



## U.S. COMMODITY FUTURES TRADING COMMISSION

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97-91

DIVISION OF  
TRADING & MARKETS

November 24, 1997

DEC 12 4 00 PM '97  
COMMERCIAL  
REGISTRATION  
DIVISION

Re: Section 4m(1) of the Act: Request for Relief  
from Registration as a Commodity Trading  
Advisor.

Dear :

This is in response to your letter dated October 20, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a telephone conversation with Division staff, by which you requested no-action relief from the requirement that "X" register as a commodity trading advisor ("CTA") in connection with providing a marketing service for agricultural products (the "Service").

Based upon the representations set forth in your correspondence, we understand the pertinent facts to be as follows. "X" is a limited liability company, formed for the purpose of serving as a consultant, and providing marketing information and advice, to operators of agri-businesses. The strategies that "X" proposes to develop as part of its Service would make use of cash contracts, futures contracts and commodity options.

As part of the Service, and in consultation with each client, "X" would develop a marketing plan for that client. In some cases, the clients themselves would place any commodity interest trades necessary under the plan. In other cases, "X" intends to obtain discretionary trading authority over clients' accounts so that "X" can enter any required commodity interest trades on behalf of these clients. Clients using the Service would be responsible for opening their own commodity trading accounts.<sup>1</sup> "X" would not receive any commission income or fees

<sup>1</sup> Clients who provide "X" with discretionary trading authority would be required to open their accounts with "Z". The registration database maintained by the National Futures

from any Commission registrant based upon the number of futures or options contracts traded by its clients but, instead, would be compensated directly by its clients based upon the total bushels of grain produced by a client or the total number of livestock sold by the client.

Section 4m(1) of the Commodity Exchange Act<sup>2</sup> ("Act") prohibits a person from using the mail or any means or instrumentality of interstate commerce in connection with his business as a CTA unless registered under the Act. As defined in Section 1a(5) of the Act,<sup>3</sup> a CTA is --

any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject the rules of a contract market; any [authorized] commodity option . . . or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing . . . .

Thus, to the extent that "X" recommends the use of commodity futures or options contracts to achieve the clients' goals, even if "X" does not accept discretionary control over any client accounts, "X" would be involved in activities which implicate the statutory definition of a CTA and would be required to register as such.

Based upon the information provided in your correspondence, we do not find that your situation presents facts upon which the Division can grant relief from the Act's CTA registration requirement. Thus, we are declining to provide the relief you have requested. In addition, if "X" intends to seek discretionary control over a client's account or seeks to guide such an account, "X" would be required by Commission Rule 4.31 to provide such client with a Disclosure Document<sup>4</sup> and may be required to become a member of the NFA.<sup>5</sup>

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Association ("NFA") indicates that "Y", a registered futures commission merchant, does business under the name "Z".

<sup>2</sup> 7 U.S.C. §6m(1) (1994).

<sup>3</sup> 7 U.S.C. §1a(5) (1994).

<sup>4</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997). We have enclosed for your information a copy of a previous Division letter which discusses the concept of guiding

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If you have any questions concerning this correspondence, please contact me or Thomas E. Joseph, an attorney on my staff, at 202-418-5450.

Very truly yours,

Susan C. Ervin  
Chief Counsel

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client accounts in the context of an agricultural marketing service.

<sup>5</sup> NFA By-Law 1101 requires that any party who is required to be registered with the Commission is also required to become a member of NFA or another registered futures association if such party intends to conduct business on behalf of a customer with a NFA member. "X" may wish to contact NFA at 1-800-621-3570 for further information concerning this requirement.