



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC letter No. 07-10  
June 25, 2007  
No-Action  
Division of Clearing and Intermediary Oversight

Re: Section 4d(a)(1) of the Act  
Request for relief from requirement to register as an IB where commissions payable to an AP of the IB are paid to a registered CTA owned and operated by the AP

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Dear :

This is in response to the letter dated January 26, 2007 from "A", President of "B", to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your statements (provided to the Division March 22, 2007), in which you acknowledge the representations in "A's" letter and authorize him to submit this request on your behalf, and by telephone conversations and e-mail communications between Division staff and "B" (the "correspondence"). By the correspondence, you request confirmation that the Division will not recommend that the Commission commence any enforcement action against you or your commodity trading advisory firms, based solely upon the failure of those firms to register as introducing brokers ("IBs") under the circumstances described below.

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. "B" is registered with the Commission as a guaranteed IB. "C" and "D" are registered as associated persons ("APs") of "B". "C" owns and operates "E". "D" and his wife own and operate "F". "E" and "F" are each registered as a commodity trading advisor ("CTA" or, collectively "The CTAs") and each of "C" and "D" is listed as a principal of his respective advisory firm. The CTAs are in the business of providing marketing, merchandising advice and assistance to agricultural producer customers. Neither CTA exercises discretion or control over customer accounts.

For accounting, tax and recordkeeping purposes, "C" and "D" desire to have the per-trade compensation that becomes payable to them from time to time, as APs of "B", paid to their

respective CTA firms, rather than to “C” and “D” directly.<sup>1</sup> However, as noted above, neither of The CTAs exercises discretion over customer accounts. Accordingly, pursuant to Section 4d(a)(1) of the Commodity Exchange Act (the “Act”),<sup>2</sup> absent relief, each of The CTAs would be required to be registered as an IB in order to receive per-trade compensation.<sup>3</sup>

In support of your request, you note that: (1) because “C”, “D” and The CTAs are all registered with the Commission, in no event would per-trade compensation be paid to unregistered persons; (2) each of “C” and “D” has provided to Commission staff a written cross acknowledgment of joint and several liability with his respective CTA firm for any violation of the Act or the Commission’s regulations in connection with advising customers and acting as APs of “B”; and (3) The CTAs will remain registered with the Commission as such.

Based upon the representations made in the correspondence, and subject to the condition stated below, the Division will not recommend that the Commission commence any enforcement action against “C”, “D” or their respective CTAs based solely upon the failure of The CTAs to register as IBs in accordance with Section 4d(a)(1) of the Act. This position, however, is subject to the condition that The CTAs disclose to their customers, in the manner described in “A’s” January 26, 2007 letter, that commissions generated by customer commodity futures and option transactions may be paid to the respective CTA firm *in lieu* of being paid directly to “C” or “D” as an AP of “B”.<sup>4</sup>

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<sup>1</sup> As registered APs of “B”, “C” and “D” are entitled to a percentage of the commissions paid by customers solicited by them who place trades in accounts introduced by “B”. This is the per-trade compensation that “C” and “D” desire to have paid to their respective CTA firms.

The Division takes no position regarding the advisability or legality of the proposed activities of “C” and “D” under Federal or state tax law or the regulations adopted by the Department of the Treasury.

<sup>2</sup> 7 U.S.C. §6d(a) (2000). The Act may be accessed through the Commission’s website, at: <http://www.cftc.gov/cftc/cftclawreg.htm>.

<sup>3</sup> Regulation 1.3(mm) excludes from the IB definition “(ii) any commodity trading advisor, which, acting in its capacity as a commodity trading advisor, is not compensated on a per-trade basis or which solely manages discretionary accounts pursuant to a power of attorney. . . .” This exclusion is not available here, however, because The CTAs do not exercise discretionary authority over their customers’ accounts. Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2006) and also may be accessed through the Commission’s website, at: <http://www.cftc.gov/cftc/cftclawreg.htm>.

<sup>4</sup> By his letter, “A” represented that, in order to obtain the requested relief, The CTAs would be willing “to amend the marketing agreements entered into between the customers and [The CTAs] to include an acknowledgement from the customers that commissions generated by their futures transactions may be paid to the respective entity.”

This letter is applicable to “C”, “D” and The CTAs solely in connection with the receipt by The CTAs of per-trade compensation payable to “C” and “D” as APs of “B”. It does not excuse any of them from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, each remains subject to all antifraud provisions of the Act and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and to all applicable provisions of Part 4.

This letter is based upon the representations made to us and is subject to compliance with the condition set forth above. Any different, changed or omitted material facts or circumstances might render this letter and the position taken herein void. In this connection, you must notify us immediately in the event that the operations and activities of “C”, “D” or The CTAs change in any material way from those represented to us. Further, this letter and the position taken herein represent the views of this Division only and do not necessarily represent the views 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