COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

89-11

August 15, 1989

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated July 20, 1989, on behalf of in which you requested that the Division confirm that it will not recommend any enforcement action against for failure to register as a futures commission merchant ("FCM") under the circumstances described below.

In your letter you have stated that:

> is a Japanese bank organized as a corporation under the law of Japan. principal office is located in Tokyo, Japan and also maintains offices elsewhere in Japan and in other non-U.S. cities. In addition, maintains several branch offices in the U.S. (the "U.S. Branches").
>
> is a member of the Tokyo International Financial Futures Exchange ("TIFFE") which commenced trading activities on June 30, 1989. intends to carry accounts for customers for the purpose of executing transactions in futures contracts (and option contracts as permitted by the Commission pursuant to Commission Rule 30.3(a)) traded on TIFFE and other non-U.S. futures and options exchanges ("Foreign Futures Contracts") and carrying positions in Foreign Futures Contracts. In that connection, expects that it will also carry customer omnibus accounts ("Omnibus Accounts") for registered U.S. FCMs through which such FCMs will obtain execution and clearing of Foreign Futures Contracts and carry Foreign Futures Contract positions for U.S. customers.
>
> All funds and property required for margin or premiums with respect to Foreign Futures Contracts carried in the Omnibus Accounts will be transferred directly by

the FCM to the Tokyo office of . Similarly, all withdrawals from Omnibus Accounts will be transmitted directly from in Tokyo to the FCM. All orders and other instructions relating to the Omnibus Accounts will be transmitted directly to Tokyo office by the FCMs and all reports and other communications relating to the Omnibus Accounts will be transmitted directly from Tokyo office to the FCM. will not have any contact with the U.S. foreign futures customers beyond carrying the positions of such customers on an undisclosed basis in an Omnibus Account. Furthermore, the U.S. Branches will not be involved in any way in 's activities as a broker in Japan in respect of Foreign Futures Contracts, except that the U.S. Branches may respond to unsolicited questions regarding Foreign Futures Contracts by referring the inquirer to an FCM which may be an FCM which maintains an Omnibus Account with . Neither the U.S. Branches nor any employee of the U.S. Branches will be compensated directly or indirectly by the FCM for responding in that manner to such unsolicited inquiries.

Commodity Futures Trading Commission ("Commission") rule 30.4(a) generally provides that it shall be unlawful for any person with respect to a foreign futures or foreign options customer to accept orders for or involving any foreign futures or options transaction and to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure such transactions without first registering as an FCM.

In Interpretative Letter 87-7, however, the Division stated that where an FCM transfers its customer omnibus account to an offshore firm which is a member of a foreign exchange and such foreign exchange member's contact with foreign futures and options customers is limited to carrying the customer omnibus account of a U.S. FCM for execution on the foreign exchange, such activity should not bring the offshore firm within the scope of the foreign futures and options rules. 1/ Accordingly, but for the existence of the U.S. Branches, could avail itself of the relief contained in Interpretative Letter 87-7 in connection with the activities proposed to be undertaken on behalf of customers resident in the United States on foreign boards of trade.

1/ See Interpretative Letter 87-7, 2 Comm. Fut. L. Rep. (CCH) ¶23,972 (November 17, 1987).

In your letter, you represent that in support of its request for this no action position, the appropriate authorized officer of will undertake on behalf of as follows:

(a) None of the U.S. Branches will solicit or accept orders for Foreign Futures Contracts or options (except that the U.S. Branches may respond to unsolicited inquiries concerning Foreign Futures Contracts by referring such inquiries to an FCM which may be an FCM which maintains an Omnibus Account with in Tokyo) or engage in any activities subject to regulation by the Commission (except in connection with proprietary trading conducted by the U.S. Branches);

(b) agrees to provide, upon request of the Commission or National Futures Association, access to books and records of the U.S. Branches for purposes of ensuring compliance with the foregoing undertaking; and

(c) agrees that the agent appointed in accordance with the undertakings of contained in its June 23, 1989 letter will also be agent for the purpose of accepting delivery and service of any communication from the Commission relating to activities in carrying the Omnibus Accounts.

The Division notes that by letter dated June 23, 1989, in connection with a no action position related to trading by Tokyo office for or on behalf of non-U.S. persons on U.S. markets, has identified to the Division its U.S. Branches and undertaken to notify the Division of any new U.S. Branches which determines to open. The Division further understands that each such U.S. Branch is subject to extensive regulation, including reporting and recordkeeping requirements and examinations, either under state banking laws or under federal law by the Office of the Comptroller of the Currency.

The Division has reviewed the undertakings proposed by and believes that subject to compliance with the additional requirement that identify the FCM(s) to which the unsolicited inquiries as specified in paragraph (a) above will be referred, such undertakings will be sufficient to ensure that the regulatory purposes of limiting the relief in Interpretative Letter 87-7 to firms located outside the United States which carry a U.S. FCM's customer omnibus account would be adequately addressed. Specifically, in these circumstances, the FCM which would benefit from the promotional activities of its unregistered agents is located in the U.S. and its sales practices, including any potential activities by its unregistered agents, could be detected by the Commission, the National Futures Association or other self-regulatory organization during the course of

an audit. 2/

The Division wishes to clarify that the no action position set forth herein will not take effect until an appropriate officer of with authority to bind both and the U.S. Branches files the documents required above and a notice on behalf of and its U.S. Branches affirming his consent to all of the consents and representations specified herein. The Division will review such submission and provide written confirmation as to the applicability of the no action relief.

Based upon the foregoing, subject to compliance with the terms and conditions of this letter, the Division will not recommend that the Commission initiate enforcement action against for failure to register as an FCM under the circumstances as described above. The position adopted herein is based on the information provided to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. This position is solely that of the Division of Trading and Markets and does not necessarily represent the views of the Commission or those of any unit of its staff.

Very truly yours,

Andrea M. Corcoran
Director

2/ See also Interpretative Letter 88-3, 2 Comm. Fut. L. Rep.(CCH) ¶24,085 (January 15, 1988).