



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

95-16

February 23, 1995

Re: Commodity Trading Advisor Registration Requirements for
Introducing Brokers

Dear :

This is in response to your letter dated November 8, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. You inquired whether "X", a registered guaranteed introducing broker ("IB"), must register as a commodity trading advisor ("CTA") under the Commodity Exchange Act (the "Act")^{1/} in connection with providing the services described below.

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. You are a listed principal and registered as an associated person ("AP") of "X". After examining "X's" books and records on October 12, 1994, the National Futures Association ("NFA") expressed the view that "X" was engaging in the business of a CTA in that "X", through you, has discretionary authority over ten of seventeen of the customer accounts that it introduces. You have been given a power of attorney over such accounts. You state that, as of November 8, 1994, "X" has seventeen accounts. Of the seventeen accounts, nine have two characteristics: you direct the trading in such accounts and they are not owned by your immediate family members. The other eight accounts are either not directed by you, or if so directed, are owned by your immediate family members or you.^{2/}

^{1/} 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992). Commission rules referred to hereinafter are found at 17 C.F.R. Ch I (1994).

^{2/} You or your minor children are the owner of four accounts, and you possess a power of attorney to trade each of these accounts.

Section 4m(1) of the Act^{3/} provides an exemption from registration as a commodity trading advisor for a person who "during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor." Although it appears that "X" has not provided commodity trading advice to more than 15 persons in the preceding 12 months, "X" has held itself out as a commodity trading advisor. Thus, the exemption from registration on the basis of §4m(1) is not available to "X"

Rule 4.14(a)(6) exempts an IB from CTA registration if the IB furnishes trading advice "solely in connection with" its IB business. In the circumstances presented, "X" directs one account more than a majority of its accounts. However, the number of accounts in which "X" directs trading, nine in all, is relatively few. In seeking relief, you also represent that "X" will maintain or reduce the current modest scale of this activity and will not advise any additional discretionary accounts. In Interpretative Letter No. 93-6, the Division concluded that discretionary authority exercised over a majority of accounts would place such activity outside the scope of the Rule 4.14(a)(6) exemption, because the exercise of such trading authority, absent special circumstances, would not be "solely in connection with" IB business.^{4/} Under the circumstances described above, however, the Division has concluded that it is not inappropriate to provide relief to "X" from registration as a CTA. Accordingly, the Division will not recommend that the Commission taken any enforcement action for failure to register as a CTA against "X". This position is, however, subject to the conditions that: (1) "X" continues to be registered as an IB; (2) you continue to be listed as a principal and registered as a AP of "X"; and (3) neither you nor "X" acquire any additional client accounts that you guide or direct.

This letter does not excuse "X" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations promulgated thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act,^{5/} the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable provisions of Part 4.

^{3/} 7 U.S.C. § 6m(1) (1988).

^{4/} See Division of Trading and Markets Interpretative Letter No. 93-6, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH), ¶ 25,571 (January 27, 1993), a copy of which is enclosed.

^{5/} 7 U.S.C. § 6o (1988 and Supp. IV 1992)

The relief granted by this letter is based upon the representations made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities of "X" or you change in any way from those as represented to us. Further, nothing in this letter should be construed as limiting in any way the Commission's ability to take enforcement or other action against "X", you or any other person for any past violation of the Act or Commission regulations. Finally, this letter represents the position of the Division of Trading and Markets only and does not necessarily represent the views of the Commission or any other division or office of the Commission. If you have any questions concerning this correspondence, please feel free to contact me or Sharon Zackula, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel