

CFTC Letter No. 99-02**December 23, 1998****Division of Trading & Markets****Re: Section 4d(1) of the Act: Applicability of Introducing Broker Registration Requirements to Organizers of Commodity Futures Seminars and Conferences**

Dear :

This is in response to your letter dated November 7, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") in which you request an interpretation as to the disclosure or other requirements that may apply when an associated person ("AP") of an introducing broker ("IB") solicits customers at futures-related seminars and conferences that may be sponsored by or have as speakers parties that are not registered with the Commission. You submitted this request after auditors from the National Futures Association ("NFA") raised issues concerning the attendance by associated persons ("APs") of "X" at such seminars and conferences.

Based upon your correspondence, we understand the pertinent facts to be as follows. "X" is a registered guaranteed IB. ¹ After a recent audit of "X", NFA compliance staff provided "X" with a copy of CFTC Interpretative Letter No. 96-45, ² which expressed the Division's view that persons who sell "leads" to Commission registrants are required to register as APs of that registrant or as IBs. NFA staff raised the possibility that in paying sponsors for its APs to attend certain futures-related seminars, "X" may in effect be purchasing leads from unregistered parties and questioned whether attendance by "X's" APs (and the solicitation of customers by the APs) at such seminars required seminar sponsors to be registered as IBs or in some other capacity. ³ However, you represent that as part of "X's" marketing efforts, its APs attend publicly offered futures industry conferences and seminars for the purpose of learning about current trading techniques and meeting other attendees who may be interested in "X's" brokerages services.

Moreover, you believe that "X's" attendance at these seminars is clearly distinguishable from the activities described in CFTC Interpretative Letter No. 96-45, and "do not approach the level of involvement between the company in the business of selling lead lists and the registrants cited in the letter." In this regard, you argue that sponsors of and speakers at the seminars are not in the business of generating leads, nor are they compensated for referring potential customers to registrants. Instead, fees, when paid by "X", are paid for admittance to the conference or seminar in consideration for the educational value of such events or for the ability to meet with other attendees who may

be interested in "X's" services. Moreover, you represent that attendance at such conferences is an important part of "X's" APs' continuing education as well as of their marketing efforts.

NFA also sent the Division a letter explaining the position of its staff. This letter stated in relevant part that:

NFA felt that it was not clearly stated [in "X's" November 7, 1997 letter to the Division] that "X" would then receive a list of attendees from the unregistered entities, specifically "A", and would use this list to generate leads. NFA is concerned that "X" is indirectly paying for leads generated by an unregistered entity.

In response to NFA's claims, you stated that the lists were provided by "A" "as a courtesy for ["X's"] use in cross-referencing [its] data-base. The [list of] names did not include telephone numbers and were not used to `generate' leads as suggested in [NFA's] letter. Leads were generated through personal contact at the seminar."

The registration requirements of the Act are an important element of customer protection and a method of screening out unfit persons from dealing with customers. To assure that these requirements reach all persons involved in customer solicitations, the registration requirements have been construed flexibly to require the registration of persons who participate even indirectly in such solicitations. As was noted during Congressional deliberations leading up to the creation of the Commission as an independent regulatory agency in 1974:

In order to adequately protect the investing public, registration requirements and fitness checks should be imposed on commodity solicitors, advisors, and all other individuals who are involved either directly or indirectly in influencing or advising the investment of customer funds.⁴

Similarly, when adopting the definition of and registration rule for IBs, the Commission stated that "the phrase `soliciting or accepting orders' . . . must be construed to encompass not just the literal solicitation of customers' orders, but also the solicitation of customers . . . for referral to an FCM for the institution of a trading relationship and the execution of those orders."⁵

The Division has interpreted the IB registration requirements in light of these underlying goals and purposes and has stated that persons who refer potential customers to Commission registrants for compensation are involved in soliciting or accepting orders for the purchase or sale of commodity interests, an activity that gives rise to a duty to

register.⁶ In this regard, the Division has explained that "any contact initiated by [a party] . . . that is intended to establish or to culminate in a customer relationship . . . is conduct that entails the `solicitation of customers' and thus may be characterized as the indirect solicitation of customers' orders."⁷ In applying the IB registration requirements to specific facts, the Division has concluded that certain entities were required to register as IBs in order to sell "leads" to Commission registrants. These entities include: (1) a company that proposed to utilize technology able to place telephone calls to thousands of persons almost simultaneously in order to conduct a survey that would identify persons who were interested in trading futures and then provide the names of those persons to a registered FCM;⁸ (2) a company that sold financial-related home study courses and arranged to have a specific FCM offer a commission discount to purchasers of the company's home study courses (and to the company itself) on any futures or options trades placed through that FCM;⁹ and (3) a vendor of futures-related information and advisory services that had arranged to have an FCM provide the vendor's subscribers with a per-trade "rebate" that could only be used to reduce amounts owed by subscribers to the vendor for services purchased.¹⁰

An important element in these Division interpretations has been the direct contact with or solicitation of potential customers by the party who provides the leads to Commission registrants. In contrast, where leads were compiled from county records and not through direct contact with or solicitation of members of the public, the Division provided a company with a letter stating that it would not recommend enforcement action if the company sold those leads to Commission registrants and did not register as an IB.¹¹ In the situation involved in your request, the seminar sponsors may contact or identify members of the public who would be interested in their services (or the services of Commission registrants) by using information, advertising or materials that discuss or make claims concerning futures trading. Through this process, they would identify persons who have an interest in trading futures or commodity option contracts and thereby may have need of the services of Commission registrants.

If these seminar sponsors in turn provided these lists of persons to Commission registrants for compensation, they would be required to register as IBs.¹² This compensation could be direct or indirect and could be present if the seminar sponsor received non-monetary benefits from the registrant such as discounts on commissions paid for the registrant's services, referrals or recommendations of customers by the registrant to the sponsor, or any other free or discounted service or information provided by the registrant to the seminar sponsor. Further, the fee paid by a registrant for its APs to attend any futures-related seminar may also be considered compensation (or a *quid pro quo*) to a seminar sponsor for referrals.¹³

With respect to the specific question presented by your request, a list of seminar attendees could be considered referrals triggering IB registration requirements if the seminar sponsor who supplied the list received either direct or indirect compensation. Indeed, permitting a registrant to send APs to a seminar for a fee in order to solicit other attendees may itself constitute referral by the seminar sponsor.

Furthermore, even where a seminar sponsor is not found to be referring customers to a registrant, solicitation of attendees of a seminar by a registrant's APs who also attend the seminar may give rise to additional disclosure requirements for the registrant. For example, if a seminar sponsor failed to describe adequately the risks of trading in futures or the risks associated with a certain trading strategy, a registrant whose APs solicited customers at the seminar may be required to provide customers with additional disclosures beyond what is required under Commission Rule 1.55(a) to assure that the customer has not been induced fraudulently to trade futures based upon the presentation at the seminar. By sending APs to a seminar and allowing the APs to solicit customers at the seminar, a registrant may be found to have adopted the message presented by the seminar sponsor and to have relied upon this message in its solicitation of customers. The registrant may, therefore, be found liable for any material misrepresentations that occurred at the seminar.¹⁴

This letter provides general guidance only. It does not excuse "X" or any other party from compliance with any applicable requirements contained in the Act or the Commission's rules. This letter, and the views provided herein, are based upon the representations that you have made to us. Any different, changed or omitted material facts or circumstances might render these views void.

This letter represents the views of this Division only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. 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,
I. Michael
Greenberger
Director

¹ According to the registration database maintained by the NFA, "X" is guaranteed by "Y", a registered futures commission merchant ("FCM").

² [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,715 (May 8, 1996).

³ Not all the sponsors of or speakers at these seminars are registered with the Commission. [Sentence

Redacted]. The Division has stated that persons who host or speak at futures-related seminars may be required to register as commodity trading advisors ("CTAs"). *See, e.g.*, CFTC Interpretative Letter No. 96-70 [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 26,796 (Sept. 18, 1996)(party who, among other things, sponsors conference for the general public on use of commodity options in trading is required to register as CTA).

⁴ H.R. Rep. No. 963, 93rd Cong., 2d Sess. at 36-37 (1974)(report by the Subcommittee on Special Small Business Problems of the House permanent Select Committee on Small Business).

⁵ 48 Fed. Reg. 35248, 35250 (August 3, 1983), *citing* 48 Fed. Reg. 14933, 14955 (April 6, 1983).

⁶ *See e.g.*, CFTC Interpretative Letter No. 96-45, *supra* n.2.

⁷ CFTC Interpretative Letter No. 90-11, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,872 at 37,147 (June 12, 1990)(employees of IB who contacted persons known to have watched a financial news program and asked if they were interested in trading futures were required to register as APs of IB).

⁸ *See* CFTC Interpretative Letter No. 90-8, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,831 (May 7, 1990).

⁹ *See* CFTC Interpretative Letter No. 93-40, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,731 (May 5, 1993).

¹⁰ *See* CFTC Interpretative Letter No. 95-51, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,420 (May 1, 1995).

¹¹ *See* CFTC Interpretative Letter No. 97-44, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,084 (June 9, 1997). In addition, the company represented that no new names had been added to the list since 1992, and none would be added, because changes in requirements for partnership registration and recording requirements eliminated the company's source of information.

¹² *See, e.g.*, CFTC Interpretative Letter No. 95-51 *supra* n.10 (vendor of futures-related information services would be IB if it were indirectly compensated for providing FCM with access to its list of subscribers).

¹³ Seminar sponsors may be found to be referring customers to a registrant by means other than supplying registrants with lists of potential customers' names. For example, seminar sponsors may be referring customers to registrants if the sponsors specifically endorse or mention the registrant, include materials supplied by the registrant with the seminar materials or negotiate fee discounts for seminar attendees who use the services of a registrant. *See* CFTC Interpretative Letter No. 96-70 *supra* n.3

(seminar sponsor who establishes referral arrangement with brokerage firms may be required to register as IB). A determination as to whether any particular activities undertaken by a seminar sponsor would be construed as solicitation of customers for a Commission registrant involves an examination of the context in which such activities occur. For example, the Division has characterized the participation of a professional athlete in a public "investment seminar" intended to attract potential subscribers for a commodity pool as an indirect solicitation requiring the professional athlete to register as an AP. *See* CFTC Interpretative Letter No. 90-11, *supra* n.7 at 37,147 (discussing unpublished Division letter dated February 24, 1987).

¹⁴ *See Scheufler v. Stuart* [1996-1998 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 27,171 (CFTC Sept. 30, 1997)(IB adopted marketing message of third party's infomercial and was liable for "fraudulent inducement" of client's trade based upon that message).