Hedging Bets: Affiliates and the Unregulated Markets

by **Rachel Hirsch**

The key to long-term success for affiliate marketers has always been staying on top of the trends. At recent trade shows, we have noticed a growing trend among affiliates moving away from traditional marketing opportunities (e.g., diet and skin care) toward more profitable, and often riskier, territories, like online trading.

But for affiliate marketers in the online trading market, the risk may not be worth the reward.

Online trading is a niche that boasts one of the highest base cost-per-acquisitions for affiliates, sometimes as much as $200 per transaction. Compared with spread betting or traditional broker-based trading, trading stock futures attracts large audiences not limited to skilled investors alone.

Given the size of the audience and low competition among affiliates, online trading, particularly binary options, has become an attractive alternative to traditional forms of online marketing.

Simply put, binary options means "two options." The system offers traders a simple choice whether an asset will close above (a "call option") or below (a "put option") at the end of the day. Lately, there seems to be a great deal of confusion regarding the legality of binary options trading in the United States.

The question is not so much whether binary options are legal in the United States, but whether the firms offering them are listed on a proper U.S. exchange and are properly registered with and regulated by the Commodity Futures Trading Commission (CFTC). Currently, Nadex is a regulated U.S. exchange, which is designated by the CFTC and permitted to accept U.S. residents as members.

Yet lack of proper registration has never been a deterrent for companies with dollar signs in their eyes. In a recent lawsuit, the CFTC charged the Ireland-based "Intrade The Prediction Market Limited" (Intrade) and "Trade Exchange Network Limited" (TEN) with offering commodity option contracts to U.S. customers for trading, including option contracts on whether certain U.S. economic numbers or the prices of gold and currencies would reach a certain level by a certain future date, all in violation of the CFTC's ban on off-exchange options trading.

While online trading may be an attractive option, affiliate marketers need to hedge their bets against future liability by taking decisive action before entering into relationships with online trading firms in risky, and often unregulated, markets.

For now, it seems that regulators like the CFTC have focused their attention on the actual firms offering these trading options. However, the CFTC has been sending cease and desist letters to affiliates in this space as well. Affiliates working in such risky markets must know the firms for which they are working. Some online trading firms may say they do not accept U.S. customers, but saying it is very different than actually representing and warranting that fact in a contractual document with their affiliates and indemnifying affiliates from liability.

The best bet for affiliates working in this space is to hire the right attorney to ensure that these representations and warranties are always in writing. [FF]

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