

## Commodity Futures Archive - Selected materials, CFTC Interpretative Letter No. 76-14 (Registration as Trading Advisor of Company Promoting Advisory Letter), ¶20,188, Commodity Futures Trading Commission, (Jul. 20, 1976)

¶20,188. Commodity Futures Trading Commission, Office of General Counsel. June 24, 1976 (Released July 20, 1976). Correspondence in full text.

**Registration: Commodity Trading Advisor: Promotion of: Advisory Letter: Registration Not Required for Soliciting Subscriptions and Coordinating Advertisement of Advisory Letter.**— A company which is engaged by the author of a commodity trading advisory letter to promote the advisory letter by soliciting subscriptions and running advertisements in industry and other publications need not register with the CFTC as a trading advisor. Because the company alleged that it would not be involved in the writing of the letter or rendering advice in connection with its promotional activities, the CFTC Office of General Counsel stated that it would not recommend enforcement action against the company for failure to register as a trading advisor.

See ¶7645, "Registration" division.

[ *Staff Reply.* ]

Re: Sections 2(a)(1) and 4m of the Commodity. Exchange Act; Commodity Trading Advisors.

Dear Sir:

Reference is made to your undated letter, and to that from [Mr. G] dated January 17, 1976, each to the Commission's Eastern Regional Office. Reference is also made to Mr. G's and your telephone conversations with this Office on February 26, 1976, and June 18, 1976, respectively, and to Mr. G's letter to this Office dated March 1, 1976. You and Mr. G have requested the staff's opinion as to whether the registration requirements of the Commodity Exchange Act, as amended ("Act"), concerning commodity trading advisors would apply to [the Company] should it engage in the activities described below.

We understand the facts to be as follows: Mr. G is the author of the commodity advisory letter [the Advisory Letter]. The Advisory Letter is owned and published by [X Corporation]. All officers of X Corporation are members of Mr. G's family, and both Mr. G and X Corporation are registered with the Commission as commodity trading advisors.

To promote the Advisory Letter, X Corporation wishes to engage the services of the Company. The Company is registered with the Securities and Exchange Commission as an investment adviser. In its promotional activities, the Company will solicit subscriptions for the Advisory Letter by direct mail advertisements to its subscribers and others, and by running advertisements in commodity industry publications and commercial publications of general circulation. Those responding to these advertisements will be instructed to make checks for subscription fees payable to the Advisory Letter, but to mail these checks to the Company which will then forward them directly to X Corporation. The Company will maintain a mailing and subscription list for X Corporation of those who respond to advertisements for the Advisory Letter, but X Corporation will mail the Advisory Letter directly to the subscribers. The Company will not be involved in writing the Advisory Letter and will not render any form of advice regarding commodities in connection with or resulting from its promotional activities as described above.

No officer, director or shareholder of the Company holds or proposes to hold any of these positions with X Corporation. None of such individuals or any other employee of the Company is or proposes to become involved in any way with the writing or preparation of the Advisory Letter. Neither X Corporation nor the Company has or proposes to have any business or financial relationships with the other except for the proposed activities to promote the Advisory Letter as described above.

Based upon the foregoing facts, should the Company perform the services specified above to promote the Advisory Letter, this Office will not recommend any enforcement action to the Commission, based solely on the Company's failure to register with the Commission as a commodity trading advisor. Because this position is based upon the facts and representations furnished to this office in the letters and telephone conversations referred to above, it should be noted that any different, omitted or altered facts or conditions might require a different conclusion.

[ *Letter of Inquiries.* ]

January 17, 1976

This letter is a request for a ruling on the matter we discussed on the telephone.

I am registered as a Commodity Trading Advisor writing a letter called [the Advisory Letter].

We wish to use the services of other firms having direct mail and advertising experience and financial services to promote [the Advisory Letter]. However, the question arose whether those firms would have to be registered as "Trading Advisors" as well. One firm we wish to use [the Company] is a registered SEC securities advisor who would promote his mailing list and advertise [the Advisory Letter] with the returns coming to his address. This continues to give him control over his names. However, the mailing pieces would be for [the Advisory Letter] and the checks would all be made out to [the Advisory Letter]. [The Company] would *in no way* be involved in the commodity business, would not give advice, nor trade etc. Their sole connection would be in the promotion of [the Advisory Letter]. They would not be trading advisors but do they have to register as such anyway?

Reed, I'm sure you are getting dozens of these technical questions, but as always a quick decision is always welcome.

Dear Sir:

We are currently registered with the Securities and Exchange Commission as an Investment Advisor.

We are at present planning to promote the services of [the Advisory Letter], which is written by [Mr. G], who is registered with the Commodity Futures Trading Commission.

[The Company] expects to be performing the promotional and other advertising efforts for [the Advisory Letter], as well as to maintain and up-date its subscription and other mailing lists. In no way do we plan to engage in providing advice on commodity markets or commodity futures trading. Furthermore, in our advertising, subscribers will be asked to make checks for their subscriptions payable to [the Advisory Letter].

We assume that [the Company] will not require a CFTC registration. However, if this assumption is in error, please let us know.

This is to confirm our telephone conversation concerning my relationship with [the Company].

- 1) Neither I, my wife or anyone else in my family has any financial interest in [the Company].
- 2) [The Company] has no financial interest in [the Advisory Letter] except the contractual relationship we would like to establish for promotion services.
- 3) There is no interlocking directorate.
- 4) I will write [the Advisory Letter].
- 5) The checks are to be made out to [the Advisory Letter].
- 6) The return address however, will be [the Company]. This lets them keep control of the responses on their advertising.
- 7) I am keeping my individual registration as well as registering [X Corporation].

I hope this explanatory note clarifies all your questions.

Thank you.