



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5430  
Facsimile: (202) 418-5547  
*aradhakrishnan@cftc.gov*

Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC Letter No. 08-07  
April 4, 2008  
Interpretation  
Division of Clearing and Intermediary Oversight

Re: Section 1a(23) and Regulation 1.3(mm)  
Definition of the Term "Introducing Broker"

Dear :

This is in response to your letter dated February 19, 2008, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by email correspondence on March 5, 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,<sup>1</sup> as a result of providing its customers an internet-based software application with the ability to route orders for the purchase or sale of commodity futures and options to an IB or futures commission merchant ("FCM") of their choice.

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. "A" is a software company that has developed an internet-based software application. Its customers include processors of agricultural products and cooperatives representing agricultural producers ("Customers"). The software application, known as the ("Platform"), facilitates 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.

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<sup>1</sup> 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 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 trades.

Prior to logging-in to the Platform, an Customer will establish a relationship with an FCM or IB for the purpose of executing any futures transactions. Once an Customer has logged-in to the Platform, it may establish parameters for purchasing grain in the cash market based upon a plurality of delivery locations with reference to the price of a futures contract for the appropriate delivery period. When the Platform matches the Customer with a producer offering similar terms (*i.e.*, location and price), the Platform places the cash transaction “on hold” and transmits to the Customer’s FCM or IB an instruction to hedge the customer’s cash grain purchase with the sale of corresponding futures contracts. Once the Customer’s FCM or IB executes the futures order, the Platform generates confirmations for both the cash and futures transactions. By connecting all the counterparties simultaneously, the Platform permits the Customer to more efficiently enter into related cash and futures transactions for the purpose of locking in its cost basis. However, an Customer may use the Platform solely to engage in cash market transactions and is not required to enter into a corresponding futures transaction.

You further have represented that each Customer will have established a relationship with an FCM or IB independent of its relationship with “A”. “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 options transaction. All “A” customers, including Customers, pay the same fee to access the Platform, regardless of whether the customer engages in any futures transactions, and such fee is not related to any fees charged by the FCM or IB for the execution of any futures orders. “A” does not receive any compensation from any customers’ FCM or IB, nor does it have a membership with trading privileges on any DCM or DTEF.

In support of your request, you claim that the activities of “A” are analogous to those of the software vendor to which the Division provided an interpretation in CFTC Staff Letter 06-29.<sup>2</sup> In that letter, the Division responded to a request from a software vendor engaged in the marketing of a software application that provided customers the ability to route orders directly to a DCM or DTEF on behalf of an FCM of the customers’ choice. 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 other things, that: (1) the software vendor did not have a membership with or trading privileges on any DCM that uses the order routing software; (2) the software did not provide express “buy” or “sell” signals; (3) the software vendor’s customers had pre-existing relationships with their FCMs and would negotiate any and all fees for executing trades between themselves and the FCM; (4) the software vendor would not solicit orders for, or recommend, propose, or encourage customers to use, any particular FCM; and (5) the software vendor would be compensated by fees paid directly by the customer, which would not be related to the fees charged by the FCM for the placement of customer orders.

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<sup>2</sup> See CFTC Staff Letter No. 06-29, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,399 (October 24, 2006).

Based upon the foregoing information, the Division concurs with your view that “A” is not an IB under the Act and the Commission’s regulations and, therefore, is not 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 Andrew Chapin, Special Counsel, at (202) 418-5465.

Very truly yours,

Ananda Radhakrishnan  
Director