**CFTC Letter No. 01-49**
**May 24, 2001**
**No-Action**
**Division of Trading and Markets**

> Re: Sections 5, 5a and 5c of the Act; Request for an Interim No-Action Position to Permit a Subsidiary of a Registered Securities Association that is Applying for Registration as a Futures Association to Serve as the Delegatee for a DCM or DTF or an Entity Seeking to Become a DCM or DTF

Dear :

This is in response to your letter dated April 27, 2001, addressed to the Office of General Counsel and the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations between Commission staff and your staff. You state that "X", a subsidiary of the "Y", is in the process of applying for registration as a futures association under Section 17 of the Commodity Exchange Act ("Act"). You seek a no-action position that will permit "X", while its application for registration is pending, to serve as the delegatee of relevant functions for a Designated Contract Market ("DCM"), a registered Derivatives Transaction Execution Facility ("DTF"), or an entity seeking to become a DCM or DTF, to assist such an entity in complying with core principles as required by the Act.[1]

Based upon your representations, we understand the facts to be as follows. "Y" is the "A" self-regulatory organization ("SRO") for the securities industry in the United States.[2] "X", "Y's" subsidiary, regulates the "V", the "B", and the "W".

Section 5 of the Act sets forth the criteria for designating a board of trade as a contract market and the core principles with which a DCM must comply. Section 5a of the Act contains the criteria for registration as a DTF and the core principles with which a DTF must comply. Section 5c of the Act permits a DCM or DTF to comply with any core principle under the Act through delegation of any function to a *registered futures association or another registered entity*.[3] Section 1a(29) defines a "registered entity" as a DCM, a DTF or registered derivatives clearing organization.[4]

The Division recognizes that your request presents unique facts and circumstances. "Y" is a national securities association registered with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934. "X" is an experienced SRO for the securities markets and the intermediaries involved in those markets. "X" also has expressly committed to register as a futures association under Section 17 of the Act. The Division believes that, upon receipt of an application from "X" that contains all of the relevant information required by Section 17 of the Act and Part 170 of the Commission's rules, it would be able to review "X's" application for registration as a futures association expeditiously. If, contemporaneously with the processing of “X's” application, the Division received an application from any other entity for designation as a DCM or registration as a DTF, and such application identified “X” as the delegatee of relevant SRO functions, the Division would not recommend that the Commission reject such application solely on the basis that “X” is not a registered futures association or other registered entity. Furthermore, if the Commission determined that such a DCM or DTF application otherwise comported with the statutory requirements for designation or registration, including demonstration that it could maintain designation or registration by complying with core principles through delegation of relevant functions to “X”, but the Commission had not yet completed its review of “X's” application under Section 17 of the Act, the Division at that time would grant to the DCM or DTF appropriate no-action relief from the requirements of Section 5c(b) of the Act upon request. Pursuant to such no-action relief, the DCM or DTF could rely on its demonstration that it complied with applicable core principles under Sections 5(d) and 5a(d) of the Act, pending Commission action on “X's” application for registration as a futures association.

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,

John C. Lawton
Acting Director

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[1] DCMs and DTFs must satisfy the criteria for designation or registration, respectively, and comply with the core principles for operation, established under Sections 5 and 5a of the Act. *See* Sections 110 and 111 of the Commodity Futures Modernization Act (“CFMA”), P.L. 106-554, 114 Stat. 2763.

[2] “Y's” membership includes more than ______ securities firms that operate more than _____ branch offices and employ more than ______ registered securities professionals, including every broker or dealer that conducts a securities business with the public.

[3] Delegating a function, however, does not relieve the DCM or DTF from responsibility for carrying out that particular function.

[4] DCMs may include registered national securities exchanges, registered national securities associations and alternative trading systems whose only futures-related activity involves security futures products. *See* Section 252 of the CFMA, adding a new Section 5f to the Act.