

CFTC Letter No. 01-92
December 11, 2001
Interpretation
Division of Trading and Markets

Re: National Futures Association Membership

Dear :

This is in response to your e-mail dated November 26, 2001, to the Division of Trading and Markets (the "Division") at the Commodity Futures Trading Commission ("Commission"). By your correspondence, you inquire about the necessity of becoming a member of the National Futures Association ("NFA") in regard to certain commodity advisory activities you intend to undertake.

Based upon your representations, we understand the facts to be as follows. You are the sole proprietor, principal, and associated person of "X", a registered commodity trading advisor ("CTA"). "X" is not a member of NFA. "X" initially will be providing commodity trading advice through a newsletter and will not be directing the commodity interest accounts of any clients. However, the newsletter will indicate that "X" is willing to manage accounts and will do so in the future. "X" will provide each subscriber of the newsletter a disclosure document prior to sending the newsletter to the subscriber.

As you are aware, NFA Bylaw 1101 provides that an NFA member may not accept an order or handle a transaction for or on behalf of any non-Member of NFA that is required to be registered with the Commission. Accordingly, before "X" could direct client accounts, in addition to being registered as a CTA, it must be a member of NFA. Since "X" is soliciting clients for managed accounts, it would seem appropriate for "X" to become an NFA member now rather than waiting until a client engages "X" to direct his/her commodity account. It might take some time to become an NFA member. If "X" is not a member of NFA before a client appoints it to direct the client's account, there could be a delay before "X" actually begins directing the account.

In your correspondence, you indicated that "X" might become a principal of an introducing broker ("IB") that is a member of NFA. You asked whether this would be sufficient to permit the directing of client accounts. If the IB were provided with a power of attorney ("POA") to direct trading in client accounts, its NFA membership would be sufficient for purposes of satisfying NFA Bylaw 1101 and a futures commission merchant ("FCM") member of NFA could accept orders from the IB entered on behalf of customers pursuant to the POA. However, the IB would fall within the definition of a CTA^[1] and, absent an exemption, the IB also would be required to register with the Commission as a CTA.^[2]

Commission Rule 4.14(a)(6)^[3] provides that a registered IB does not need to register as a CTA if its trading advice is "solely in connection with" its business as an IB. Without more facts, the Division is unable to opine as to whether the IB's activities would be "solely in connection with" its business as an IB. The Division has previously noted that, if an IB exercises discretionary authority over a majority of

its clients' accounts, the exemption provided for under Rule 4.14(a)(6) is not applicable and the IB must register as a CTA.^[4] If the IB does not exercise discretionary authority over a majority of its clients' accounts, the Division looks at all the facts and circumstances of the IB's advisory activities to determine whether such activities are "solely in connection with" the IB's business as an IB.

If the scenario remains that "X" becomes a principal of an IB but, instead of the customer giving a POA to the IB, the customer gives the POA to "X" directly, the IB would be acting solely as an IB and would not also be required to register as a CTA. However, the IB's NFA membership would not be sufficient as to "X" for purposes of NFA Bylaw 1101. Accordingly, neither the IB nor an FCM member of NFA could accept an order from "X" on behalf of a customer if "X" were not also an NFA member. "X" would have to become an NFA member in order to enter trades for its clients.

You also inquired about whether "X" would need to provide the details of its trading program in disclosure documents provided to prospective clients. Commission Rule 4.34 describes what must be included in the disclosure documents provided by CTAs, including the description of the trading program.^[5] You further inquired if it would violate any rules or regulations for a CTA to provide opinions about cash markets in a newsletter. Such activity would not violate any Commission rules. Finally, you inquired as to the appropriate way for you to introduce yourself to prospective clients. Since "X" is a sole proprietorship, and you are the sole proprietor, the Division believes that it would be permissible for you to introduce yourself as a CTA.

I hope you find this letter responsive to your inquiry. If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430. For questions regarding NFA membership or NFA Bylaw 1101, you might want to contact Daniel A. Driscoll, Executive Vice President, Chief Compliance Officer, at NFA, at (312) 781-1320.

Very truly yours,

Lawrence B. Patent
Associate Chief Counsel

^[1] See Section 1a(6) of the Commodity Exchange Act (the "Act").

^[2] See Section 4m(1) of the Act.

^[3] Commission rules referred to herein are found at 17 C.F.R. Ch. 1 (2001).

^[4] CFTC Interpretative Letter No. 95-17, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,344 (February 24, 1995); CFTC Interpretative Letter No. 93-6, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,571 (January 27, 1993).

[\[5\]](#) See Commission Rule 4.34(h).