

CFTC Letter No. 02-08

February 5, 2002

No-Action

Division of Trading and Markets

Re: Section 4m(1) -- Request for relief from CTA registration requirements for contractual provider of streaming video and audio coverage of the trading action on the floor of a designated contract market who makes such coverage available for a fee to subscribers and vendors of market data providers.

Dear :

This is in response to your letter dated December 7, 2001, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letter dated January 7, 2002, your e-mail messages dated January 4, 2002 and January 14, 2002 and by telephone conversations with Division staff. By this correspondence, you request that the Division not recommend that the Commission commence any enforcement action against "P" for failure to register under Section 4m(1)^[1] of the Commodity Exchange Act (the "Act")^[2] as a commodity trading advisor ("CTA") in connection with providing live video and audio coverage over the Internet of contract market trading floor activity to market data vendors and to individual subscribers for a fee.

Based upon your representations, we understand the facts to be as follows. "P", through its "Q" subdivision, is in the business of transmitting clear, live video and audio signals over the Internet, using a system called "R" that "P" developed to deliver clear audio and video signal at extremely low transmission rates. "R" technology enables live, real-time broadcasting of a video signal to be distributed via the Internet to users on either dial-up or broadband connections. "P" proposes to take live audio and video signals from cameras strategically placed over a contract market's trading pits and to distribute the signal for a fee through the "P" (an interface) to market data vendors such as "S" and "T". Individual subscribers would be able to access these signals from the market data vendor or through an exchange's content delivery system. In either case, a form of the "P" would be used to assist in the delivery system. The exchanges involved will be the "A", the "B", the "C" and the "D" (referred to generically herein as "the Exchanges"). "P" intends to make its video signal available to the Exchanges as well as to members of the Exchanges ("Member Companies").

You describe the purpose and operation of the video/audio stream as follows:

1. The subscribers will be given access to a live video/audio stream showing the trading action in the pits in real time with live quotes provided to us by the Exchanges with no editing via the Internet. This will allow subscribers anywhere in the world the opportunity to see what is actually happening in the trading pits. The subscribers will benefit from this service by being able to respond to trading trends as if they were in the pits. We will make no suggestions or recommendations with respect to any trading activity. We will allow anyone that would like to

subscribe the opportunity to enhance their trading experience by allowing them to view the live trading action taking place in the pits.

2. "P" will allow the transmission of an after hours signal for educational purposes at the request of the Exchanges. The after hours signal will be used to assist new traders in their understanding of the Exchanges' Rules and Regulations, trading terms and acceptable "Best Practices." This will essentially expand the customer base of the Exchanges by allowing new customers to understand the trading process and also enrich the trading experience for all traders.
3. "P" will allow the Exchanges to use the compressed stream for archiving purposes to supplement their archiving process and make record requests simpler by providing video information via a CD or DVD format.

You further state that "P" intends to provide factual commentary (which you characterize as "generic") at opening, mid-day and closing points in the market day, and to permit Exchanges and Member Companies to provide their own live commentary to clients via a separate video channel.

In addition to the foregoing description, you represent that "P" does not, and will not, direct the trading of any clients. You further represent that "P" does not transmit clients' orders or facilitate clients' trading. If asked, "P" will not discuss a client's particular situation or the advisability of particular trades. "P" will only discuss technical issues concerning the client's signal reception.

Together with your request for a no-action position, you assert that "P" is entitled to an exemption from CTA registration requirements under Rule 4.14(a)(9),^[3] in that "P" does not direct client accounts and it does not provide "commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients."

In support of your request, you further state that "P" will continue to comply with those provisions of the Act and Commission rules that apply to a CTA, regardless of registration status, such as Section 4o of the Act and Rules 4.30, 4.41(a) and 4.41(b). You also claim that none of the managing members of "P" is subject to statutory disqualification under Section 8a(2) or 8a(3) of the Act.^[4]

Based upon the representations made in your correspondence, particularly the stated intention of "P" to provide unedited video and audio coverage of the trading action of the Exchanges' trading pits accompanied by factual commentary, and the representation that no advice concerning the advisability of trading particular commodity interest contracts or advice regarding a customer's investment situation will be given, the Division will not recommend that the Commission commence any enforcement action against "P" based solely upon the failure of "P" to register as a CTA under Section 4m(1) of the Act in connection with providing streaming video and audio coverage of trading activity on the floor of a designated contract market accompanied by "P's" factual commentary.^[5]

The position taken in this letter does not excuse "P" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example,

"P" remains subject to the antifraud provisions of Sections 4b and 4o of the Act,^[6] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules and to all otherwise applicable provisions of Part 4.

This letter is based upon the representations you have made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might render the position taken herein void. You must notify us immediately in the event that the operations or activities of "P" change in any material way from those represented to us. Furthermore, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5450.

Very truly yours

John C. Lawton
Acting Director

^[1] 7 U.S.C. § 6m(1) (2000).

^[2] 7 U.S.C. § 1 *et seq.* (2000).

^[3] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

^[4] 7 U.S.C. § 12a(2) or 12a(3) (2000).

^[5] You have also noted that the Exchanges may provide their own commentary. We do not reach the question whether the Exchange-provided commentary raises regulatory issues under the Act or Commission rules.

^[6] 7 U.S.C. § 6b and 6o (2000).