

Issued in Kansas City, Missouri, on August 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-21788 Filed 8-15-97; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Commission's Reparations Jurisdiction Over Commodity Trading Advisors Exempt From Registration Under Section 4m(1) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is clarifying its reparations jurisdiction over certain commercial agricultural cash market participations and nonprofit general farm organizations referred to in Section 4m(1) of the Commodity Exchange Act ("Act").¹ Provided that these persons furnish commodity trading advice that is solely incidental to the conduct of their business, these persons are exempt from registration as commodity trading advisors ("CTAs") pursuant to Section 4m(1) of the Act, but are subject to reparations proceedings under Section 14 of the Act.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Natalie A. Markman, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION: Section 4m(1) of the Act provides, among other things, that dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof as well as certain nonprofit voluntary membership farm organizations (collectively, "Cash Dealers") are exempt from registration as CTAs but are subject to reparations proceedings under Section 14 of the Act.² Section 14(a)(1) of the Act, which

generally addresses the Commission's reparations jurisdiction, provides that reparations claims may be filed by persons complaining of any violation of the Act or Commission rules against "any person who is registered" under the Act.³ No cross-reference or other acknowledgment of the Section 4m(1) reparations provision is made in Section 14. However, the Commission's reparations rules, which implement Section 14 of the Act, expressly include the Section 4m(1) Cash Dealers as a category of permissible respondents in reparations proceedings.⁴

processor, broker, or seller in cash market transactions of any commodity specifically set forth in [S]ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in [S]ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a [CTA] is solely incidental to the conduct of that person's business: *Provided, That such person shall be subject to proceedings under [S]ection 14 of this Act.*

7 U.S.C. § 6m(1) (1994) (emphasis added). Commission Rules 4.14(a) (1) and (2) also provide that Cash Dealers are exempt from CTA registration but make no mention of reparations jurisdiction. Commission rules referred to herein are found at 17 CFR Ch. I (1997).

This Advisory does not address the scope of the exemption from CTA registration under Section 4m(1) of the Act or under Rules 4.14(a) (1) and (2).

³ Section 14(a)(1) provides, in relevant part, that: Any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by *any person who is registered* under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. * * * and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages * * *.

7 U.S.C. § 18(a)(1) (1994) (emphasis added). As amended by the Futures Trading Act of 1978, Section 14(a) provided that a reparations complaint could be filed with the Commission by "[a]ny person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered or required to be registered under [S]ection 4d, 4e, 4k, or 4m of this Act * * *." Pub. L. No. 95-405, § 21, 92 Stat. 865, 876-76 (1978) (emphasis added). The Futures Trading Act of 1982 ("1982 Act") subsequently amended Section 14(a) to eliminate reparations jurisdiction over persons "required to be registered" under the Act. Pub. L. No. 97-444, § 231, 96 Stat. 2294, 2319 (1983).

⁴ In 1983, the Commission amended its reparations rules by promulgating interim reparations rules to implement the 1982 Act's amendment of Section 14(a), which eliminated reparations jurisdiction over persons "required to be registered" under the Act. 48 FR 21923 (May 16, 1983). In Rule 12.21 of the interim rules, the Commission retained reparations jurisdiction over registrants but eliminated those persons who were "required to be registered" under the Act as

The Part 12 rules, as promulgated in 1984 and continuing to the present, provide in Rule 12.13(a) that reparations complaints may be filed against any registrant, as defined in Rule 12.2.⁵ Rule 12.2 defines *registrant* as any person who: (1) Was registered at the time of the alleged violation; (2) *is subject to reparations proceedings by virtue of Section 4m*; or (3) is otherwise subject to reparations proceedings.

In a 1985 **Federal Register** release addressing revisions of Part 4 of the Commission's rules, the Commission stated that it did "not intend hereafter to exercise jurisdiction in its reparations program over persons exempt from CTA registration under [S]ection 4m(1)."⁶ The Commission wishes to eliminate any ambiguity that may have been created by the 1985 release by clarifying that, as provided in Section 4m(1), dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof and certain nonprofit voluntary membership farm organizations who provide commodity trading advice in a manner incidental to their business are exempt from CTA registration but subject to reparations proceedings pursuant to Section 4m(1) and as provided in Part 12 of the Commission's rules.

Issued in Washington, D.C. on August 12, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-21829 Filed 8-15-97; 8:45 am]

BILLING CODE 6351-01-M

potential reparations respondents. The Commission also modified Rule 12.21 by adding, for the first time, persons "exempt from registration as [CTAs] by virtue of the second sentence of Section 4m" as a class of potential reparations respondents. *Id.* at 21924. The Commission explained that under Section 4m:

Certain dealers, processors, brokers, or sellers in cash market transactions in agricultural commodities and non-profit general farm organizations who provide advice on agricultural commodities are exempt from having to register as [CTAs]. Nevertheless Section 4m provides that such persons are subject to proceedings in reparations. *Nothing in the 1982 amendments has affected this provision of the Act.* Thus, * * * the Commission will continue to hear reparations claims filed against persons who, at the time of the violation, were exempt from registration pursuant to Section 4m of the Act.

Id. (emphasis added).

⁵ The Commission replaced interim Rule 12.21 with Rule 12.13(a) and moved its list of Part 12 definitions to Rule 12.2. 49 FR 6602, 6622-23, 6626 (February 22, 1984).

⁶ 50 FR 15868, 15881 n. 77 (April 23, 1985); see also 49 FR 4778, 4783 (February 8, 1984) (proposing the Part 4 amendments).

¹ 7 U.S.C. § 1 *et seq.* (1994).

² The second sentence of Section 4m(1) provides that:

The [registration] provisions of this section shall not apply to any [CTA] who is a (1) dealer,