offices (the "Branch Offices") will be transferred to "U" at the closing of the Asset Purchase Agreement, which is expected to occur in July, 1993 (the "Closing").<sup>1/</sup> In connection with the transfer of "X Accounts",<sup>2/</sup> "T" will deliver to "U" the commodity processing system (the "System") currently used for processing of "X

<sup>1/</sup> We note that, following the Closing, "T" will change its name to "V" and "U" will change its name to "W".

<sup>2/</sup> Pursuant to Rule 1.65, 58 Fed. Reg. 17495 (April 5, 1993), the "T" Account customers will either have received: (i) a letter, dated June 1, 1993, advising that "V" will transfer the "T Accounts" and assign their Commodity Client Agreements to "W" unless a customer advises "V" to the contrary by the close of business on June 16, 1993; or (ii) a letter, dated June 8, 1993, requesting consent to the proposed transfer to "W" by the close of business on June 22, 1993.

Accounts". The System handles all aspects of account processing and related operational matters, including regulatory accounting requirements and computation of funds required to be held in segregation pursuant to Section 4d(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6d(2) (1988), and the rules promulgated thereunder. However, it is anticipated that "W" will not be able to commence operating the system until on or about September 6, 1993.

To avoid disruption in customer services with respect to "X Accounts" during the period between the date of the Closing and the date that "W" commences operation of the System (the "Interim Period"), "V" will continue to operate the System with respect to "X Accounts" and new customer commodity accounts opened at "W" during the Interim Period. Consequently, during the Interim Period, in order to facilitate the asset sale contemplated by "Y", "V" has agreed to execute and clear futures and options on futures transactions for "X Accounts" and for all new commodity accounts (collectively, "X Accounts") to be opened in the Branch Offices on a fully-disclosed basis. Customers will be advised of this arrangement by notice sent promptly after the account transfers.

In furtherance of this arrangement, during the Interim Period, Branch Office commodity customers will remit funds to be credited to "X Accounts" to the "W" Branch Offices. Funds to be received by wire, which you expect to comprise the bulk of the funds, will be wired directly to a "V" commodity customer segregated bank account and will be identified as belonging to "X Accounts". Customer checks received by "W" Branch Offices will, as a general procedure, be deposited into a local "W" bank account and swept into a "V" commodity customer segregated bank account by the end of business that day,<sup>3/</sup> as "V" will not maintain local bank accounts after the Closing for the Branch Offices. The procedures which will be followed with respect to such checks are set forth in your letter of July 15, 1993. Receipt of such funds, the customer's account number and other pertinent information will be immediately recorded in the Cash-Over-the-Wire ("COW") system, a computerized mainframe on-line system. Such checks will be deposited into a local "W" bank account and confirmed against bank deposit tickets. At the close of business, "W"'s Treasury Department in New York will instruct the wire transfer of the appropriate amount to "V"'s commodity customer segregated bank account. In determining the amount of funds to be deposited into the "V" commodity customer segregated bank account, "W" will increase the total amount of

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<sup>3/</sup> You have indicated that it is possible but unlikely that some checks will be immediately endorsed to "V" and directly deposited into a "V" commodity customer segregated bank account that would constitute a "qualifying account" as defined in paragraph (c) of Rule 1.57, 17 C.F.R. § 1.57(c) (1993).

funds received at the "W" Branch Offices for deposit in a "V" commodity customer segregated bank account by an amount equal to the amount expected to be received at "W" Branch Offices on the West Coast after the closing of the Fedwire system but before the close of business.

Whether customer checks are immediately endorsed to "V" and deposited directly into a "V" segregated account or deposited in an "W" account and swept into a "V" segregated account at the end of the day, "V" will be responsible for maintaining customer funds in proper segregation and for maintaining sufficient net capital to carry the positions that will be held in "X Accounts." "W" will also undertake to segregate sufficient excess funds to cover any amounts deposited into local "W" bank accounts and swept into "V" accounts at the end of the day based upon historical daily experience of the amount of checks received by "V" at the Branch Offices for customer margin calls in respect of "X Accounts."<sup>4/</sup> "V" will have position limit and large trader reporting responsibilities during the Interim Period with respect to "X" and will have the right to liquidate positions in "X" and to take other remedial actions consistent with the clearing agreement to be executed by "V" and "U".

"T" and "U" have made the following acknowledgments in support of this request for relief. "T" acknowledges that during the Interim Period "V" will be responsible for maintaining proper segregation of commodity customer funds for "X Accounts," preparation of the segregated funds computations and schedules, and maintaining the appropriate level of net capital with respect to "X Accounts". "U" (which becomes "W" at the Closing) acknowledges that: (i) it has no reason to believe that it does not and will not have sufficient net capital to carry the positions that will be held in "X Accounts" during the Interim Period; (ii) following the close of the Interim Period, a copy of "W"'s FOCUS report required under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. (1988), as amended, for that month-end will be filed with the Commission within seventeen business days following such month-end indicating the funds then held in segregation for "X Accounts" in accordance with applicable securities regulatory requirements; and (iii) with respect to checks received from commodity customers at Branch Offices, "W" will follow the procedures set forth in your letters of June 18, 1993 and July 15, 1993, as noted above, such that checks generally will be swept into a "V" commodity customer segregated bank account by the close of business on the day that such funds are received.

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<sup>4/</sup> Based upon historical daily experience, the amount received by the Branch Offices in checks should be less than one million dollars daily.

Thus, although "X Accounts" will have been transferred to "W" and have become accounts of "W" serviced in "W" Branch Offices by APs of "W", "V" will continue to perform the required segregation and capital computations with respect to "X Accounts" during the Interim Period, subject to the acknowledgments of "U" described above. "W" will have contractual responsibilities to its commodity customers under the Commodity Client Agreements by virtue of "W"'s assumption of such agreements from "T" as of the Closing Date.

Based upon the representations and acknowledgments made to us and subject to the conditions set forth below, the Division has determined that it will not recommend that the Commission commence enforcement action against "V" or "W" under Sections 4d(2), 4f(b) or 4g of the Act and the rules promulgated thereunder in connection with "V"'s performance of the execution and clearance services during the Interim Period to facilitate the transfer of customer accounts described above. This position is conditioned upon "V"'s performance of its responsibilities to maintain proper segregation of commodity customer funds for "X Accounts," prepare the segregated funds computations and schedules, and maintain the appropriate level of net capital with respect to "X Accounts," and "V"'s and "U"'s compliance with the acknowledgments described above and in your letters. This position may terminate in the event of changed circumstances, including, for example, the receipt of negative reports in connection with this matter.

The position adopted herein is based upon the representations and acknowledgments made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations and activities of "T", "U", "V" or "W" change in any way from those as represented to us. Moreover, this position is that of the Division only and does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning this correspondence, please feel free to contact me or Susan C. Ervin, Chief Counsel, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran  
Director