

From: Matt Schinzel <Matt.Schinzel@InfiniumCM.com>
Sent: Monday, July 19, 2010 6:33 PM
To: hardeightfutures <hardeightfutures@CFTC.gov>
Cc: Aaron Lebovitz <Aaron.Lebovitz@InfiniumCM.com>; Jeff Knoeck <Jeff.Knoeck@InfiniumCM.com>
Subject: Comment on Hard Eight's CFTC Petition
Attach: S35C-110071916250.pdf

Dear Mr. Starwick,

Attached please find Infinium Capital Management, LLC's comment in connection with Hard Eight Futures, LLC's April 21, 2008, Petition to the CFTC, and the CFTC's June 17, 2010 Request for Comment in connection with that Petition. Please let me know if you have any questions regarding Infinium's submission.

Regards,
Matt Schinzel

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VIA E-MAIL to hardeightfutures@cftc.gov

July 19, 2010

David A. Stawick
Secretary
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Hard Eight Futures Petition for Exemption from Section 2(a)(1)(C)(iv) of the Act and
Appendix D to Part 30 of the Rules of the Commission

Dear Mr. Stawick:

On behalf of Infinium Capital Management, LLC ("Infinium"), a proprietary futures and securities trading firm¹ currently registered as a Member Firm of several U.S. and foreign futures exchanges including, but not limited to, the CBOT, CME, DME, Eurex, ICE, NYMEX, and NYSE-Liffe, with its principal place of business in the United States, I am submitting this letter in connection with the Commodity Futures Trading Commission's ("CFTC" or "Commission") Request for Comment on Hard Eight Futures, L.L.C.'s ("HEF") April 21, 2008, Petition permitting appropriate persons to trade non-narrow security indexes futures on foreign boards of trade.²

Infinium would like to take this opportunity to voice its general support of the exemption sought by HEF in its petition to the CFTC, and to address several of the questions noted in the CFTC's June 17, 2010 Request for Comment issued in connection with HEF's petition. Infinium believes that Hard Eight's petition for exemption allowing eligible contract participants³ ("ECP") to trade futures on foreign non-narrow security indexes when an ECP has filed noticed with the Commission seeking such an exemption, and the Commission has a Memorandum of Understanding ("MOU") with the foreign exchange's regulators, is in the public interest and should be granted. As HEF noted in its July 7, 2010 response to the CFTC's request to comment, Infinium strongly believes that the current OGC no-action process has the effect of preventing ECPs from trading such futures contracts in the more regulated exchange trading environment thus forcing ECPs to enter into economically equivalent transactions in the much less-regulated over-the-counter ("OTC") market. The current state of regulation prohibiting U.S. persons from entering into futures contracts on a non-narrow

¹ Infinium currently has no customer business. All trading capital is currently derived from Infinium's net trading profits and the personal funds of Infinium's owners. Infinium currently qualifies as an ECP under section 1a(12)(A)(v) of the Commodity Exchange Act.

² "Petition of Hard Eight Futures, LLC for Exemptive Relief, Pursuant to Section 4(c) of the Commodity Exchange Act, from Section 2(a)(1)(C)(iv) of the Commodity Exchange Act and Appendix D to Part 30 of the Rules of the Commodity Futures Trading Commission," 75 Fed. Reg. 34429 (June 17, 2010) ("Request for Comment").

³ The term "eligible contract participant" is defined in section 1a(12) of the Commodity Exchange Act.

security index traded on a foreign board of trade unless the foreign board of trade has applied for, and has been granted, a no-action letter by the CFTC's Office of the General Counsel ("OGC") is an overly time consuming process and it removes control from sophisticated U.S. investors in determining which financial products they desire to trade placing it in the hands of foreign boards of trade. As HEF noted in its comment letter, "a foreign board of trade may not have previously requested an OGC or direct-access no-action letter for a variety of reasons. For example, the foreign board of trade may believe that there is not enough trading interest on the part of the general public in the U.S. to merit the time, attention and cost necessary to prosecute such a request. However, it may be precisely this type of market that is attractive to the sophisticated ECP trader." By taking the control out of the foreign board of trade hands and placing it with the U.S. based ECP trader, in accordance with the conditions outlined HEF's petition, the CFTC would be making it possible for ECP's to execute such transactions in a cleared, exchange environment which would preserve market integrity, enhance transparency, reduce possible system risk and promote competition.

Furthermore, Infinium agrees with HEF that "the current prohibition on trading futures contracts on non-narrow security indexes on foreign boards of trade acts as an incentive for ECPs to move their trading operations off-shore." Infinium competes in an international environment with non-U.S. firms that do not face similar trading restrictions. For U.S. based firms to maintain their competitive edge, sophisticated trading firms such as Infinium need a streamlined process through which to seek permission to trade such futures contracts. Infinium believes that by granting HEF's petition, including the proposed conditions, the CFTC would be providing an effective means through which a U.S. based ECP could gain CFTC approval to trade such a futures contract on a foreign board of trade thereby enabling U.S. firms to compete with the rest of the world more effectively.

With those general comments, Infinium now responds directly to several of the specific questions posed by the Commission in its Request for Comment.

Question 1

Should an order granting the request for relief include any one or more the conditions proposed by HEF in its Petition?

As stated above, Infinium believes that the Commission should grant the request for relief sought by HEF. The conditions proposed by HEF's petition required for an ECP to qualify for the exemption provide the CFTC with sufficient time to make the factual determination required to verify that an applicant is qualified as ECP under section 1a(12) of the Commodity Exchange Act ("Act"), and that the index meets the statutory definition of a being a "narrow based index". As HEF also noted, "because the exemption is not self-effectuating, those trading in reliance on the exemption will be identified to the Commission making it possible for the Commission to communicate on an on-going basis as it deems appropriate."

Question 5

Should an order granting the relief requested in HEF's Petition require that there be no solicitation of Eligible Contract Participant ("ECP") orders, and/or that ECP's be required to trade only for their own account?

David A. Stawick

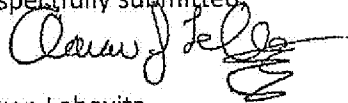
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As a proprietary trading firm with no customer business or funds under management, Infinium is always acting solely for its own account, however Infinium agrees with HEF that by limiting trading under the exemptive order to only ECPs that are trading for their own accounts, the Commission would be unnecessarily limiting an ECPs ability to trade non-narrow security index futures on foreign boards of trade. As HEF noted, "limited trading under the exemptive order to an ECP trading for its own account ... would be unduly restrictive." Infinium is one of the many ECPs contemplated in HEF's comment letter that may wish to avail itself of this exemption, but which it is not necessarily a member of all foreign boards of trade on which a qualifying index may be traded. In such instances Infinium would seek to trade on those foreign boards of trade as a customer through an intermediary. Infinium sees no difference in acting for its own account via direct membership with a foreign board of trade versus acting as a customer of FCM for its own account on a foreign board of trade. Infinium believes that as long as the FCM is required to determine that the ECP has qualified for an exemption under the proposed CFTC order that it should be allowed to trade non-narrow security index futures through a U.S. based intermediary.

Infinium appreciates the Commission taking into consideration its comments and endorsement of HEF's Petition for Rulemaking. Infinium believes that the Petition, if adopted, will provide competitive footing for U.S. ECPs without yielding the regulatory oversight and protection the CFTC is tasked with providing the U.S. public. Infinium agrees with HEF that by providing a streamlined process for qualified U.S. ECPs to obtain Commission approval to trade futures contracts on non-narrow foreign security indexes in an exchange cleared environment, that market integrity, enhanced transparency, and greater U.S. based competition will occur.

Respectfully submitted,



Aaron Lebovitz
Managing Member

NL/ms

Cc: Chairman Gensler
Commissioner Dunn
Commissioner Chilton
Commissioner Somers
Commissioner O'Malia