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VIA E-MAIL ONLY
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Peter A. Kals
Attorney Advisor
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: CFTC Proposed Rule to Amend Rule 1.35(a)

Dear Mr. Kals:

Our law firm of Henderson & Lyman ("H&L") would like to thank the Commodity Futures Trading Commission ("CFTC" or "Commission") for the opportunity to respond to the Commission's request for comment on the above-referenced proposed rule change, published in the Federal Register on June 7, 2011. We also would like to thank the Commission for allowing us the opportunity to submit this comment letter after the comment period listed in the Federal Register.

By way of background, H&L is a boutique law firm that assists futures and forex firms in meeting their registration and compliance related obligations pursuant to the rules and regulations promulgated by Commission and the National Futures Association ("NFA"). For the reasons set forth below, H&L respectfully submits that while the Commission should be lauded for its recent efforts to augment certain registration and compliance related aspects of the futures and forex industry, its proposed amendment to CFTC Rule 1.35(a), requiring all introducing brokers ("IBs") to tape-record all oral conversations with clients that lead to an executed transaction, should be rejected.

In particular, we believe that the Commission's proposed amendment should be rejected for the following reasons:

1) NFA already requires that Member firms with more than a certain percentage of disciplined associated persons ("APs") be required to tape-record all conversations that they have with existing and potential customers for a period of two (2) years. We believe that this NFA rule has already been very effective at protecting the investing public, while at the same time recognizing and respecting the tremendous cost burden that a blanket tape-recording requirement would have on the industry.

2) Purchasing and maintaining recording equipment and related services would add substantial and undue financial burdens on many IBs, especially smaller firms with no history of fraud. For instance, increased record keeping space, on-going upgrades, and regulatory costs would be cost prohibitive to many smaller firms and thus potentially put them out of business altogether. As a consequence, the proposed rule would clearly favor larger IBs at the expense of smaller ones.

3) The proposed rule would likely not achieve its intended results, because solicitation is not typically conducted over the phone nor are orders typically entered over the phone. Both the futures and forex industry are primarily electronic now-a-days and therefore the proper focus should instead be on safe guards focused on online solicitations and the like.

4) The vast majority of all misleading communications made to the public come from third party marketing firms relying on exemptions from registration pursuant to the Commodity Exchange Act ("CEA") and not from well-disciplined and cautious registrants. As a result, the positive effect of the proposed rule would likely be quite minimal, while its cost would be tremendous – potentially even putting many law-abiding registrants out of business altogether.

5) Nearly all overnight sessions, wherein brokers assist customers with their trades from outside the office, would be prohibited. Customers would suffer as a result because they would be prevented from entering important trades with their brokers due to the proposed tape-recording

rule. Otherwise, all IBs would also need to install tape-recording devices on their employees' personal phones, which likely would not be workable nor acceptable in terms of employee privacy laws.

6) NFA already provides Member firms with guidance and rules concerning the proper content of all communications to be had between Member firms and their potential or actual customers. These rules are intended to prevent fraud and are generally quite effective in their objective.

7) State laws currently differ regarding the ability to tape record customers. As a result, it may not be legal for firms to record and store this information in all jurisdictions. Liability for providers storing the information may also increase and those willing to offer services may be significantly limited.

8) The proposed rule would be inconsistent with CFTC proposed rule 23.202(a)(1), which does not establish an affirmative new requirement to tape-record all telephone conversations where an audit trail can be accomplished through alternative means such as electronic messaging or trading. A rule should not be promulgated where it would be in conflict with the requirements of another rule.

H&L is grateful to the Commission for giving it the opportunity to comment on the notice of proposed rule making. If there are any questions regarding these comments, please feel free to contact me at (312) 986-6959 or Nkuchera@henderson-lyman.com. Thank you for your attention to this matter.

Sincerely,

/s/

Nicole M. Kuchera
Associate of Henderson & Lyman

NMK/sad

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