98-1 (6)

Coffee, Sugar & Cocoa Exchange, Inc.

James J. Bowe
President

March 6, 1998





Ms. Jean A. Webb
Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Reproposed Amendments to Commodity Futures Trading Commission Regulation 1.35 Relating to Account Identification for Eligible Bunched Orders

Dear Ms. Webb:

Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE" or "the Exchange") submits the following comments in response to a release issued by the CFTC on January 7, 1998[1] requesting comments on reproposed amendments to Regulation 1.35 relating to account identification for eligible bunched orders (the "Release").

CSCE applauds the Commission's efforts in establishing a regime under which account managers can efficiently utilize futures markets while at the same time maintaining adequate customer protection against fraudulent allocations of trades. Permitting the post execution allocation of trades should bring significant relief to those account managers encompassed by the Release. However, the Exchange believes that the criteria defining "eligible orders", "eligible customers" and "eligible managers" should be fine-tuned, as described below.

Eligible Orders

The amendments would permit only those account managers who trade a mixed portfolio - i.e., a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Commodity Exchange Act - to allocate trades after they have been executed. In so doing, the CFTC has afforded relief to securities investment advisors, banks and insurance companies but excluded all commodity trading advisors ("CTAs") who manage futures/options only portfolios. While it may be true that the original request for relief was made on behalf of securities investment advisors who also traded futures contracts that is not a reason to condition the relief on securities (or other non-CFTC regulated products) being in the manager's portfolio. The same problems which generated the original request for relief are also faced by advisors who trade futures/options only portfolios. If the Commission believes that post trade allocation can be a more efficient way of handling large bunched orders, then all account managers directing the trading of eligible customer accounts should be permitted to utilize that process. The mixed portfolio requirement adds no

[1] 63 Fed. Reg. 695 (1998)

Four World Trade Center New York, New York 10048 (212) 742-6123 Fax: (212) 748-4322

further protections for customers and the Release does not even suggest that the portfolio requirement is at all related to customer protection or legitimate regulatory concerns. Indeed, the only explanation given for excluding futures/options only managers is a statement that such account managers "should be able to achieve equivalent treatment of customer's accounts" by other means, such as utilizing average price systems or the pre-filed allocation procedures developed by NFA and contained in Appendix C to Part One of the Commission's Regulations. In so stating the Commission appears to have concluded that futures/options advisors have no need for the relief, therefore it should not be available to them. CSCE disagrees with this conclusion.

Average price systems have not been adopted by all exchanges, and CSCE, for example, does not have one at the present time. In any event, such systems are designed to deal with the need to allocate mixed price fills among various customers, but do not address the allocation of partial fills or the allocation of trades resulting from strategies involving multiple futures contracts traded on different exchanges. Therefore, average price systems do not present a solution for CTAs. Similarly, the Commission cannot point to the prefiling of an allocation methodology with NFA as a realistic alternative, given the fact that no CTAs have utilized that procedure to date. Advisors who arbitrage or otherwise trade combinations of different futures and options contracts (whether they be different commodities, different months in the same commodities, or options with different strike prices) face the same time and fairness pressures as do advisors managing mixed portfolios with regard to providing account identifications within the time constraints currently dictated by Regulation 1.35. There is no reason why these advisors should not also be able to obtain the relief offered by the amendments, and we urge the Commission to revise the amendments to eliminate the mixed portfolio requirement.

<u>Eligible Customers</u>

The amendments would permit post execution allocation only for orders placed for the accounts of "eligible customers". Excluded from this category are accounts managed for natural persons, as distinguished from institutions. By excluding individuals (irrespective of their level of commodity sophistication) from the relief afforded to institutional customers, the Commission has deviated from all other provisions of the Act and Commission Regulations which define categories of "sophisticated" persons, e.g., Sections 4(c)(3)(A)-(J) of the Act and Parts 35 and 36 of the Regulations. At a minimum, such inconsistency will lead to confusion and inevitable mistakes. However, more troubling is the express exclusion of the very persons who derive their income from commodity trading -- floor brokers and floor traders. If anyone has the requisite expertise to gauge the quality of an account manager's performance, it is a professional commodity trader. The only rationale offered for barring this entire class of commodity professional is an allusion to unspecified cases in which preferential allocations had been made to personal or proprietary accounts or to accounts owned by family members of the account manager. The Commission does not indicate whether any of these cases involved preferential allocations made by a CTA (as opposed to an associated person of an FCM) or that the preferred trades were allocated to floor broker and trader accounts. It is fundamentally unfair to bar floor brokers and traders from having their accounts treated as eligible accounts because of an unsubstantiated fear that it might be easier to divert profitable trades to an account carried in the name of an individual than to an account of a regulated institution. If there is any merit to this fear, it can be adequately redressed by excluding accounts that are related to the manager, i.e., proprietary accounts or accounts owned by family members, from the definition of eligible customers. There is no reason to exclude accounts of all natural persons. The Exchange urges the Commission to include floor brokers and traders in its listing of eligible customers.

Eligible Managers

The Commission has excluded from the definition of eligible account manager non-U.S. investment advisors registered with the Commission, advisors otherwise exempt from registration under Regulation 30.10 and foreign investment advisors subject to regulation in their home jurisdiction. The reason for such exclusion is the Commission's concern for potential difficulties in auditing these entities and in obtaining documentation required to be made available under the amendments. To the extent the Commission has already registered a non-U.S. investment advisor as a CTA, the same threshold issue of auditing and accessibility must have been addressed with regard to the books and records that CTAs are required to maintain under the Act. If auditing difficulties were not perceived to be an impediment to registration, why should they now be perceived as an impediment to affording regulatory relief to such CTAs? With respect to advisors that are exempt from registration pursuant to Regulation 30.10, the Commission has already made a determination that the advisors are subject to a comparable regulatory scheme which, presumably, affords customer protection safeguards comparable to those under U.S. law. That being the case, why is comparability deemed not to exist in the context of the amendments? Finally, to the extent that a foreign advisor provides management services to a non U.S. person, the Commission has not historically extended its regulatory authority to such relationships. In light of the important role that foreign advisors play in the U.S. futures markets, we believe the CFTC should reconsider including them within the scope of eligible account managers.

Contract Market Rule Enforcement Programs

The reproposal would require exchanges to adopt audit procedures to determine member compliance with the certification, allocation and recordkeeping requirements identified in paragraphs (iv), (v)(A) and (vi)(A)-(C) of amended Regulation 1.35. Many of those requirements, e.g., those contained in paragraphs (iv), (v) and (vi)(C) pertain to back office FCM activities which, pursuant to the inter-exchange Joint Audit Program ("JAP"), would fall within the scope of the review conducted by the FCM's designated self-regulatory organization ("DSRO") and would not be part of each exchange's rule enforcement program. Indeed, the only requirements that CSCE believes would be subject to audit under its enforcement program are (1) the identification of eligible orders on the Exchange trade register and trade practice surveillance records and (2) identification of eligible orders and account managers on floor order tickets. Accordingly, the Commission should confirm that those audit areas covered by the DSROs under the JAP do not need to be monitored by the exchanges under their rule enforcement programs.

Very truly yours,

James J. Bowe

:Z4U_1.WPD/45534