

CFTC Letter No. 01-87

October 15, 2001

Interpretation

Division of Trading and Markets

Dear

This is in response to your e-mail message to the Secretary of the Commodity Futures Trading Commission (the "Commission") dated October 9, 2001, which was referred to the Division of Trading and Markets ("Division") for reply. In your message, you ask what disclosures you are required to include on a website you propose to set up, and where and how those disclosures should be displayed. You contemplate that your website would provide subscribers with a general daily forecast regarding the S&P 500 futures contract (and possibly of other major index futures contracts). Any response to your question depends upon the nature of the activities of the person or persons operating the website. Since the website you describe is under contemplation and not yet set up, it is not possible to say with certainty what the regulatory requirements affecting the website will be.

Notwithstanding the foregoing, we can offer you the following by way of guidance. As a general principle, one who provides commodity interest trading advice to another for compensation (monetary or otherwise) is required to register with the Commission as a commodity trading advisor ("CTA") and to comply with the Commission's regulations affecting CTAs. There is, however, an exemption available under Commission Rule 4.14(a)(9) to CTAs that provide advice on an impersonal basis that is not tailored to any client's particular circumstances (see "Exemption from Registration as a Commodity Trading Advisor," 65 Federal Register 12938 (March 10, 2000) (<http://www.cftc.gov/foia/fedreg00/foi000310a.htm>)). You should read that release to determine whether the activities that you contemplate will fit within the criteria for the registration exemption.

Regardless of whether a CTA is required to register with the Commission, the Commission retains jurisdiction over the CTA in matters involving fraud or manipulation of the commodity interest markets. In that connection, although the Commission has not required CTAs who avail themselves of the registration exemption of Rule 4.14(a)(9) to display prescribed disclosures on websites, any such CTA would be well advised to display clearly all material information, whether or not it is expressly required to be disclosed. Such information would include, without limitation, some of the items you mention in your message, such as the nature and rules of the trading system you plan to use, the fact that the trend and strength rating would be your opinion, the fact that your results are based on past data and are not the result of actual trading, and the fact (if true) that you do not intend that any subscriber use your opinion as his or her sole reason to enter or exit commodity interest markets. You should also consult Commission Rule 4.41 regarding advertising by CTAs, particularly with respect to the presentation of any simulated or hypothetical performance results.

In the absence of prescribed content or format for disclosures by CTAs who are exempt from the registration requirement, it would be up to you to make a reasonable determination of what information

is material and the manner of presenting that information. If, however, your website as ultimately set up does not fall within the exemption provided by Rule 4.14(a)(9), you would be required to comply with the disclosure and recordkeeping requirements of Rules 4.31 and 4.33 through 4.36. (With respect to delivery of required disclosures, in the context of electronic media such as websites, you would want to refer to "Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials," 62 Federal Register 39104 (July 22, 1997)).

You should consult legal counsel concerning the applicability of various provisions of the Commodity Exchange Act and Commission rules to you and your website, in light of the particular activities you intend to conduct. A great deal of information may be found at the CFTC's Internet website (<http://www.cftc.gov>), including official statements by the CFTC that may address your concerns. You may reply to this e-mail message if you have additional questions.

Sincerely,

Christopher W. Cummings
Staff Attorney
Division of Trading and
Markets