

**CFTC Letter No. 98-07****January 22, 1998****Division of Trading & Markets**

Dear :

This letter is in response to your letter dated November 5, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request advice concerning the registration requirements for a business your company, "X", is about to establish.<sup>1</sup> You state that this business will entail teaching farmers "how to hedge, through trends and using futures," and that "X" will provide these services through the use of "the FAX, Seminars, and face to face interviews." Your brochure advertises that "X's" information services are specifically "designed for you and your farm," although you state that "X" will not engage in any trading itself, nor recommend specific trades, nor refer its clients to any individuals or entities for the purpose of providing trading advice or other services. According to your November 5 letter, you anticipate that the fee for the service you intend to provide will be \$1,500, although you noted that this may change.

Based upon the information provided, it appears that "X" should register with the Commission as a commodity trading adviser ("CTA"). As defined in Section 1a(5) of the Commodity Exchange Act ("Act"),<sup>2</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 or advisability of trading in" commodity futures contracts and options.<sup>3</sup> Under the Act, an individual or firm may provide advice by recommending specific transactions or trading methodologies or may advise clients about the "value of or advisability of trading in" futures or commodity options and, in either case, be required to register as a CTA.<sup>4</sup>

Since "X" will not have discretionary trading authority over any commodity interest trading accounts, it appears that persons soliciting clients on "X's" behalf will not have to become registered as associated persons or take and pass the Series 3 exam.<sup>5</sup> Similarly, "X" will not be required to provide its clients with the Disclosure Document required by Commission Rule 4.31.

The Commission has delegated its registration functions to the National Futures Association. You should therefore contact them at the following address to obtain further information and forms:

National Futures Association

200 West Madison Street, Suite 1600

Chicago, Illinois 60606

(312) 781-1300

From Outside of Illinois:

(800) 621-3570

This letter is based on the representations made in your letter, as supplemented. Any different, changed, or omitted facts or circumstances might require us to reach a different conclusion. If you have any questions concerning this correspondence, please contact Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> You represent that "X" is an entity that currently provides tax, accounting, and other financial services to corporate farmers and has been in business since 1974.

<sup>2</sup> 7 U.S.C. § 1 et seq. (1996).

<sup>3</sup> 7 U.S.C. § 1a(5). Copies of the sections and rules referred to herein as well as the interpretative letters listed below have been enclosed for your reference.

<sup>4</sup> See Division of Trading and Markets Interpretative Letter No. 96-56 [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,761 (July 8, 1996). See also Division of Trading and Markets Interpretative Letter No. 96-70 [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,796 (Sept. 18, 1996) (firm that offered advice by hosting seminars for the general public on the use of options, including options on futures, and provided a dial-up phone service to subscribers providing the risk

parameters of specific options was required to register as a CTA).

<sup>5</sup>See 7 U.S.C. § 6k(3) (1996).