

**CFTC Letter No. 98-03****December 24, 1997****Division of Trading & Markets**

Dear :

This is in response to your letter dated April 17, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") by which you request relief from registration as a commodity pool operator ("CPO"), commodity trading advisor ("CTA") and futures commission merchant ("FCM") in connection with certain commodity option transactions that "X" proposes to undertake on behalf of its clients.

Based upon the representations set forth in your letter, we understand the pertinent facts to be as follows. "X's" clients are non-operating owners of farmland who have delegated authority to "X" to make most of the decisions concerning the operation of their farms, including decisions concerning leasing, crop planting and marketing. As part of its management service, "X" proposes to use commodity options to hedge the grain produced on "X"-managed farms. Since the output from a single farm would not be large enough to hedge on a per-farm basis, "X" proposes to "pool" production from all client farms and hedge on a collective basis. All option trades would be placed through a single account opened at a registered FCM. The costs of the option premiums and commissions and any profits from the options trading would be allocated to clients on a per bushel basis by "X" based upon its records. Costs would be paid from client funds maintained with "X".

The Division has previously addressed facts similar to those presented by your request.<sup>1</sup> In our prior letter, we reasoned that the company in question, by advising its clients concerning the benefits of hedging and entering trades on behalf of its clients, was both soliciting and accepting orders for the purchase or sale of commodity interests.<sup>2</sup> The Division concluded that the entity in question was required to register as either an FCM or a CTA, depending upon the structure of the transactions.<sup>3</sup> We do not believe that your situation presents facts significantly different from those previously addressed by the Division and we decline to provide the requested registration relief. Further, we note that because "X" proposes to assign partial interests in exchange-traded commodity options to its individual clients, your request may raise additional regulatory issues not addressed in our prior letter cited above.

This response is based upon the representations made to us. It represents the views of this Division only and not necessarily the views of the Commission or any other office or division of the Commission. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. This letter does not relieve you or "X" from any requirements of the

Commodity Exchange Act<sup>4</sup> or Commission rules promulgated thereunder. If you have any questions on this correspondence, please contact Thomas E. Joseph, an attorney on my staff at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> See CFTC Interpretative Letter No. 84-17, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,373 (October 2, 1984)(farm management company would be required to register as a CTA or FCM, but not a CPO). We have enclosed a copy of this letter for your information.

<sup>2</sup> The Division has considered your arguments that "X" will not be soliciting or accepting funds from your clients to trade futures. However, we note that "X" will be formulating and executing hedging strategies for its clients. The Division believes that based upon these activities, "X" will be providing advice and executing commodity option trades to benefit its clients, and thus, as discussed in our previously cited letter, will be engaged in the solicitation and acceptance of orders for commodity option transactions.

<sup>3</sup> Commission rules require any person that solicits or accepts orders from commodity option customers to be registered as an FCM or an introducing broker ("IB"). See Rule 33.3. In addition, the conclusions reached in our cited letter concerning CTA registration would also apply to persons engaged in authorized commodity option transactions on behalf of their customers. Commission rules are found at 17 C.F.R. Ch. I (1997).

<sup>4</sup> 7 U.S.C. § 1 et seq. (1994).