

CFTC Letter No. 99-64**December 6, 1999****No-Action****Division of Trading & Markets**

Re: Request for No-Action Position for IB Carrying Accounts with Non-Guarantor FCM

Dear:

This is in response to your letter dated September 24, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated September 30, and October 13, 1999, a letter from "X" dated October 7, 1999, and telephone conversations with Division staff. You request, on behalf of "Y", a guaranteed introducing broker ("IB") of "X", a registered futures commission merchant ("FCM"), relief permitting "X" to provide execution but not clearing services for certain customers introduced by "Y".

Based upon the representations made in your correspondence, we understand the facts to be as follows. "Y", as an IB of "X", introduces certain commercial hedgers as customers to "X". Several of these customers have requested that "Y" do "give-up" business with them. Although "X" would be providing execution services for these customers, it would not be clearing such trades.

In support of your request, you represent that, in connection with the "give-up" trades in commodity interest contracts for these institutional customers, "Y" will limit to \$2,000,000 the amount of money, securities, or property (or credit extended in lieu thereof) required by FCMs other than "X" from these institutional customers to margin the "give-up" trades. You further represent that, notwithstanding that certain of "Y's" customers will elect to have their transactions cleared by FCMs other than "X", "Y" receives no compensation from the other FCMs through which the transactions are cleared. In addition, "X" is substantially capitalized and will have sufficient adjusted net capital to meet any obligations it may have to "Y's" customers without regard to whether those customer accounts are carried by "X". Specifically, "X" confirms that as of July 31, 1999, it had adjusted net capital of "A" and excess net capital of "B".¹ Further, "X" reaffirms that, as provided in the guarantee agreement it executed with "Y", it accepts joint and several liability for all obligations of "Y" under the Commodity Exchange Act ("Act")² and the regulations promulgated thereunder with respect to the solicitations of, and transactions involving, all customer transactions of "Y".

As you may know, Rule 1.57(a)(1) provides, in pertinent part, that an IB that has entered into a

guarantee agreement with an FCM must open and carry customer accounts with such guarantor FCM on a fully-disclosed basis. In order to protect the IB's customers, the FCM that has entered into the guarantee agreement with the IB must carry all of the customer accounts introduced by the IB³.

Based upon our evaluation of the information provided in your letter, as supplemented, we believe that granting your request would not be contrary to the "customer protection" objective of Rule 1.57(a)(1)⁴. This opinion is based principally upon your representations as to the \$2,000,000 limit in margin funds related to the "give-up" trades, the substantial capital held by "X" and the purpose of the requested relief, which is to comply with the requests of certain institutional customers that their trades be cleared by FCMs other than "X".

Accordingly, based upon the above representations, the Division will not recommend that the Commission take any enforcement action under Rule 1.57(a)(1) against "Y" or "X" if "Y" introduces to "X" certain commercial hedgers who employ "X's" execution services but choose to clear their transactions with other FCMs. The no-action position taken in this letter does not affect any other duties or responsibilities of "Y" or "X".

This letter, and the no-action position issued herein, are based upon the representations that have been made to us. Any different, changed, or omitted material facts or circumstances might require us to reach a different conclusion. You must notify us immediately in the event the operations or activities of "Y" or "X" change in any material way from those represented to us. Further, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or any other division or office of the Commission.

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

Very truly yours,

John C. Lawton

Acting Director

AJS/as

¹ As of August 31, 1999, "X" had adjusted net capital of "C", and excess net capital of "D".

² 7 U.S.C. § 1 *et seq.* (1994).

³ See 57 Fed. Reg. 23136 at 23137 (June 2, 1992).

4 *See, e.g.* CFTC Interpretative Letter No. 96-85, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,914 (December 4, 1996).