



301 Yamato Road
Suite 2200
Boca Raton
Florida 33431-4931

561.241.0018
Fax: 561.994.6887

E-mail: investor@jwh.com
Web site: www.jwh.com

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COMMENT

April 25, 2003

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

**Received CFTC
Records Section
04/25/2003**

Re: Account Identification for Eligible Bunched Orders

Dear Ms. Webb:

John W. Henry & Company, Inc. (JWH) welcomes the opportunity to comment on the Commission's proposal to modify Commission rule 1.35 regarding the identification of accounts eligible for inclusion in bunched orders for execution, published in the Federal Register on March 14, 2003 (68 F.R. 12319). JWH has been registered as a commodity trading advisor since 1982. JWH currently manages approximately \$1.6 billion in client assets, and is one of the largest commodity trading advisors. JWH therefore has a vital interest in the subject of accounts that are permitted to participate in bunched orders.

JWH believes that the proposed modifications of rule 1.35 in the proposed rule amendments are well considered and reflect current trading practices. The elimination of restrictions on accounts eligible to participate in bunched orders will simplify the order placement process for trading advisors and should remove a potential source of performance disparities between accounts managed by an advisor. Accordingly, accounts currently not eligible to participate in bunched orders are likely to benefit from being part of larger orders for execution.

JWH also supports the proposed modification concerning disclosure of an account manager's bunched order allocation methodology to clients on an "information availability" basis. JWH believes that should provide sufficient information to address client concerns about the procedures to be utilized, while also providing adequate information for monitoring the fairness of allocations. JWH believes that the proposed expansion of the class of eligible customers is appropriate, when considered in connection with the disclosures to be required about the allocation methodology. The proposal contains proper protections for those customers who are not currently eligible to participate in bunched orders, as long as it is understood that the "results" to be provided about other comparable customers are the results of execution and allocation, and not, for example, some broader measure, such as account performance results. The term "results" is used, without qualification, in both the narrative release and in the text of proposed rule 1.35(a-1)(5)(ii)(C). (In contrast, the proposed changes related to allocations in proposed 1.35(a-1)(5)(iii) and to records in (iv) refer frequently to execution and allocation.) To prevent misinterpretation of what "results" are to be presented upon request by an account manager, reference in the final rule to results of trade executions and allocations would be useful.

JWH also supports the proposal to delete the current certification requirement in rule 1.35(a-1)(5)(iv). The changes contained in other sections of the proposal reflect the central role of the account manager in developing and administering the order allocation procedures for the accounts it manages.

JWH also supports the proposed modification of the standard for determining equitable account allocations. JWH believes that fairness of allocations is best judged over time, so that an anomaly in the execution of a particular trade does not suggest that an entire methodology is unfair.

Finally, JWH believes that the remedies standard proposed in section 1.35(a-1)(iv)(D) is too severe. The narrative portion of the release states that Commission action under this subsection would not require prior notice and hearing. Because “[t]he failure of an account manager to respond to a request for information under this rule would be sufficient” to trigger a Commission order prohibiting an account manager from submitting orders on an exchange other than for liquidation, JWH believes that the standard for sanctioning the failure of an account manager to respond under this section should be one of willfulness. JWH believes that modification of that standard is warranted, given the potentially serious impact of such a Commission order on the clients of the account manager, as well as on the account manager itself.

JWH commends the Commission and its staff on the proposals to amend rule 1.35 and urges their adoption.

Sincerely yours,

/s/ David M. Kozak
Senior Vice President and General Counsel