

CFTC Letter No. 02-27**March 21, 2002****Interpretation****Division of Trading and Markets**Re: Section 4e of the Commodity Exchange Act

Dear:

This is in response to your letter dated December 4, 2001, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your correspondence, you request, on behalf of the "X", acting for the benefit of its members, confirmation that "X" individual traders and "X" executing brokerage firms meet the requirements of Sections 4k(5) and 4f(a)(3) of the Commodity Exchange Act (the "Act"),^[1] respectively, and are, therefore, exempt from the registration requirements of Section 4e of the Act.

Section 4e of the Act provides that any person acting as a floor broker ("FB") or floor trader ("FT") must be registered as such with the Commission.^[2] Section 4k(5) of the Act provides that any associated person of a registered securities broker or dealer ("BD")^[3] that limits its "solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving [futures contracts] or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from . . . [Section 4e of the Act]."^[4] Section 4f(a)(3) of the Act provides that an FB or FT is exempt from the registration requirements of Section 4e of the Act if: (1) the FB or FT is a registered securities BD; (2) the FB or FT limits its activities on behalf of others involving futures contracts to security futures products; and (3) the FB's or FT's registration with the Securities and Exchange Commission ("SEC") is not suspended pursuant to an order of the SEC.^[5]

Individual Traders

In your letter, you described "X" individual traders as composed of floor traders, retail floor brokers, and executing floor brokers. You represented that "X": (1) floor traders trade for their own account or on a proprietary basis on behalf of a "X" market maker or designated primary market maker firm ("DPM"); (2) retail floor brokers execute customer and proprietary orders on behalf of brokerage firms that carry customer accounts; and (3) executing floor brokers execute orders on behalf of an executing brokerage firm for BD accounts, for customer or proprietary accounts of brokerage firms, for market maker accounts, and for the accounts of institutional and other customers that generally trade large size orders. You represented that these traders are all associated persons of BDs registered with the SEC.

If these traders are associated persons of registered BDs, as you have represented, and limit their

solicitation, acceptance, execution, or placing of orders on behalf of others involving futures contracts, or options thereon, to security futures products, then they meet the requirements of Section 4k(5) of the Act and, therefore, are exempt from, among other provisions, Section 4e of the Act.

Executing Brokerage Firms

In your letter, you represented that “X” executing brokerage firms are registered with the SEC as BDs and execute agency orders for BD accounts, for customer or proprietary accounts of brokerage firms, for market maker accounts, or for the accounts of institutional and other customers that generally trade large size orders. Further, you represented that these executing brokerage firms will limit their solicitation, acceptance, execution, or placing of orders on behalf of others involving futures contracts to security futures products. Moreover, you have represented that your request for confirmation is limited to firms whose registration is not suspended by an order of the SEC.

In your letter, you represented that these executing brokerage firms fall within the definition of an FB under Section 1a(16) of the Act because they are "associations, that through their associated persons, execute orders, on or subject to the rules of a contract market, for other persons." While it has been the experience of the Commission that FBs in the futures industry are generally natural persons, as you correctly noted in your letter, the definition of FB under the Act includes non-natural persons.^[6] Accordingly, these executing brokerage firms, even though they are associations, fall within the definition of an FB.

If, as you have represented, these executing brokerage firms are BDs registered with the SEC and such registration has not been suspended pursuant to an order of the SEC and they limit their activities on behalf of others involving futures contracts to security futures products, then they meet the requirements of Section 4f(a)(3) of the Act and, accordingly, they are exempt from the registration requirements of Section 4e of the Act.

The opinions expressed in this letter relate only to “X” individual traders and executing brokerage firms regarding registration as FBs or FTs under Section 4e of the Act. This letter and the opinions expressed herein are based upon the representations you have made to us. Any different, changed, or omitted facts or conditions might change the opinion of the Division. Moreover, this opinion is solely that of the Division and does not necessarily represent the opinion of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton

[1] 7 U.S.C. § 1 *et seq.* (2000).

[2] A floor broker is defined as "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility." 7 U.S.C. § 1a(16); *see also* 17 C.F.R. § 1.3(n). A floor trader is defined as "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility." 7 U.S.C. § 1a(17); *see also* 17 C.F.R. § 1.3(x).p

[3] A broker is generally defined as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(4) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4). A dealer is generally defined as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise." Section 3(a)(5) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(5). An associated person of a BD is "any partner, officer, director, or branch manager of such [BD] (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such [BD], or any employee of such [BD]." Section 3(a)(18) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(18).

[4] 7 U.S.C. § 6k(5).

[5] 7 U.S.C. § 6f(a)(3).

[6] *See* Section 1a(28) of the Act, 7 U.S.C. § 1a(28), defining the term "person" to include "individuals, associations, partnerships, corporations, and trusts."