



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 07-09
June 1, 2007
Other Written Communication
Division of Clearing and Intermediary Oversight

Re: Request for Reconsideration

Dear :

On November 10, 2005, the Division of Clearing and Intermediary Oversight (“Division”) issued a letter to you stating that it would not recommend that the Commodity Futures Trading Commission (“Commission”) commence any enforcement action against “A” for its failure to register as a commodity trading advisor (“CTA”) under Section 4m(1) of the Commodity Exchange Act (the “Prior Letter”).¹ That relief was, however, subject to compliance with the conditions that “B”, an affiliated registered introducing broker (“IB”): (1) register as a CTA; and (2) provide a Disclosure Document to each of its customers that participates, or will participate, in “A’s” Broker-Assisted Trading Program. By letter dated December 24, 2005, as supplemented by information provided to Division staff via email (collectively, the “correspondence”),² you have requested that the Division reconsider the imposition of these conditions.

In support of this request, you claim that “B” does not exercise discretionary control over customer accounts. Consequently, you claim that any past performance results in each account are not attributable to the “A” trading systems as executed pursuant to “B’s” trading authority, but rather, to each individual customer, and therefore that any performance disclosures set forth in a Disclosure Document regarding the “A” trading systems would be misleading to prospective customers.³ However, you also have confirmed that each customer signs a letter of direction

¹ CFTC Staff Letter 05-22, [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶30,167 (November 10, 2005). A copy of the Prior Letter may be accessed on the Commission’s website at: <http://www.cftc.gov/files/tm/letters/05letters/tm05-22.pdf>.

² Most recently, you provided Division staff with a copy of the letter of direction to be signed by “A” customers in favor of “B”.

³ Alternatively, you claim that because “B” does not limit its brokerage execution services to the Broker-Assisted Trading Program, it qualifies for the registration exemption set forth in

granting “B” a limited power of attorney for the express purpose of entering orders in accordance with the signals generated by the “A” trading systems.⁴ Moreover, you have confirmed that customers do not receive trade signals concurrently with the transmittal of the signals to “B”, nor does “B” contact customers prior to the execution of any system trades. Rather, customers are required to refer to the “A” website for a summary of trade signals *after* the orders have been executed.

CTA registration and the attendant Disclosure Document requirement set forth in Regulation 4.35 are intended to provide protections to customers, particularly those who may be unsophisticated in financial matters, by apprising prospective customers of material facts before they commit their funds.⁵ Accordingly, in the Prior Letter, the Division determined that the discretionary nature of services provided by “A” and “B”, in the aggregate, warranted CTA registration and the provision of a Disclosure Document to current and prospective customers by

Regulation 4.14(a)(6), which provides that a person is not required to register as a CTA if it is registered as an IB and the person’s trading advice *is solely in connection with* its business as an IB. (Emphasis added.)

However, in light of various statements “A” makes on its website, the Division disagrees with your claim. For example, since 2005, the “A” website has stated:

How many brokerages provide the “A”? One. The principals of “A” formed a brokerage in July of 2005 for the purpose of providing a sanitized and focused environment. This is needed to ensure correct execution of every trade, and correct application of the cash management programs on behalf of each system traded for each member participant. These are full time brokerage functions that are not suited for brokerages with many other activities.

Members needing additional brokerage services for activity that is in addition to the trading of our systems will be accommodated through a strategic alliance partner of the brokerage. The strategic alliance was established for this purpose, and so that “B” brokers remain undistracted and focused on high quality execution of the entire “A” program. (Emphasis added.)

⁴ The “A” website states:

By simply becoming an “A” member and issuing the Letter of Direction, a professional brokerage firm, trained by “A” in all aspects of our systems and cash management programs, will execute the systems and correctly size each trade on your behalf.

⁵ See CFTC Staff Letter No. 03-15, [2002-2004 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶29,454 (Apr. 1, 2003). A copy of this letter may be accessed on the Commission’s website at: <http://www.cftc.gov/tm/letters/03letters/tm03-15.htm>.

“B”. The ability of a customer to amend periodically its participation in any given “A” trading system executed pursuant to the letter of direction granted to “B” and consistent with the advertisements posted on “A’s” website does not diminish the discretionary nature of the relationship between each customer and “B”. Furthermore, in the Prior Letter, the Division noted specifically that relief was being provided to “A” on the basis that no additional benefit would be provided to “A” customers in light of the registration and disclosure obligations to be fulfilled by “B”, an entity already registered as an IB and whose sole principals were the sole principals of “A”.

Based upon the foregoing, the Division denies your request for reconsideration. If you have any questions concerning this correspondence, please contact Andrew Chapin, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan
Director