



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 10-05
No-Action
March 16, 2010
Division of Clearing and Intermediary Oversight

Re: Regulation 1.35(a-1)(1)
Request for relief from requirement to provide specific customer account
identifiers to an IB's clearing FCM at or prior to order entry

Dear :

This is in response to your letter dated October 29, 2009, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") (the "correspondence"). By the correspondence, you request, on behalf of "A", confirmation that the Division will not recommend that the Commission commence enforcement action against "A" based solely on the failure of "A" to provide specific customer account identifiers to "A's" clearing futures commission merchant ("FCM") at or prior to order entry. We understand that your request has been prompted by an audit of "A" by the National Futures Association ("NFA").

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. "A" is registered with the Commission under Section 4d of the Commodity Exchange Act (the "Act")¹ as an introducing broker ("IB"). It has numerous customers for which it transmits orders to the FCM. These customers have subscribed to third party newsletters, or have purchased computer-based trading systems, and they have executed letters of direction to "A" to trade their accounts pursuant to the newsletters or trading systems. When alerts are issued by the newsletters, or signals generated by the trading systems, "A" transmits orders to the FCM, based on the customers' respective trading specifications or parameters.²

¹ 7 U.S.C. §6d (2006). The Act can be found at the Commission's website, at: <http://www.cftc.gov/>.

² Although your request arises in the context of customers executing letters of direction for an intermediary to trade their accounts pursuant to third-party-developed computer systems or software, we are restricting our response to the specific request for relief from the requirements

As is set forth more fully in the correspondence, “A” uses a Microsoft Excel spreadsheet to keep track of trade allocations among its customers in accordance with their selected trading parameters. You represent that “A” has been unable to find a way to provide the trade allocation information in its Excel spreadsheet to the clearing FCM in a manner that complies with Regulation 1.35(a-1) without risking missed customer trades or price “slippage.” Specifically, you claim that because of the number of customers, the number of newsletters and trading systems those customers use, the frequency with which signals are generated and the practice of some customers of switching from one trading system to another during the day, requiring “A” to comply with the requirements of Commission Regulation 1.35(a-1)(1)³ is unduly burdensome and would harm “A’s” customers by interfering with efficient filling of their orders.

Regulation 1.35(a-1) specifies, among other things, the conditions upon which specific customer account identifiers for accounts included in bunched orders need not be recorded at the time of order placement. Regulation 1.35(a-1)(5)(i) specifies that only specified “eligible account managers” can engage in post-execution allocation of bunched orders.⁴ As a registered IB, “A” is not an “eligible account manager,” and therefore is not permitted to engage in post-execution allocation under Regulation 1.35(a-1).

After careful consideration of the detailed presentation of your position in the correspondence, the Division is not persuaded that “A” should be relieved from the requirement to provide specific customer account identifiers at or before the time of order transmittal. This is because when the Commission amended Regulation 1.35(a-1)(5)(i) to include among eligible account managers CTAs that are exempt or excluded from registration, it specifically declined to include those CTAs that are exempted from registration pursuant to Regulation 4.14(a)(6) because they are registered as IBs.⁵

Neither the Act nor Commission regulations specify the business plan that an IB must adopt or employ, although the Act does prohibit fraudulent dealings with customers and the regulations impose certain trading standards. “A” has developed its own unique business model, and in carrying out that plan appears to have encountered difficulties meeting certain

of Regulation 1.35(a-1). Thus, we are not addressing, and we take no position at this time with respect to, the registration requirements, if any, applicable to the third-party trading system developers whose signals “A” accepts.

³ Commission regulations referred to in this letter are found at 17 C.F.R. Ch. I (2009). Like the Act, the regulations can be found at the Commission’s website, at: <http://www.cftc.gov/>.

⁴ The list includes a registered commodity trading advisor (“CTA”) or a CTA who is excluded or exempt under Commission regulations *except* Regulations 4.14(a)(3) or (a)(6); a state or federally registered investment adviser; a bank, insurance company, a trust company or a savings and loan; or a foreign adviser who only exercises discretion over non-U.S. accounts.

⁵ See, 68 Fed. Reg. 34790, 34791 (Jun. 11, 2003) and 68 Fed. Reg. 12319, 12321 (Mar. 14, 2003), both of which can be found at the Commission’s website.

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requirements under Commission regulations. The Division believes, however, that the inability of “A” to find a software system that would readily permit compliance with Regulation 1.35(a-1) without any change to “A’s” chosen business model is not sufficient justification for granting the requested relief. Moreover, the Division is informed by NFA staff that the situation described in your correspondence is very rare. Accordingly, your request is denied.

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