

CFTC letter No. 03-19

April 29, 2003

Exemption

Division of Clearing and Intermediary Oversight

Re: Request for Exemption from Registration as an Introducing Broker

Dear :

This is in response to your letter dated April 21, 2003, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"). By your letter, you request an exemption from registration with the Commission as an introducing broker ("IB") under the Commodity Exchange Act ("Act").

In your letter, you state that you have a marketing and consulting company, "X". Through "X", you have received requests for information and contact names on opening commodity accounts and you would like to furnish names of associated persons ("APs")^[1] and futures commission merchants ("FCMs") in response to these requests. By your letter, you state that "X" will not trade or open any of these accounts. However, you state that you intend to charge a monthly fee for giving these referrals to APs or FCMs.

The Act defines an "Introducing Broker" as "any person...engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contract that result or may result therefrom..."^[2] In addition, Commission Rule 1.3(mm)^[3] further defines an introducing broker as "[a]ny person who, for compensation or profit, whether direct or indirect, is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market..."

Section 4d of the Act requires registration of any person who comes within the IB definition. As you state in your letter, "X" wishes to refer potential customers to APs and FCMs. In return, "X" would charge a monthly fee to select APs and FCMs. However, "X" would not provide advice to the potential referrals nor would it trade the referrals' accounts.

Generally, persons who refer potential customers to Commission registrants for compensation are required to register under the Act.^[4] The registration requirements of the Act are an important element of customer protection and a method of screening unfit persons from dealing with customers. The registration requirements have been construed flexibly to require the registration of persons who participate even indirectly in such solicitations or referrals.^[5] The Division has interpreted the IB

registration requirements in light of these goals and has consistently held that persons who refer potential customers to Commission registrants for compensation must register with the Commission.^[6] In applying the IB registration requirements to this case, the Division concludes that “X” will be introducing members of the public to Commission registrants for compensation and thus acting as an IB. Therefore, since “X” will be acting as an IB, it would be required to register pursuant to Section 4d(1) of the Act.

Based upon the information provided in your correspondence, the Division does not find that it can grant relief from the Act’s IB registration requirement. If you have any questions concerning this correspondence, please contact me at (202) 418-5430 or Trabue Bland, an attorney on my staff, at (202) 418-5466.

Sincerely,

Jane Kang Thorpe
Director

^[1] Although your letter refers to “brokers,” we believe that you are referring to individual salespersons or “associated persons” under the Act.

^[2] 7 U.S.C. § 1a(24) (2002).

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

^[4] *See, e.g.*, CFTC Interpretive Letter No. 98-76 [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶ 27,477 (November 18, 1998).

^[5] Subcommittee on Special Small Business Problems of the House Permanent Select Committee on Small Business, H.R. Rep. No. 963, 93rd Cong., 2d Session at 36-37 (1974)(discussing Congressional intent that “registration requirements and fitness checks should be imposed on commodity solicitors, advisors, and all other individuals who are involved directly or indirectly in influencing or advising the investment of customers’ funds”).

^[6] CFTC Interpretive Letter No. 99-02 [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶ 27,517 (December 23, 1998).