



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

CFTC letter No. 05-18  
October 5, 2005  
Exemption  
Division of Clearing and Intermediary Oversight

Re: "U"

Dear :

This is in response to your letter dated June 22, 2005, to the Commodity Futures Trading Commission (the "Commission"), which has been referred to the Division of Clearing and Intermediary Oversight (the "Division") for response. By your letter and subsequent emails from you and your colleague, "A" (collectively, the "correspondence"), you have requested confirmation that your client, "U", need not register with the Commission in order to receive ongoing payments from "V" and "W" (collectively, "X").

Based upon our review of the correspondence, you have made the following representations. "U" entered into an employment agreement with "X" in 1995. In connection with her employment with "X", "U" solicited investors for various of "X's" funds. After introducing investors to the funds, "U" would remain available to answer any questions or concerns, sometimes putting investors directly into contact with the fund manager. "U" ceased soliciting new investors for the "X" funds in 2002, and her employment was terminated in 2004. Pursuant to the terms of her employment agreement, "U" is entitled to a bonus "in perpetuity" that is calculated based upon investments by "X" investors who were solicited by "U".

Generally, "a person must be properly registered to collect fees as compensation for soliciting clients on behalf of other Commission registrants, even where . . . the person is receiving a so-called 'trailing commission.'"<sup>1</sup> The Commission has stated, however, that "the [Commodity Exchange] Act does not require registration as a prerequisite to the receipt of trailing commissions in all circumstances."<sup>2</sup> For example, the Division's predecessor, the

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<sup>1</sup> CFTC Letter 96-39, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. ¶ 26,689 (May 6, 1996).

<sup>2</sup> See *In the Matter of GNP Commodities Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. ¶ 25,375 at 39,263 (Sept. 4, 1992) (although futures commission merchant's registration was revoked and its assets sold, it was permitted to receive payments based on commissions paid and floor broker revenues earned on those assets, provided that it exercised no control over the solicitation or trading of those accounts).

Division of Trading and Markets (“Trading and Markets”), permitted a company to receive continuing finder’s fees for soliciting on behalf of commodity trading advisors (“CTAs”) even though the company was no longer registered as an introducing broker.<sup>3</sup> Notably, the decision to grant relief was based on representations that the company would have no follow-up contact with, or responsibilities for, the accounts in question, and that the company’s business activity would be limited to accepting fees from its former CTA clients. Similarly, Trading and Markets permitted an individual to earn ongoing per-trade compensation from a former business partner on customer accounts they had jointly serviced, but expressly noted that the unregistered recipient of the compensation had not engaged in any commodity-related business since her termination.<sup>4</sup>

In the course of considering your request, “U” and “X” have provided conflicting information on at least two facts that significantly bear on the registration question. First, “U” and “X” have provided conflicting accounts as to whether certain of “X’s” funds traded commodity interests during the time “U” solicited for those particular funds.<sup>5</sup> Second, “U” and “X” have provided conflicting accounts as to whether “U” has engaged in any commodity-related business with “X” investors since her termination in 2004.

The Division does not believe that it would be appropriate to attempt to resolve these conflicting factual accounts in its response to your registration question. In the event that “U” and “X” are unable to agree as to the facts bearing on the registration question, they may elect to resolve their dispute in a court or other competent fact finding forum. Accordingly, the Division is unable to continue with its consideration of your request.

If you have any questions concerning this correspondence, please contact R. Stephen Painter Jr., an attorney on my staff, at (202) 418-5416.

Very truly yours,

Ananda Radhakrishnan  
Director

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<sup>3</sup> See CFTC Letter 96-39, *supra* note 1.

<sup>4</sup> A copy of this letter, dated April 23, 1986, is enclosed. *Cf. In the Matter of GNP Commodities Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. ¶ 25,594 (Oct. 9, 1992) (permitting futures commission merchant whose registration had been revoked to receive income from the lease of its memberships on various contract markets, provided that it did not directly or indirectly exercise control over the lessees).

<sup>5</sup> The Division notes that “X” has been registered as a commodity pool operator with the Commission since 2000.