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E D & F MAN INTERNATIONAL INC

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March 13, 1998

VIA TELEFAX TRANSMISSION
(202) 418-5521

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

COMMENT
MAR 17 7 25 PM '98
COMMODITY FUTURES
TRADING COMMISSION
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Re: **Proposed Rules Regarding Account
Identification for Eligible Bunched Orders**

Dear Ms. Webb:

In connection with the proposed rules amending CFTC Regulation 1.35(a-1) to allow eligible customer orders to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution, E.D.& F. Man International Inc. ("Man") would like to submit the following comments for consideration.

While Man believes that the proposed rules have definite advantages, certain aspects of the rules, as set forth below, are unnecessarily restrictive as well as burdensome. As a futures commission merchant ("FCM") with a significant amount of managed accounts from both U.S. and foreign commodity trading advisors, we support the CFTC's efforts to afford more flexibility to these managers in allocating orders to their customers. As the size and sophistication of these managers has increased over the years, we find that they are seeking better means of servicing their customers, often utilizing advanced technology that allows them to trade more efficiently for their customers. In connection with the proposed rule, we have the following specific comments for the CFTC's consideration:

1. *Eligible Account Managers*

Proposed Regulation 1.35(a-1)(5)(ii) excludes as an eligible account manager foreign investment managers. We believe foreign investment managers should be included in the group of eligible account managers provided that such managers are duly registered and licensed in their own jurisdictions to conduct such business.

The CFTC states as its reasoning in excluding foreign investment managers from the group of eligible account managers the potential difficulty in auditing such entities and in obtaining documentation required under the record-keeping regulations of 1.35(a-1)(6)(vi). We believe, however, no public interest would be served by regulating such entities under proposed Regulation 1.35. The CFTC has traditionally taken the position that it has no jurisdiction over foreign entities doing business exclusively with foreign customers unless their activities violate or compromise the market integrity of the U. S. markets (i.e. non-competitive trades). End of day order allocation does not directly impact the integrity of the U. S. markets but rather centers around customer protection. Consequently, we believe that it should be the responsibility

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of the home jurisdiction regulator, and not the CFTC, to determine whether the foreign manager is conducting its business with customers in accordance with applicable rules and regulations.

Man personnel handle orders for a wide variety of managed accounts. Clients generally search for the manager that offers them investment management best suited to their individual circumstances. If the CFTC believes that end of day order allocation can be permitted as provided in the proposed rule, then we do not understand why certain clients should be disadvantaged because they invest with foreign managers. As part of an international trading company, Man desires that the markets not discriminate among investment managers based on their jurisdiction of incorporation.

2. *Eligible Customers*

Proposed Regulation 1.35 (a-1)(6)(iii) restricts eligible customers to "institutional or other comparatively large entities whose accounts are subject to other regulatory or management regimes and who may participate in multi-market investment strategies." The CFTC specifically excludes natural persons from the category of eligible customers.

High net worth natural persons that are investing in the stock and futures markets are typically investors who are capable of fending for themselves and do not need the additional protections that may be afforded less sophisticated investors. The CFTC acknowledges that high net worth natural persons are sufficiently sophisticated to monitor the results of post-trade allocations in their accounts. The CFTC, however, is of the belief that preferential allocations would be more likely to occur in the case of natural persons investing in the futures exchanges. While there may be instances in which individuals have been the subject of unfair allocations, we do not believe that this should disqualify suitable natural persons from obtaining the benefits of this rule. By making such a distinction, we fear that natural persons will be persuaded to trade through entities when this may not be suitable for their circumstances.

In other contexts where the CFTC has considered the standard of suitability for certain exemptions, the CFTC decided in favor of inclusion of natural persons. See, for example, Regulation §§ 4.7, 4.8, and Parts 35 and 36. Most recently, in connection with amendments to Regulation §1.55, the CFTC expressly included natural persons in the exempt category. We believe that the CFTC's reasoning in the Federal Register Release accompanying revised Regulation §1.55 pertain equally to the situation here. Hence, we propose that the eligibility standard of the proposed regulations should be based on asset or net worth as opposed to status as an institutional investor.

3. *Account Certification*

Proposed Regulation 1.35(a-1)(5)(iv) requires that the account manager must provide a list of eligible futures accounts to the FCM allocating the order. The CFTC believes that this requirement should enable the FCM to assure that allocations are made only to eligible accounts. However, this belief is somewhat contradictory to the CFTC's view that the account manager, and not the FCM, is the appropriate party to obtain the written consent from the eligible customer and that it is the account manager's responsibility to exclusively determine whether a customer falls within the definition of an eligible customer. Since it is the account manager makes the determination of eligible

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customer and subsequently would provide the list of eligible accounts, any deviations or changes would have to be communicated to the FCM promptly which may not always occur. The failure of the account manager to inform the FCM as well as the potentially large number of accounts which may be on the list could result in potential errors and delays in trade processing. The responsibility of fair, non-preferential allocation of orders among accounts is that of the account manager and not the FCM. Obviously, whether or not a list is provided to the FCM, an FCM has an ongoing obligation to inquire if there are appearances of preferential allocations. Therefore, we propose that the need to provide the list of eligible futures accounts to the FCM not be required as it serves no meaningful purpose.

4. *Recordkeeping*

Under proposed Regulation 1.35(a-1)(5)(vi), the CFTC has added the requirement that the FCM carrying an eligible account to which an eligible order has been allocated must identify each trade resulting from the execution of an eligible order on confirmation statements provided to the affected account owner and/or trustee. Man believes that this requirement would be costly and burdensome and is not necessary. In general, futures trading systems are not designed to capture this type of information and provide it to the customer. We also do not believe that customers would normally review every trade confirm to determine if they were subject to an unfair trade allocation. In light of the fact that under the present proposal post-trade allocation of block orders would only be permitted for a relatively small universe of eligible customers, orders and account managers, this requirement does not afford any additional protection. Man believes that given the sophisticated nature of the eligible customers, notification to, and consent by, the customers as to the post-trade allocation of orders is sufficient. In our experience, customers that are disgruntled with a trade raise their objections with their investment managers when they are informed of the fill. Were that to occur, the manager would then have to explain the manner in which the trade was allocated to the client. Man believes that this additional requirement is burdensome.

In proposing amendments to CFTC Regulation 1.35(a-1), the CFTC has recognized the current needs of the industry and its participants. However, we believe that the proposed rules do not go far enough for the reasons set forth above. Therefore, in adopting the proposed amendments to Regulation 1.35(a-1), we urge the CFTC to consider: (i) expanding the definition of eligible account manager to include foreign investment managers; (ii) including certain natural persons in the definition of eligible customers; (iii) eliminating the need for the account manager to provide a list of eligible accounts to the FCM; and (iv) eliminating the requirement that confirmation statements identify eligible orders.

Very truly yours,


Gary M. Rindner
General Counsel

GMR/as

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