

CHARTERHOUSE TILNEY

**SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

July 15, 1993

RESPONSE OF THE OFFICE OF CHIEF COUNSEL DIVISION OF INVESTMENT MANAGEMENT

**Our Ref. No. 93-185-CC
Charterhouse Tilney
File No. 132-3**

In your letter of April 7, 1993, you request the staff's assurance that it would not recommend enforcement action to the Commission under the Investment Advisers Act of 1940 (the "Advisers Act") if, without registering as an investment adviser under Section 203(a) of the Advisers Act, Charterhouse Tilney ("CT") engages in activities permitted of foreign broker-dealers in accordance with (1) the requirements of Rule 15a-6 under the Securities Exchange Act of 1934 (the "Exchange Act") or (2) the Commission's position with respect to the distribution of research to U.S. persons by foreign broker-dealers set forth in Securities Exchange Act Release No. 27017 (July 11, 1989) ("Release 27017").

CT is a foreign broker-dealer incorporated in the United Kingdom. It is a wholly-owned subsidiary of Charterhouse PLC, which is a wholly-owned subsidiary of The Royal Bank of Scotland PLC. CT's business is conducted from the United Kingdom, and CT has no operations located in the United States or anywhere else outside of the United Kingdom. CT is not registered with the Commission as a broker-dealer or an investment adviser. n1 In addition, CT is affiliated with Charterhouse North American Securities Inc. ("CNAS"), a Delaware corporation that is wholly-owned indirectly by Charterhouse PLC, and registered as a broker-dealer with the Commission. Because CNAS provides research to its customers solely as an incident to its broker-dealer business and receives no special compensation, other than brokerage commissions, for providing these services, it is not registered as an investment adviser under the Advisers Act in reliance on Section 202(a)(11)(C). n2

In accordance with paragraph (a)(2) of the Rule, n3 CT also proposes to provide research reports to "major U.S. institutional investors," as defined in paragraph (b)(4) of the Rule n4 and to effect transactions in the securities discussed in the research reports with or for these investors. You state that neither CT, nor the research reports provided to these investors by CT, would recommend the use of CT to effect trades in any security. Moreover, CT will not initiate contact with these investors to follow up on the research reports or otherwise induce or attempt to induce the purchase or sale of any security by these investors other than in accordance with paragraph (a)(3) of the Rule. You further state that no research provided by CT to these investors would be provided pursuant to any understanding, express or implied, that the investors receiving the reports would direct commission income to CT.

CNAS also proposes to distribute CT research reports to U.S. persons other than major institutional investors in accordance with the Commission's position as stated in Release 27017. You state that CNAS will have full supervisory authority for the publication of the reports prepared by CT and will distribute the reports in the United States. You further state that each such research report would prominently state that CNAS had accepted responsibility for the content of a report, and that any U.S. persons receiving a report and wishing to effect transactions in any security discussed in the report should do so with CNAS and not CT. In accordance with this statement, all transactions with U.S. recipients of the reports would be effected only with or through CNAS and not CT. Moreover, no research prepared by CT and provided by CNAS to its U.S. customers would be provided pursuant to any understanding, express or implied, that the recipients of these reports would direct commission income to CT.

In addition, CT proposes to attempt to induce the purchase and sale of securities by U.S. institutional investors or major U.S. institutional investors through direct contact in accordance with paragraph (a)(3) of Rule 15a-6. n5 You state that, except in connection with unsolicited orders pursuant to

paragraph (a)(1) of the Rule, all transactions with or for these investors resulting from these contacts would be effected through CNAS, which would execute the transactions through CT.

CT also proposes to effect transactions with registered broker-dealers, foreign persons temporarily present in the United States with whom CT had a bona fide, pre-existing relationship before the person entered the United States, and the other persons permitted under paragraph (a)(4) of Rule 15a-6. n6

Finally, you state that any investment advice CT renders in connection with activities permitted under Rule 15a-6 and Release 27017 as described in your letter will be solely incidental to CT's business as a broker-dealer, and CT will receive no special compensation for these activities.

We would not recommend any enforcement action to the Commission if CT engages in the activities described in your letter without registering under the Advisers Act. n7 Our position is based on the facts and representations made in your letter and in the telephone conversation. Any change in facts or circumstances may require a different conclusion. Moreover, this response only expresses the Division's position on enforcement action and does not purport to express any legal conclusions on the questions presented.

We note that you have not requested that the staff comment regarding the application to CT of the exemption from broker-dealer registration provided under Rule 15a-6. Accordingly, the Division of Market Regulation, which has reviewed your request, expresses no opinion on the application of Rule 15a-6 to CT.

Alison E. Baur
Attorney

Footnotes

n1 Section 202(a)(11)(C) of the Advisers Act excludes from registration and regulation a broker-dealer whose performance of advisory services is solely incidental to its brokerage business and who does not receive special compensation (other than sales commissions). The Division takes the position that, to qualify for the broker-dealer exclusion in Section 202(a)(11)(C), the broker-dealer must be registered under the Exchange Act. Accordingly, a foreign broker-dealer that is not registered under the Exchange Act and that provides research to U.S. persons would fall within the definition of investment adviser and generally would be required to register under the Advisers Act. See, e.g., Citicorp (pub. avail. Sept. 14, 1986). In Release 27017, however, the Commission stated that the Division would expect to respond favorably to no-action requests regarding registration under the Advisers Act by foreign broker-dealers who meet the conditions of paragraph (a)(2), (a)(3), or (a)(4) of Rule 15a-6 if their activities are limited to those described in Section 202(a)(11)(C).

n2 Telephone conversation between Ned Roman and Alison Baur (May 7, 1993).

n3 Paragraph (a)(2) of Rule 15a-6 exempts from Exchange Act registration for a foreign broker-dealer that furnishes research reports directly or indirectly to major U.S. institutional investors under certain conditions.

n4 Paragraph (b)(4) of Rule 15a-6 generally defines major U.S. institutional investor as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of \$ 100 million; or a registered investment adviser with total assets under management in excess of \$ 100 million. Paragraph (b)(7) of the Rule generally defines U.S. institutional investor as a person that is a registered investment company; a bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Regulation D under the Securities Act of 1933; or several other entities defined in Regulation D.

n5 Paragraph (a)(3) exempts from broker-dealer registration a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that any resulting transactions are effected through a registered broker-

dealer, and certain conditions are met by the foreign broker-dealer, foreign associated persons, and the registered broker-dealer.

n6 Paragraph (a)(4) exempts from broker-dealer registration a foreign broker-dealer that effects any transaction in securities with or for, or induces or attempts to induce the purchase or sale of any securities by, in addition to the persons listed above: banks; certain international organizations; foreign agencies or branches of U.S. persons; and nonresident U.S. citizens.

n7 See Barclays PLC (pub. avail. Feb. 14, 1991); Dean Witter Reynolds (Canada) Inc. (pub. avail. Mar. 1, 1990); James Capel & Co. Limited (pub. avail. Dec. 6, 1989).

INQUIRY-1:

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**Investment Advisers Act of 1940
Section 202(a)(11)(C) and Section 203**

April 7, 1993

**Thomas S. Harman, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549**

Dear Mr. Harman:

We are writing on behalf of our client, Charterhouse Tilney ("CT"), to request assurance that the Staff of the Division of Investment Management will not recommend enforcement action against CT if CT engages in activities outlined in Rule 15a-6 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the position of the Commission with respect to the distribution of research to U.S. persons by foreign broker-dealers set forth in Exchange Act Release No. 27017, as described below, without registering as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act").

In Exchange Act Release No. 27017, dated July 11, 1989, (54 Fed. Reg. 30013) the Commission Staff indicated that although a foreign broker-dealer providing research reports to U.S. persons would generally be considered to be an investment adviser within the meaning of the Advisers Act, the Division of Investment Management would expect to respond favorably to a no-action request by a foreign broker-dealer regarding Advisers Act registration if the foreign broker-dealer's activities within the U.S. are limited to those described in paragraphs (a)(2), (a)(3), or (a)(4) of Rule 15a-6 and in Section 202(a)(11)(C) of the Advisers Act. 54 Fed. Reg. at 30023.

In Exchange Act Release No. 27017, the Commission further indicated that it would not require registration as a U.S. broker-dealer by a foreign broker-dealer whose research reports were distributed in the U.S. by a registered broker-dealer, if that registered broker-dealer prominently stated on the

research report that it had accepted responsibility for its contents, if the research report prominently indicated that any U.S. persons receiving the research and wishing to effect any transactions in any security discussed in the report should do so with the registered broker-dealer, not the foreign broker-dealer, and if transactions with U.S. recipients of the report actually were effected through the registered broker-dealer not the foreign broker-dealer. 54 Fed.Reg. at 30021-30023.

BACKGROUND

CT is a foreign broker-dealer incorporated in the United Kingdom. It is a wholly-owned subsidiary of Charterhouse PLC, which is a wholly-owned subsidiary of The Royal Bank of Scotland PLC. CT's principal business is as a stockbroker servicing both private and institutional clients. CT is a member of the London Stock Exchange and is a member of and duly authorized by the Securities and Futures Authority, the relevant regulatory body in the United Kingdom. CT does not act as a market maker, but deals for its clients on an agency basis. The business of CT is conducted from the United Kingdom, and CT has no operations located in the United States or anywhere else outside of the United Kingdom.

Charterhouse North American Securities Inc. ("CNAS"), a Delaware corporation which is wholly-owned indirectly by Charterhouse PLC, is an affiliate of CT. CNAS, which is located in New York, New York, is registered as a broker-dealer under Section 15 of the Exchange Act and is a member of the National Association of Securities Dealers, Inc. (the "NASD").

PROPOSED ACTIVITIES

CT proposes to engage in the activities permitted to a foreign broker-dealer under paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) of Rule 15a-6 under the Exchange Act and Exchange Act Release 27017 without it being required to register as a broker-dealer under the Exchange Act. Research reports prepared by CT and provided to U.S. persons pursuant to Rule 15a-6 or otherwise pursuant to the Commission's position as stated in Exchange Act Release 27017 would be provided as an incident to CT's business as a broker-dealer and without any special compensation therefor. The activities to be engaged in by CT are more fully described below.

Unsolicited Transactions

Pursuant to Rule 15a-6(a)(1), CT will effect transactions in securities with or for persons that have not been solicited by CT. These transactions would be executed by CT on the London Stock Exchange or other foreign exchanges of which it is a member.

Distribution of Research Reports to U.S. Investors

Pursuant to Rule 15a-6(a)(2), CT proposes to provide research reports to "major U.S. institutional investors," as defined in Rule 15a-6(b)(4) and to effect transactions in the securities discussed in the research reports with or for major U.S. institutional investors as permitted under Rule 15a-6(a)(2). Neither CT, nor the research reports provided to such investors by CT, would recommend the use of CT to effect trades in any security. In addition, CT will not initiate contact with these major U.S. institutional investors to follow up on the research reports or otherwise induce or attempt to induce the purchase or sale of any security by those investors, except in accordance with the provisions contained in Rule 15a-6(a)(3). No research provided by CT to major U.S. institutional investors would be provided pursuant to any understanding, either express or implied, that the major U.S. institutional investors receiving such reports would direct commission income to CT.

CT may establish a relationship as described in paragraph (a)(3) of Rule 15a-6 with CNAS, and, in such case, any transactions with CT in securities discussed in the research reports provided to major U.S. institutional investors will be effected through CNAS pursuant to the requirements of Rule 15a-6(a)(3), as further discussed below. In addition, if such a relationship is established with CNAS, CNAS may distribute research reports prepared by CT to U.S. customers of CNAS. In accordance with the Commission's position as stated in Exchange Act Release No. 27017, CNAS would accept responsibility for the content of such reports, and each report would prominently state that (i) CNAS had accepted

responsibility for the content of such report, and (ii) any U.S. persons receiving such report and wishing to effect transactions in any security discussed in the report should do so with CNAS and not CT. In accordance with such statement, all transactions with U.S. recipients of the reports would be effected only with or through CNAS and not CT. No research prepared by CT and provided by CNAS to its U.S. customers would be provided pursuant to any understanding, either express or implied, that the customers receiving such reports would direct commission income to CT.

Direct Contacts with Major U.S. Institutional Investors and U.S. Institutional Investors

CT may also attempt, through direct contact, to induce the purchase or sale of securities by U.S. institutional investors or major U.S. institutional investors in accordance with Rule 15a-6(a)(3). Except in connection with unsolicited orders pursuant to Rule 15a-6(a)(1), all transactions with or for U.S. institutional investors and major U.S. institutional investors resulting from such contacts would be effected through CNAS (which would execute the transactions through CT). CT would, subject to the exception set forth in Rule 15a-6(a)(3)(i)(B), provide the Commission with (i) any information or additional documents within its possession, custody or control, (ii) any testimony of foreign associated persons, and (iii) any assistance in taking the evidence of other persons, wherever located, that the Commission requests related to transactions under paragraph (a)(3). The foreign associated person of CT effecting transactions pursuant to paragraph (a)(3) will conduct all securities activities from outside the U.S., except that such person may conduct visits to U.S. institutional investors and major U.S. institutional investors provided that such person will be accompanied on such visits by a person associated with CNAS. Transactions in any securities discussed during such visits will be effected through CNAS in accordance with paragraph (a)(3). CNAS will accept responsibility for the foreign associated person's communications with the U.S. institutional investors and major U.S. institutional investors. In addition, CNAS will make a determination that the foreign associated person is not subject to any of the disqualifications set forth in Rule 15a-6(a)(3)(ii)(B).

Pursuant to Rule 15a-6(a)(3)(iii), CNAS:

- (1) will be responsible for: (a) effecting the transactions with the U.S. institutional investors and major U.S. institutional investors, other than negotiating terms; (b) issuing all required confirmations and statements to the U.S. institutional investor or major U.S. institutional investor; (c) extending or arranging for the extension of any credit to the U.S. institutional investor or major U.S. institutional investor in connection with the transactions; (d) maintaining required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Exchange Act; (e) complying with Rule 15c3-1 under the Exchange Act with respect to the transactions; and (f) receiving, delivering and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3-3 under the Exchange Act;
- (2) will participate through an associated person in all oral communications between the foreign associated person of CT and a U.S. institutional investor, other than a major U.S. institutional investor;
- (3) will have obtained from CT, with respect to each foreign associated person, the type of information specified in Rule 17a-3(a)(12) under the Exchange Act, including information regarding any sanctions imposed by foreign securities authorities, exchanges or associations;
- (4) will have obtained from CT and each foreign associated person of CT written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization, providing that process may be served on them by service on CNAS in the manner set forth on CNAS's current Form BD; and
- (5) will maintain a written record of the information and consents described in paragraphs (3) and (4) above, and all records in connection with trading activities of the U.S. institutional investor or major U.S. institutional investor involving CT conducted under Rule 15a-6(a)(3), in an office of CNAS located in the U.S., and will make these records available to the Commission upon request.

Other Transactions

Pursuant to paragraph (a)(4) of Rule 15a-6, CT may effect transactions with registered broker-dealers, foreign persons temporarily present in the U.S. with whom it had a bona fide, pre-existing relationship before the person entered the U.S. and the other persons permitted under such paragraph of Rule 15a-6.

CONCLUSION

CT proposes to engage in the activities permitted to foreign broker-dealers under and in accordance with Exchange Act Rule 15a-6 and the Commission's position on distribution of foreign broker-dealer's research reports by U.S. registered broker-dealers set forth in Exchange Act Release 27017. Any investment advice rendered in connection with such activities will be solely incidental to CT's business as a broker-dealer, and CT will receive no special compensation for such research reports.

In light of the foregoing, as well as the Staff's prior decisions to respond favorably to no-action requests made by foreign broker-dealers operating under circumstances substantially similar to those described above (See Barclays PLC, SEC No-Action Letter (avail. February 14, 1991); Dean Witter Reynolds (Canada) Inc., SEC No-Action Letter (avail. March 1, 1990); James Capel & Co. Limited, SEC No-Action Letter (avail. December 6, 1989); and Exchange Act Release 27017, 54 Fed. Reg. at 30023), we respectfully request that the Staff confirm that it will not recommend to the Commission that any enforcement action be taken against CT if CT engages in the activities described herein without registering as an investment adviser pursuant to Section 203 of the Advisers Act.

Should you have any questions or require any further information in connection with this request, please call Marcia Hepford Watt (716) 263-1517 or Ned W. Roman (716) 263-1299.

Very truly yours,

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