



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

CFTC Letter No. 08-08  
May 21, 2008  
Interpretation  
Division of Clearing and Intermediary Oversight

Re: Regulation 1.57(a)(1)  
Request for interpretation of the requirement that an IB open and carry each customer's account with a carrying FCM on a fully-disclosed basis

Dear :

This is in response to your letter dated March 20, 2008, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by a subsequent letter and e-mail messages<sup>1</sup> (the "correspondence"). By the correspondence, you claim, on behalf of "A", a registered introducing broker ("IB"), that the requirement in Commission Regulation 1.57(a)(1)<sup>2</sup> that an IB open and carry each customer's account with a carrying futures commission merchant ("FCM") on a fully-disclosed basis, should not be applicable where the IB introduces a non-clearing FCM to a clearing FCM.

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. "A" has approximately 50 customers, 37 of which it introduces to a certain clearing FCM (the "Clearing FCM"). "A" complies with Regulation 1.57(a)(1) with respect to its own customers.

"A" has introduced a non-clearing FCM (the "Non-Clearing FCM") to the Clearing FCM, obtaining lower commission rates for the Non-Clearing FCM than the Non-Clearing FCM was able to obtain on its own. The Non-Clearing FCM has established and maintains an omnibus account with the Clearing FCM, and the Non-Clearing FCM maintains the accounts of its individual customers in that omnibus account. The Non-Clearing FCM does not transmit any orders to "A" for submission to the Clearing FCM. In return for providing the introduction of the Non-Clearing FCM to the Clearing FCM, the Clearing FCM pays to "A" a share of the

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<sup>1</sup> Specifically, the letter was dated April 8, 2008 and the e-mail messages were dated April 15, 2008.

<sup>2</sup> Commission regulations referred to in this letter are found at 17 C.F.R. Ch. I (2007). They can be accessed through the Commission's website, at: <http://www.cftc.gov/>.

commissions that are paid by the Non-Clearing FCM's account holders. "A" receives no other compensation from, and in fact has no other contact or connection with, the Non-Clearing FCM's customers.

Regulation 1.57(a)(1) requires that each IB must open and carry each customer's and option customer's account with a carrying FCM on a fully-disclosed basis. In CFTC Staff Letter 87-4, the Division's predecessor, the Division of Trading and Markets, denied relief from the requirements of Regulation 1.57(a)(1) to a registered IB that introduced an omnibus account of a non-clearing FCM to a clearing FCM without fully disclosing the individual customer accounts of the non-clearing FCM.<sup>3</sup> Like the facts presented in your letter, the non-clearing FCM's customers did not have individual accounts with the IB or the clearing FCM, and the IB did not accept any customer funds. However, unlike the facts in your letter, the non-clearing FCM transmitted orders for the omnibus account to the IB, which then transmitted the orders to the clearing FCM.

The Commission adopted Regulation 1.57(a)(1) as a result of the addition of the term "introducing broker" to the Commodity Exchange Act (the "Act")<sup>4</sup> – which included previously unregistered "agents," whose principal function was to procure customer business for "carrying" or clearing FCMs. Regulation 1.57(a)(1) was intended to eliminate customer confusion regarding the proper execution of individual orders and the respective legal responsibilities of the IB, the non-clearing FCM and the clearing FCM.

In the facts presented in your correspondence, it appears that "A" has done no more than bring the Non-Clearing FCM and the Clearing FCM together. "A" does not participate in the transmittal of orders for the omnibus account or the individual customers of the Non-Clearing FCM. In further support of your request, you note that "A" has no contact with the customers whose accounts are included in the omnibus account, and that those customers are unaware of "A's" role (limited as it is).

The Division believes that when an IB *does no more than* introduce a non-clearing FCM to a clearing FCM and the non-clearing FCM establishes an omnibus account with the clearing FCM, the requirement of Regulation 1.57(a)(1) that an IB open and carry each customer's and option customer's account with a carrying FCM on a fully-disclosed basis is not implicated, where: (1) the IB does not receive or transmit the trading orders for the omnibus account to the

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<sup>3</sup> See, CFTC Staff Letter No. 87-4 [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,912 (Sep. 28, 1987).

<sup>4</sup> Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294. See 48 Fed. Reg. 35248, 35269 (Aug. 3, 1983).

clearing FCM; and (2) the IB does not accept funds from the customers whose accounts are maintained in the omnibus account.<sup>5</sup>

This letter does not excuse an IB relying on the interpretation<sup>6</sup> set forth herein from compliance with any other requirements applicable to it contained in the Act or in the Commission's regulations issued thereunder. For example, the IB remains subject to applicable antifraud and registration provisions of the Act and the Commission's regulations, and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations.

This letter is based upon the representations made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted material facts or circumstances might render this interpretation void. Moreover this letter does not necessarily represent the position of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

Ananda Radhakrishnan  
Director

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<sup>5</sup> Of course, where, as here, the IB separately introduces its own customers to an FCM, the requirement of Regulation 1.57(a)(1) applies to the IB in connection with that separate introduction activity.

<sup>6</sup> See Regulation 140.99(a)(3), which states that “[a]n interpretative letter may be relied upon by persons in addition to the Beneficiary.”