



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 07-15
August 23, 2007
No-Action
Division of Clearing and Intermediary Oversight

Re: CFTC Regulation 1.65 – Transfer of Accounts

Dear :

This is in response to your letter dated August 23, 2007, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), concerning the transfer of accounts from “A” to your firm, “B”. You stated that “B” understands that this transfer is necessary because “A” is undercapitalized as a result of the financial problems of “C”.

Because of the exigent circumstances, “B” intends to accept the transfer of accounts as soon as possible, which could be as early as August 23, 2007. You represent that “B” has consulted with NFA on this matter and that NFA is agreeable to an immediate transfer. You have therefore requested a waiver of CFTC Regulation 1.65(a), 17 C.F.R. §1.65(a) (2007), concerning notice to and consent by customers to a bulk transfer of accounts.

Based upon the representations in your letter, the Division believes that granting relief would not be contrary to the public interest. Indeed, the Commission recognized when it adopted Regulation 1.65(a) that the normal ten-business-day advance notice of bulk transfers would not be applicable in a financial emergency. *See* 58 Fed. Reg. 17495, 17501 & n.27 (April 5, 1993).

Accordingly, the Division will not recommend that the Commission commence any enforcement action against “B” based solely upon the failure of “B” to comply with the requirements of CFTC Regulation 1.65(a) in connection with the transfer of accounts from “A” to “B”. This relief is conditioned upon “B”, as soon as practicable, notifying the former customers of “A” that, if they do not wish to do business with “B”, they may inform “B” where they would like “B” to transfer their accounts.

This letter does not excuse “B” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, “B” remains subject to the other provisions of CFTC Regulation 1.65 and all applicable antifraud

provisions of the Act. Moreover, the position taken in this letter is applicable to “B” solely in connection with the transfer of customer accounts from “A” to “B”.

The position taken in this letter is based upon the representations that have been made to the Division. 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 “B” 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 you have any questions concerning this correspondence, please contact Deputy Director Lawrence B. Patent at (202) 418-5439.

Very truly yours,

Ananda Radhakrishnan
Director