

CFTC Letter No. 99-10**February 11, 1999****Interpretation****Division of Trading & Markets**

Re: Request for Confirmation of Availability of Exemption from CTA Registration Under Rule 4.14(a)(6)

Dear :

This is in response to your letter dated December 30, 1996 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmissions dated April 16, 1997, April 23, 1997 and May 7, 1998 and telephone conversations with Division staff. By your correspondence, you request confirmation that "X", a registered introducing broker ("IB"), may rely on the exemption from registration as a commodity trading advisor ("CTA") in Rule 4.14(a)(6).¹

The term "commodity trading advisor" is defined in Section 1a(5) of the Commodity Exchange Act ("Act")² to mean any person who --

(i) 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 --

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market;

(II) any commodity option authorized under section 4c; or

(III) any leverage transaction authorized under section 19; or

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning any of the activities referred to in clause (i).

The term "introducing broker" is defined in Section 1a(14) of the Act³ to mean any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, who is engaged --

in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

Section 4m(1)⁴ of the Act generally requires registration as a CTA of all persons who come within the CTA definition, and Section 4d requires registration as an IB of all persons who come within the IB definition.⁵ Thus, because the activities of CTAs and IBs are very similar in that they concern themselves with providing commodity interest trading advice to members of the public, persons could readily fall within both the CTA and IB definitions and would be required to register as both a CTA and an IB.⁶ To alleviate duplicative registration (and resulting compliance) burdens in appropriate circumstances, the Commission adopted Rule 4.14(a)(6), which provides an exemption from CTA registration for a person who is registered as an IB and whose commodity interest trading advice is "solely in connection with its business" as an IB. In proposing Rule 4.14(a)(6), the Commission stated that "absent an appropriate exemption, an introducing broker would also be required to register as a commodity trading advisor, even where the introducing broker's advice was limited to analyses of market conditions and the issuance of generalized recommendations to purchase or sell particular futures contracts."⁷ In adopting Rule 4.14(a)(6), the Commission further stated that it would be monitoring the use of the new IB registration category to determine whether CTAs were registering as IBs to avoid their disclosure obligations,⁸ in which case "the Commission will take appropriate measures to remedy any problems that may result from such a practice."⁹

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" has been registered as an IB since January 1996.¹⁰ In November 1996, the National Futures Association ("NFA") examined the books and records of three of "X's" twenty-three accounts and, based upon its review, determined that "X" was directing the trading in one of these accounts pursuant to a power of attorney and that it was guiding the trading in the other twenty-two accounts.¹¹ NFA concluded that "X" was acting as a CTA, the exemption from CTA registration in Rule 4.14(a)(6) was not available to "X" and "X" therefore should be registered as a CTA.

In support of the instant request, you represent that: (1) "X's" advisory service activities

consist solely of discussions by telephone with its clients about current and publicly available commodity interest market information;¹² and (2) "X" does not employ any advisory media such as a newsletter, hotline or computer program in connection with providing commodity interest trading advice to its customers.

Based upon your representations and our further review of "X's" activities,¹³ it appears that "X" is providing commodity interest trading advice that is solely in connection with its business as an IB. Accordingly, the Division confirms that "X" may claim the exemption from CTA registration in Rule 4.14(a)(6).

This letter is based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render this position void. You must notify us immediately in the event the activities or operations of "X" change in any material way from those represented to us. Further, this letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or the Commission's rules issued thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's rules to the reporting requirements for traders set forth in Parts 15, 18, and 19 and to all other applicable provisions of Part 4.¹⁴

This letter represents the position of the Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission. If you have any questions concerning this letter, please contact Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1998).

² 7 U.S.C. §1a(5) (1994).

³ 7 U.S.C. §1a(14) (1994).

⁴ 7 U.S.C. §6m(1) (1994).

⁵ 7 U.S.C. §6d (1994).

⁶ Rule 3.4 generally provides that registration in one capacity under the Act does not include registration in any other capacity.

⁷ 48 Fed. Reg. 14933, 14936 (April 6, 1983).

⁸ Rule 4.31 requires that a registered CTA must provide a Disclosure Document containing specified information (*e.g.*, past performance information) before it can enter into an agreement to direct or guide a client's account.

⁹ 48 Fed. Reg. 35248, 35252 (August 3, 1983).

¹⁰ "A" is the sole registered associated person ("AP") and listed principal of "X". "A" does not engage in any other commodity-interest related business.

¹¹ "X" currently has four customer accounts. It does not hold a power of attorney over any of these accounts.

¹² For the purpose of this letter, publicly available information is information obtained from public sources, *e.g.* newspapers, magazines, radio or television.

¹³ Since NFA had audited a small number of "X's" accounts, our further review included, among other things, an examination of "X's" account files and trade tickets as of September 30, 1997 by Division staff of the Commission's Southwestern Regional Office.

¹⁴ Thus, "X" remains subject to Rules 4.30 and 4.41, which prescribe certain operational and advertising requirements for all persons who come within the CTA definition regardless of registration status.