

CFTC Letter No. 97-26**March 26, 1997****Division of Trading & Markets**

Re: Section 4m(1): Exemption from CTA Registration

Dear :

This is in response to your letter dated January 29, 1997 to the Division of Trading and Markets (the Division) of the Commodity Futures Trading Commission (the Commission), whereby you inquire as to whether you may claim an exemption from registration as a commodity trading advisor (CTA) pursuant to Section 4m(1) of the Commodity Exchange Act (the Act¹).

Based on your letter, we understand the pertinent facts to be as follows. You intend to sell subscriptions to a fax service (the Service) entitled A, of which you are the sole designer. The Service will provide subscribers with buy and sell recommendations for Eurodollar futures and option contracts traded on X.

Section 4m(1) of the Act generally requires that a person who provides commodity interest trading advice to the public must register as a CTA. Section 4m(1) does, however, provide an exemption from registration as a CTA for a person who satisfies two conditions: (1) during the course of the preceding twelve months, he has not furnished commodity trading advice to more than fifteen persons; and (2) he does not hold himself out generally to the public as a CTA. The Division views holding oneself out as a CTA to include such conduct as promoting advisory services through mailings, directory listings, and stationery, or otherwise initiating contact with prospective clients.² Thus, unless a CTA restricts his clients to family, friends, and existing business associates, a CTA generally will be viewed as holding himself out to the public as a CTA and would not be able to claim the exemption from registration in Section 4m(1). This is true whether or not the CTA is advising fifteen or fewer persons, since in order to qualify for the Section 4m(1) exemption, the CTA must satisfy both conditions.

Thus, if you plan to solicit clients other than immediate family members, friends, and business associates, you would be holding yourself out as a CTA and would be required to register as such prior to marketing the Service. You would also be required to comply with all other provisions of the Act and Commission's regulations thereunder applicable to registered CTAs, including Section 4b and Section 4o,³ the antifraud provisions of the Act, Part 4 of the Commission's regulations applicable to CTAs, and the reporting requirements for traders set forth in Parts 15, 18, and 19 of

the Commission's regulations.

The advice provided herein is based upon the representations that you have made to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event your activities change in any way from those as represented to us.

If you have any questions concerning this correspondence, please feel free to contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ 7 U.S.C. §6m(1) (1994).

² Division of Trading and Markets Interpretative Letter 91-9, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,189 (Dec. 30, 1991). We have enclosed a copy of this letter for your reference.

³ 7 U.S.C. §§ 6b and 6o (1994).