

CFTC Letter No. 01-83
November 2, 2001
Interpretation
Division of Trading and Markets

Re: Foreign Exchange Activities

Dear:

This is in response to your letter received by the Commodity Futures Trading Commission ("Commission") on April 9, 2001. By your correspondence, you request information about the regulation of the foreign currency market. Section 102 of the Commodity Futures Modernization Act of 2000 ("CFMA") amended the Commodity Exchange Act (the "Act") to make clear that offering off-exchange foreign currency futures and option contracts to retail customers is unlawful unless the counterparty is a regulated entity enumerated in the Act.^[1] The counterparties enumerated include registered futures commission merchants ("FCMs") and certain affiliated persons of registered FCMs.^[2] Accordingly, if a firm is offering such contracts and is not one of the regulated entities enumerated in the Act, it is operating unlawfully. You may find information about any firm or individual registered with the Commission, including any actions taken against a registrant, in the National Futures Association ("NFA") Background Affiliation Status Information Center ("BASIC"), on the NFA website at: www.nfa.futures.org/basicnet/.

In your letter, you asked about the regulation of persons introducing clients to the firm offering foreign currency trading. Generally, a person employed by an FCM to solicit customers must register as an associated person ("AP") of the FCM.^[3] Also, generally speaking, a separate entity that introduces customers to an FCM must register as an introducing broker ("IB").^[4]

You also asked about advertising by persons introducing clients. While there is no prohibition against advertising by IBs, the antifraud provisions of the Act and regulations thereunder are applicable to all of the IB's activities, including advertising. Finally, you asked about state regulation of foreign currency trading. The Act and the regulations promulgated thereunder are applicable throughout the United States. Additionally, each state may also have specific statutes and regulations applicable to firms doing business in those states. You must contact the appropriate agency in each state to find out what the applicable laws and regulations might be.

I hope you find this letter responsive to your inquiry. Should you have additional questions on this matter, contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Lawrence B. Patent
Associate Chief Counsel

^[1] See 7 U.S.C. § 2 (1994), *as amended by* the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. No. 106-554, 114 Stat. 2763 (to be codified as amended in scattered sections of 7 U.S.C.). As used in this letter, the term "retail customer" refers to any person other than a person that comes within the definition of an eligible contract participant under Section 101 of the CFMA, to be codified in Section 1a(12) of the Act.

^[2] The other enumerated counterparties are: (1) financial institutions; (2) registered broker-dealers; (3) associated persons of registered broker-dealers; (4) insurance companies or affiliates thereof; (5) financial holding companies; and (6) investment bank holding companies. See 7 U.S.C. § 2(c)(2)(B)(ii), as amended by CFMA Section 102.

^[3] As stated in note 2, an FCM is only one of the enumerated counterparties that may lawfully offer this type of retail foreign currency trading. To the extent that your inquiry pertains to introducing clients to firms that are one of the enumerated counterparties other than an FCM, you will have to contact the appropriate regulatory body for a response, e.g., a broker-dealer is registered with the Securities and Exchange Commission.

^[4] 7 U.S.C. § 1a(23); *see also* Commission rule 1.3(mm). Commission rules referred to herein are found at 17 C.F.R. Ch. 1 (2001). With respect to entities that introduce retail customers to registered FCMs acting as counterparties under Section 2(c)(2)(B)(ii) of the Act, as amended by Section 102 of the CFMA, however, it is the opinion of the Division of Trading and Markets that such entities may not be required to register with the Commission as an IB, but may voluntarily do so. This opinion is solely that of the Division of Trading and Markets and does not necessarily represent the opinion of the Commission or any other division or office of the Commission and is not binding on the Commission.