

CFTC Letter No. 98-33**May 5, 1998****Division of Trading & Markets**

Re: Section 4d(1) of the Commodity Exchange Act -- Request for Continued No-Action Position Regarding IB Registration Requirement Where Entity Continues to Receive Finder's Fees from Former Clients who are CTAs

Dear :

This is in response to your letter dated December 18, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request a continuation of the no-action relief previously granted by the Division to "T" and "A" from the introducing broker ("IB") registration requirements of Section 4d(1) of the Commodity Exchange Act ("Act")¹ in the context of "T's" receipt of finder's fees from commodity trading advisors ("CTAs") to whom "T" introduced clients while registered with the Commission as an IB.

Based upon your representations, we understand the pertinent facts to be as follows. "T" was registered with the Commission as an IB from April 11, 1995 until February 28, 1996. During the same period, "T's" sole principal, "A", was registered as an associated person ("AP") and listed as a principal of "T". "T" used its contacts in the futures industry, mainly registered APs of futures commission merchants ("FCMs") and other IBs, to market the programs of various CTAs to members of the public. As compensation for the services it provided, "T" received a percentage of the fees collected by the CTAs on the accounts that "T" introduced. Generally, "T's" agreements with the CTAs called for it to receive fees for as long as the accounts remained open, with the fees declining after the first two years of the account's opening.

In early 1996, "A" was hired as an AP for one of "T's" CTA-clients, "U". "U" did not want "A" to remain registered as an AP of an unaffiliated company ("T"), so "A" had to sever his ties with "T". "T" also had to withdraw its registration as an IB because it was not economically feasible to maintain its IB status without the participation of "A".

Because some of the accounts introduced by "T" to its CTA-clients remained open and continued to produce income for "T" following the withdrawal of its IB registration, "T" sought no-action relief from the Division to enable it to continue to receive fees from the CTAs even though it was no longer registered as an IB. "T" identified four CTAs from whom it anticipated receiving fees in the future.

By letter dated May 6, 1996 (the "May 6 Letter"), and based upon relevant precedent,² the Division granted "T's" request for no-action relief. The relief was granted subject to the condition that "A" remain registered with the Commission during the entire period in which "T" received fees from its former CTA-clients and that all such fees ceased to be paid to "T" at a date not later than two years from the date of the May 6 Letter (no later than May 6, 1998).

You assert that when "T" originally requested the relief from IB registration, "T" had no reason to believe that it would continue to receive fees for a period longer than two years. Nonetheless, you assert that there is still one CTA from whom "T" wishes to receive fees in the future, "V". You anticipate that "T" will continue to receive fees for no more than one additional year. Accordingly, you seek no-action relief that would permit "T" to continue receiving fees from "V" through May 6, 1999.

As we stated in the May 6 Letter, there are circumstances in which registration will not be required as a prerequisite for the receipt of fees paid for soliciting clients on behalf of other Commission registrants. The Commission has not required registration, for example, where, as here, the non-registrant who receives the commissions is in a passive role and exercises no control whatsoever over the solicitation or trading of the accounts in question or any other accounts.³

Based upon your representations that: (1) "T" was registered as an IB at the time it solicited members of the public for its CTA-clients; (2) "A" continues to be registered as an AP of "U", which continues to be registered as a CTA; (3) "T", while still incorporated and in good standing under the laws of "W", continues to be a dormant company, and is no longer registered as an IB; (4) "T" is no longer soliciting customers on behalf of its CTA-clients; (5) "T" was and continues to serve in a passive role with respect to the accounts of its former CTA-clients with no follow-up contact with, or responsibilities for the accounts in question; and (6) "T's" business activity is limited to accepting fees from its former CTA-clients, we believe that it would not be contrary to the public interest or the purpose of Section 4d(1) of the Act for "T" to continue to receive fees for an additional one year, or, through May 6, 1999, without being registered as an IB. Accordingly, the Division will not recommend that the Commission commence any enforcement action against "T" or "A" under Section 4d(1) of the Act, based solely upon "T's" failure to remain registered as an IB while it continues, through May 6, 1999, to receive fees owed by "V", as described above. This relief is subject to the conditions that: (1) "A" remains registered with the Commission during the entire period in which "T" receives fees from "V"; and (2) "T" otherwise complies with the May 6 Letter. This relief also is subject to the condition that all such fees will cease to be paid to "T" after May 6, 1999.

The relief granted by this letter is applicable to "T" and to "A" solely in connection with their right to receive fees as described above without "T" being registered as an IB. It does not excuse "T" or "A" from compliance with any other applicable requirements contained in the Act or the Commission's rules promulgated thereunder. Further, this letter, and the no-action position taken herein, is based upon the representations that have been made to us and is subject to compliance

with the conditions set forth above. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the activities of "T" and "A", including their registration status, change in any material way from those as represented to us.

If you have any questions concerning this correspondence, please contact Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

¹ 7 U.S.C. § 6d(1) (1994).

² See *infra* note 3.

³ *In the Matter of GNP Commodities Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,375 at 39,283 (Sept. 4, 1992) (FCM that entered into contract for the sale of its assets and whose registration was revoked was permitted to receive periodic payments based on a portion of the commissions and floor broker revenues earned on the assets).