CFTC letter No. 04-09
February 20, 2004
No-Action
Division of Clearing and Intermediary Oversight

Re: Section 4d -- Request for No-action Relief from Introducing Broker Registration

Dear:

This is in response to your letter dated January 5, 2004, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), by which you request that the Division not recommend enforcement action be taken against "T" and "U" if "T" were to introduce certain customers located in the United States ("US Customers") on a fully-disclosed basis to any registered futures commission merchant ("FCM") without being registered with the Commission as an introducing broker ("IB"). The Division previously granted no-action relief to "T" with respect to activities undertaken in relation to accounts carried on a fully-disclosed basis solely with "U".[1]

The relevant facts are unchanged from the original request. "V" is a wholly-owned subsidiary of "W" and appropriately registered in France with the Comité des Establissements de Crédit et des Enterprises d'Investissement as a credit institution and with the Conseil des Marchés Financiers to provide investment services. "T" is a branch of "V" located in London. "T" acts as a broker of, among other things, futures and options. "T" is appropriately registered in the United Kingdom with the Financial Services Authority ("FSA") to conduct an investment business. Pursuant to Commission Rule 30.10,[2] "T" has been granted an exemption from registration with the Commission as an FCM for purposes of offering foreign futures and options to US Customers. "U" is a wholly-owned subsidiary of "V" located in New York and is registered with the Commission as an FCM.

Subject to certain conditions,[3] the relief set forth in the July 17, 2003 Letter permitted "T" to act as an IB[4] to "U" so as to introduce institutional US Customers to "U" for purposes of trading US exchange-traded futures and options. The relief eliminated the need for US customers to use multiple order entry systems or phone calls to engage in transactions in both US and non-US markets, and thus mitigated the increased systemic and liquidity risks associated with such activities. You have stated, however, that certain US customers may not want to carry their accounts on a fully-disclosed basis with "U" because, among other reasons, they have a "prime brokerage" relationship with another FCM. In such instances, the US customers would prefer to give up futures and options executed on US exchanges through "T" to another FCM. Based upon conversations with you, it is our understanding that "T" will arrange for the execution of the orders placed by US Customers whether "U" or another FCM will clear the trades.[5]

In support of your request for relief, you represented that all conditions set forth in the July 17, 2003

Letter will continue to apply, including the acknowledgment by "U" that it will be jointly and severally liable for any violations of the Act or of the Commission's rules committed by "T" in connection with the latter's handling of orders for US customers for trading of futures and options on US exchanges, regardless of whether the customer account is carried by "U" or by another FCM. You further represented that the Group[6] is organized transversally worldwide across many departments, with each department managed by a single global director. Local legal, compliance, internal audit, credit and risk employees at "U" and "T", therefore, have identical reporting lines to a central global head, while maintaining local day-to-day reporting lines to the local senior manager. As such, "U" is willing to accept liability for trades given up by "T" to another FCM because "T" will be subject to the same procedures and oversight designed to monitor and control risks associated with the trading of futures and options by institutional US customers.

Based upon the representations in your letter, the Division believes that granting the requested relief would not be contrary to the public interest. Accordingly, the Division will not recommend that the Commission commence any enforcement action against "T" or "U" based solely upon the failure of "T" to register as an IB for purposes of introducing institutional US Customers to "U" or any other FCM to trade US-exchange traded futures and options. This relief is conditioned upon "U's" acknowledgment that it will be jointly and severally liable for any violations of the Act or the Commission's rules committed by "T" in connection with the latter's handling of orders for US Customers for trading of futures and options on US exchanges, including those orders executed by "T" and given up to another FCM. "U" must submit such an acknowledgment in writing manually signed by a representative duly authorized to bind "U" within two weeks of the date of this letter.

This letter does not excuse "T", "U", or any other FCM acting pursuant to this relief from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each remains subject to all applicable antifraud provisions of the Act. Moreover, the position taken in this letter is applicable to "T" and "U" solely in connection with "T's" introduction of institutional US Customers on a fully-disclosed basis for purposes of executing trades on US exchanges.

The position taken in this letter is based upon the representations that have been made to the Division. Any different, changed, or omitted facts or conditions might render this position void. You must notify the Division immediately in the event the operations or activities of "T", "U", or any other participating FCM change in any material way from those represented to us. Further, this letter represents the position of this Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission. If you have any questions concerning this correspondence, please contact Deputy Director Lawrence B. Patent at (202) 418-5439 or Special Counsel Andrew V. Chapin at (202) 418-5465.

Very truly yours,

James Carley

Director

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[1] CFTC Letter No. 03-28, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,229 (July 17, 2003) (“July 17, 2003 Letter”).

[2] Commission rules referred to herein may be found at 17 C.F.R. CH I (2003).

[3] The relief set forth in the July 17, 2003 Letter was predicated upon the following: (a) all US Customers that “T” will introduce to “U” will be institutional customers as defined in Commission Rule 1.3(g); (b) all US Customers will be introduced on a fully-disclosed basis in accordance with Commission Rule 1.57; and (c) FSA will continue to supervise “T's” sales practice activities related to all customers including US Customers, and the appropriate French regulators will continue to supervise “T's” overall regulation and financial adequacy.

[4] An IB is defined as a person engaged in soliciting or in accepting orders for futures that does not accept any money, securities, or property to margin any trades that result from such trades. *See* Section 1a(23) of the Commodity Exchange Act (the "Act"); *see also* Commission Rule 1.3(mm).

[5] *See* CFTC Letter 94-25, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,016 (March 11, 1994) (permitting an FCM to utilize the services of one of its guaranteed IBs to arrange execution of customer orders, subject to, among other conditions, the requirement that the FCM consent to be jointly and severally liable for any violations of the Act and the rules promulgated thereunder committed by the guaranteed IB).

[6] The Group refers to all subsidiaries and divisions of “W” that bear the “X” name worldwide.