



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Ananda Radhakrishnan  
Director

CFTC Letter No. 10-36  
Interpretation  
October 25, 2010  
Division of Clearing and Intermediary Oversight

Re: Sections 2(c)(2)(B)(iv)(I)(bb) & 2(c)(2)(C)(iii)(I)(bb) of the Act  
– Request for Interpretation that Certain Activities Will Not Require  
a Registered IB to Also Register as a CTA

Dear :

This is in response to your letter dated June 16, 2010, to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”), as supplemented by your email sent August 25, 2010 (collectively, “correspondence”) on behalf of “A”. By your letter, you request that the Division confirm your interpretation that the “Service” to be offered by “A” will not require “A” to register as a commodity trading advisor (“CTA”) under Section 2(c)(2)(B)(iv)(I)(bb) or 2(c)(2)(C)(iii)(I)(bb) of the Commodity Exchange Act (“Act”).<sup>1</sup>

Based upon the representations made in the correspondence, we understand the facts to be as follows: “A” is a registered introducing broker (“IB”). It intends to offer its customers a forex trading service known as the “Service”. Through the Service, customers will pay a fee to create an account that will automatically follow the trading conduct of one or more “Bs”. The “Bs” are forex traders contracted and compensated by “A” to have their trading signals replicated for the purposes of the Service. “A” will provide risk and performance information to all participating customers, and each customer will choose the “B(s)” for the automated program and control all other financial aspects of his/her account with the ability to change any trading controls at any time. “A” will not assist any customer in designing the trading program offered by the Service, but will provide technical support and assistance.

Based solely upon your representations, and without conducting an on-site inspection of “A” or the operation of the Service, the Division does not believe that the Service involves any

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<sup>1</sup> 7 U.S.C. § 2(c)(2)(B)(iv)(I)(bb); 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb). The Act can be accessed on the Commission’s website, [www.cftc.gov](http://www.cftc.gov).

exercise by “A” of discretionary trading authority or the obtaining of written authorization to exercise such authority. It appears that “A” through the Service will act as a conduit for its customers to execute (forex) trades, which is what entities registered as IBs do. Accordingly, the Division believes that “A” would not be required to register as a CTA based on its offering to its IB customers the Service, as it is currently described in the correspondence.<sup>2</sup>

The views expressed in this letter do not relieve “A” from compliance with any other obligations under the Act or the Commission’s regulations issued thereunder. For example, it remains subject to all applicable anti-fraud provisions of the Act and to all obligations that apply to IBs.

This letter is based solely upon the representations made to the Division, and is applicable to “A” solely in connection with its offering of the Service to its IB customers.<sup>3</sup> Any different, changed or omitted material facts or circumstances might render the interpretation expressed herein void. In this regard, 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 views of this Division only and does not necessarily represent the views of the Commission or of any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact me or Elizabeth Miller, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Ananda Radhakrishnan  
Director

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<sup>2</sup> The Commission has recently adopted regulations implementing Sections 2(c)(2)(B)(iv)(I)(bb) and 2(c)(2)(C)(iii)(I)(bb) of the Act. Regulation of Off-Exchange Retail and Foreign Exchange Transactions and Intermediaries, 75 Fed. Reg. 55410 (Sep. 10, 2010) (to be codified at 17 C.F.R. Parts 1, 3, 4, 5, 10, 140, 145, 147, 160, and 166). The Division believes the interpretation expressed in this letter is consistent with those rules and the Commission’s position that automated trading programs in general might or might not trigger additional registration requirements, depending on whether any of their features “appear to constitute discretion, strategy, or advice on the behalf of the sponsoring entity.” *Id.* at 55414.

<sup>3</sup> In this regard, your letter concludes that “it is clear that the “Bs” will not be exercising any trading discretion over retail forex accounts.” The interpretation the Division is providing by this letter is strictly to whether “A” would be required to register as a CTA. It does not apply to any other person.