CFTC Letter No. 00-10

January 6, 2000

No-Action

Division of Trading & Markets

Re: Section 4m(1) -- Request for No-Action Position from CPO Registration to Permit University to Offer Seminar Course that Operates as a Student Trading Club

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Dear :

This is in response to your electronic mail message dated February 15, 1999 to the Commodity Futures Trading Commission ("Commission"), as supplemented by letter dated December 9, 1999, facsimile transmission dated March 30, 1999, electronic mail messages dated June 8, 1999, August 5, 1999, August 17, 1999 and January 3, 2000 and telephone conversations with staff of the Division of Trading and Markets ("Division"). By your correspondence, you request that the Division not recommend that the Commission commence any enforcement action against the "University's" cooperative extension service ("CES"), for failure to register as a commodity pool operator ("CPO") under Section 4m(1) of the Commodity Exchange Act ("Act"),[1] if the University offers, as part of its curriculum, a course that will allow University students to trade commodity interests through participation in a trading club (the "Trading Club").

Based upon your representations, we understand the facts to be as follows. You are an Assistant Professor of Farm Management with the "Q" of the University's College of Agriculture, Food and Natural Resources, and you have a research appointment through the University's CES. You also are an employee of the "R" of the "T", which operates in partnership with the University's CES**.** Previously, while working as a graduate teaching assistant at "U", you taught a seminar course that provided the students enrolled therein the opportunity to participate in a Trading Club. The "U" seminar course was operated under the direction of "A" by "U's" CES pursuant to a CPO registration no-action position issued by the Division to "U" and its agents and employees in 1987.[2]

The University proposes to offer a similar seminar course ("Course") to its third- and fourth-year University students who have completed a specific undergraduate course sequence in marketing. The Course will be offered continually and on an annual basis each Fall semester. It will be made available through the University Line Schedule, the schedule of class and seminar listings for the subsequent semester. It will be offered on an elective basis in that enrollment will not be required as a prerequisite for the granting of any degree. Class size will be limited to a maximum of 45 students, and students participating in the Course will earn two general academic credits.

Students enrolled in the Course will be required to pay the regular academic fees charged for enrollment in a two-credit course at the University. While Course enrollees are not required to participate in the Trading Club, those electing to do so will be required to pay an additional fee of up to a maximum of three hundred dollars ("Trading Fee") that will be used exclusively for the purposes of trading commodity interests. Other than these fees, there will be no other costs associated with participation in the Trading Club. Moreover, neither you nor anyone else will receive any direct or indirect compensation for operating the Trading Club, other than the reasonable and customary amount of compensation provided to persons as employees of the University.[3]

At the beginning of each semester that the Course is offered, the University will furnish you with a check in an amount equal to the total of the Trading Fees paid to the University from students who have enrolled in the Course and elected to participate in the Trading Club. You intend to establish an account in the name of the Trading Club with a registered futures commission merchant ("FCM"), and you will deposit the Trading Fees into this account. Monthly and confirmation statements will be sent to you by the FCM, and you will, in turn, distribute copies of these statements to the participants in the Trading Club.

You indicate that the purpose of the Trading Club is to provide learning by experience, and that "real" trading is preferable to "paper trading."[4] Accordingly, participants in the Trading Club, as groups of three or four individuals, will orally and in writing present trading recommendations to the Trading Club. All recommendations that are so presented will have to be approved by majority rule in order to be effectuated. [5] As instructor, you will have a veto power over the majority if you perceive that the majority-approved recommendation will jeopardize the operation of the Trading Club.

Participants in the Trading Club will primarily trade agricultural commodity futures contracts and options on such contracts. However, the Trading Club also may trade in metal and financial futures contracts and options on such contracts. At the end of the academic semester, profits and losses will be allocated *pro rata* to each student based upon the student's contribution to the Trading Club. However, losses in excess of the pooled funds will be the responsibility of the "Q". Indeed, the "Q" has established a reserve account in the amount of $35,000 to cover any unanticipated losses by the Trading Club.[6]

Although the Trading Club will not employ professionals to trade or manage the account, as instructor, you will distribute general information regarding futures terminology, exchange operation hours and initial and maintenance margin standards. You will obtain this information from, among other sources, the various contract markets on which trades are to be effected. Guide sheets and other teaching materials also may be obtained from the "R".

You are seeking a no-action position that would permit the University and other persons associated with operating the Trading Club to offer the Course without having to register with the Commission as a CPO.

The term "commodity pool operator" is defined in the Act as:

> any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property . . . for the purpose of trading any commodity for future delivery on or subject to the rules of any contract market, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.[7]

Section 4m(1) of the Act makes it unlawful for any CPO, unless registered under the Act, to make use of the mails, or any means or instrumentality of interstate commerce in connection with his business as a CPO.

In considering your request, we note the mission of the "R", which is stated to be as follows:

> In cooperation with our partners and customers, "R" provides the focus to advance a global system of research, extension and higher education in food and agricultural sciences and related environmental and human sciences to benefit people, communities and the Nation.
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> The "R" mission emphasizes partnerships with the public and private sectors to maximize the effectiveness of limited resources. "R" programs increase and provide access to scientific knowledge; strengthen the capabilities of land-grant and other institutions in research extension and higher education; increase access to and use of improved communication and network systems; and *promote informed decisionmaking by producers, families, communities and*

other customers. (Emphasis added).

In support of your request, you represent that because the objective of the Trading Club is to promote "informed decision-making by producers, families, communities and other customers" through the advancement of knowledge and education about the futures markets, the operation of the Trading Club meets the objectives and mission of the "R".

Based upon the foregoing, it appears that granting your request would not be contrary to the public interest or the purposes of Section 4m(1) of the Act. In this regard, we note the educational purpose of the Trading Club and your representations that: (1) the Trading Club will be promoted and sponsored by the University and the CES; (2) losses in excess of the pooled funds will be the responsibility of the "Q"; (3) enrollment in the Course is voluntary and is not a mandatory prerequisite for graduating or obtaining a degree; and (4) operation of the Trading Club is consistent with the mission and objectives of the "R".

Accordingly, the Division will not recommend that the Commission commence any enforcement action for failure to register as a CPO under Section 4m(1) against the University, or any of its agents and employees, whose involvement in a Trading Club otherwise would require registration as a CPO. This position is, however, subject to the following conditions: (1) as instructor for the Course, you will distribute to each participant in the Trading Club, upon registering for the Course, a written copy of the statement prescribed by Rule 4.13(b) to the effect that the operator of the Trading Club is not registered as a CPO, and, therefore, is not subject to disclosure document, periodic account statement and annual report requirements; (2) no participant in the Trading Club may contribute more than $300 to the Club; (3) no Trading Club may have more than 50 participants; (4) each Trading Club must have a specific expiration date; (5) the commodity interest trading account of the Trading Club must be opened and traded in the name of the Trading Club; (6) any withdrawals from the commodity interest trading account must be requested in writing and signed by two members of the Trading Club; (7) the FCM that carries the account of the Trading Club must be informed in writing of the foregoing restriction regarding withdrawals; and (8) "Q" will be responsible for the losses of any Trading Club in excess of the amount of the Trading Fees that have been contributed to that Club.

This letter does not excuse the University, its agents and employees from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each remains subject to all applicable antifraud provisions of the Act and the Commission's regulations and the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations. Moreover, this letter is applicable to the University and its agents and employees solely in connection with the operation of a Trading Club.

This letter, and the no-action position provided herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the activities of the University or its agents and employees change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

1 7 U.S.C. § 6m(1) (1994).

2 CFTC Staff Letter No. 87-5 [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,916 (Sept. 29, 1987).

3 You are not receiving additional compensation for your research appointment through the University's CES.

4 In support of his request for a no-action position, "A" claimed, and you claim as well, that:

> The problem with 'paper' trading is that little, if any 'real' learning takes place, and the typical student's approach to the exercise is to treat it as if it were a game of chance. Since no 'real' money is involved, the student never has to bear responsibility for the trades and few students take the time to investigate market fundamentals, assess alternative trading strategies, or to relate commodity trading to commodity marketing activities (*i.e.*, hedging commodity sales and purchases).

CFTC Staff Letter No. 87-5, ¶ 23,916 at 34,252.

5 Only students participating in the Trading Club, however, may vote on prospective trades.

6 By letter dated December 9, 1999 and electronic mail message dated January 3, 2000, "Q" provided written confirmation that it will be responsible for losses in excess of pooled funds and that it has established a reserve account to cover such losses.

7 7 U.S.C. § 1a(4) (1994).