



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 08-12
July 10, 2008
Interpretation
Division of Clearing and Intermediary Oversight

Re: Section 1a(23) and Regulation 1.3(mm) – Request for Interpretation in
Connection with the Definition of an Introducing Broker

Dear :

This is in response to your letter dated March 31, 2008, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), as supplemented by telephone calls and email correspondence on April 18, 2008 and June 26, 2008 (collectively, the “correspondence”). By the correspondence, you request that the Division concur with your view that “A” would not be an introducing broker (“IB”) as defined in the Commodity Exchange Act (“Act”) and the Commission’s regulations issued thereunder,¹ as a result of providing its customers a software application with the ability to route orders for the purchase or sale of commodity futures and options contracts to a futures commission merchant (“FCM”) or IB of their choice.

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. “A” is a company that develops and distributes software for trading, order-entry and other related services in the financial industry. It has developed an internet-based order-entry system software application (the “Platform”), which resides on “A’s” computers and facilitates the execution of commodity futures and options transactions with the customers’ FCM or IB.

¹ See Section 1a(23) of the Act, 7 U.S.C. §1a(23) (2000), and Commission Regulation 1.3(mm), 17 CFR 1.3(mm) (2007), respectively. An IB is defined generally as a person engaged in soliciting or in accepting orders for commodity futures and options contracts listed on any designated contract market (“DCM”) or derivatives transaction execution facility (“DTEF”) that does not accept any money, securities, or property to margin any trades that result from such orders.

The Platform facilitates the trading in these instruments by allowing customers to gather and analyze market data and place orders for trades through the Platform without having to open a separate application. The customer will log-on and place orders directly with an exchange or with its FCM or IB as it normally would, except that it would be trading directly through the Platform instead of opening a separate application to execute the trade. By providing a method of entering trades without opening a separate application, “A” is providing technology that facilitates order-entry in a more efficient manner.

“A” intends to license the platform to customers using the FCM or IB of their choice. “A” does not recommend, propose, or encourage that customers use any particular FCM or IB, even upon request. The Platform does not produce express “buy” or “sell” signals and “A” does not solicit or accept orders for any commodity futures or commodity option transaction. Customers who want access to the Platform would pay “A” either a monthly fee or a fee based on the number of contracts executed. The fee would not be based on the dollar amounts of the contracts or the fees that the FCM or IB charges. In some cases, this fee would be paid by the FCM or IB in order to allow its customers access to the platform. Customers would inform “A” of the FCM or IB they wish to use to execute trades, and “A” would work with the FCM or IB to develop the required technology to allow the customer to access the FCM’s or IB’s order entry system using the Platform. “A” is not a registered broker-dealer, FCM or IB.

The Division recently had occasion to provide the interpretation you seek in CFTC Staff Letter 08-07.² That letter concerned a software company that developed an internet-based software application for processors of agricultural products and cooperatives representing agricultural producers. The software application facilitated the execution of related cash and futures transactions in the grain markets by linking customers with both the customers’ cash market counterparties and the customers’ respective IB or FCM. The Division determined that the software vendor was not an IB and would not be required to register as an IB based on representations, among others, that: (1) each customer will have established a relationship with an FCM or IB independent of its relationship with the software vendor; (2) the vendor would not recommend, propose, or encourage that customers use any particular FCM or IB, even upon request; (3) the platform would not produce express “buy” or “sell” signals; (4) the software vendor would not solicit or accept orders for any commodity futures or commodity option transaction; (5) fees charged by the vendor would not be related to any fees charged by the FCM or IB for the execution of any futures orders; and (6) the software vendor would not receive any compensation from any customer’s FCM or IB, nor would it have a membership with trading privileges on any designated contract market (“DCM”) or derivatives transaction execution facility (“DTEF”).

In the instant case, and as is stated more fully above, the first five factors are present. As for the sixth factor, however, there is a difference. In “A’s” model, in some cases the licensing fee *would* be paid by the FCM or IB, in order to allow its customers access to the Platform. We

² See CFTC Staff Letter No. 08-07, 2008 WL 1696960 (C.F.T.C.) (April 4, 2008).

do not believe this distinction to be critical, however, because we believe it would be in the nature of other FCM or IB-financed customer services such as providing customers with market data, news, analyst reports and newsletters. As in past cases, “A” would not have membership with trading privileges at any DCM or DTEF.

Accordingly, based upon the foregoing representations, the Division concurs with your view that “A” would not be an IB under the Act and the Commission’s regulations in connection with operating the Platform and, therefore, that it would not be required to register as such.

The position taken in this letter is based upon the representations that have been made to the Division, and is applicable to “A” solely in connection with its operation of the Platform. Any different, changed, or omitted facts or conditions might render this position void. You must notify the Division immediately in the event the operations or activities of “A” change in any material way from those represented to us.

Further, this letter represents the position of this Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission. If in the future the Commission determines that persons who provide technology to facilitate the order entry process must be registered under the Act, “A” may have to comply with the applicable registration requirements at that time.

If you have any questions concerning this correspondence, please contact Peter B. Sanchez, Special Counsel, at (202) 418-5237.

Very truly yours,

Ananda Radhakrishnan
Director