U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

96-09

DIVISION OF
TRADING & MARKETS

December 28, 1995

Re: Registration Status

Dear :

This is in response to your letter dated November 27, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. You are currently registered under the Commodity Exchange Act as a commodity trading advisor ("CTA") and as an introducing broker ("IB"). By your letter, you request the Division's opinion as to whether you may withdraw your IB registration and continue to engage in certain commodity interest trading activities solely under your CTA registration.

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows. Your activities have primarily involved the "marketing of CTAs to institutional allocators (bank subsidiaries, trading managers and wire houses), consulting and futures execution referral." You state that certain bank futures commission merchants ("FCMs") have engaged you to obtain CTA clients for them based on your contacts in the industry. You would accomplish this by arranging meetings and conference calls between the FCMs and the CTAs. You would be compensated "on a transaction fee percentage basis" for any business that resulted from your "recommendation or identification." You also indicate that you would perform some "relationship monitoring" on a periodic basis.

Based upon our review of your proposed activities, it would appear that they encompass solicitation of customer relationships on behalf of an FCM. For example, when you contact a CTA for the purpose of having that CTA's customers' trades executed by an FCM, the CTA's clients become customers of the FCM. Further, the CTA itself could become a customer of the FCM for trading for its own account.

You refer in your letter to an example cited in the Commission's Federal Register notice announcing the adoption of

rules governing IBs.[1/] However, this example was intended to clarify a different situation. Based upon your letter and telephone conversations, it appears that you are bringing CTAs and FCMs together based upon your relationship with the CTAs. These introductions are not the result of the type of advisory services performed by an independent financial manager to which the Commission was referring in the Federal Register notice that you cite. It appears that the services you perform are essentially that of an IB or associated person ("AP") of an FCM. We also note that you are being compensated on a transaction basis. Although the type of fee arrangement is not necessarily the deciding factor in our analysis, we believe that the arrangement you describe provides an incentive for you to arrange introductions of CTAs that will generate substantial commission revenue, which is the normal circumstance for an IB or an AP of an FCM.

Accordingly, based upon your representations, we cannot confirm your position that you may continue the activities that you describe in your letter if you withdraw your IB registration. If you have any questions concerning this correspondence, please contact me or Myra Silberstein, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

1/ 45 Fed. Reg. 35248, 35253 (August 3, 1983).