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COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
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DIVISION OF
TRADING AND MARKETS

February 24, 1995

Re: Requested Relief from Commission Rule 3.10(a)(2)

Dear :

This is in response to your letter of January 17, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). In your letter, you requested relief from Commission Rule 3.10(a)(2),[1/] which requires that firms registered under the Commodity Exchange Act ("Act") list their principals on Form 7-R and accompany such form with a Form 8-R and fingerprint card for each principal. You request such relief with respect to your wife, "A", who serves as the corporate secretary for "X", a registered commodity trading advisor ("CTA").

We understand the relevant facts to be as follows. "X" was incorporated in 1993 and registered as a CTA effective March 1994. Your Canadian legal and financial advisors recommended that "A" become secretary of "X" since "X" would require another signing officer in case you became deceased or incapable of operating the financial affairs of "X". You describe "A's" primary business as that of mother and homemaker. The duties she performs for "X" include general secretarial work, answering the telephone, recordkeeping and bookkeeping, and other administrative functions. You are currently listed as the only principal and associated person of "X".

While you state that "A's" role at "X" is purely clerical, she is the corporate secretary for "X". Commission Rule 3.1(a) defines the term "principal" for registration purposes. The definition of "principal" includes, among others:

> Any person including, but not limited to, a sole proprietor, general partner, **officer**, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly,

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

> through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission. . . . (Emphasis added.)

The Commission's Office of the General Counsel has previously interpreted the term "principal" in the context of a corporate CTA. CFTC Interpretative Letter No. 76-15, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,194 (August 2, 1976). It was stated therein that "the term 'individual principals' includes **officers**, directors, principal shareholders and any other person who, directly or indirectly, controls the advisor. The term would also include a president, any vice president, **secretary**, treasurer or principal financial officer and comptroller or principal accounting officer." (Emphasis added.) We believe this interpretation is applicable to a corporate CTA such as "X" and thus because of "A's" position as corporate secretary, she should be deemed to be a principal of "X".

Essentially, you have requested relief from the Division if "X" fails to list "X" as a principal, despite her position, based on your representations that she exercises no control or influence over "X's" activities. We do not find, however, that the requirements for listing as a principal create undue hardship in this instance or that other special circumstances exist warranting relief from the principal listing requirement.[2/] Accordingly, based upon the facts as represented to us, we are unable to conclude that no-action relief is warranted in this case.

Please contact me or Associate Chief Counsel Lawrence B. Patent at (202) 254-8955 if you have any questions about this matter.

Very truly yours,

Susan C. Ervin
Chief Counsel

2/ Rule 3.10(a)(2)(i) only requires that a person who is a principal of a CTA applicant file a Form 8-R and provide a completed fingerprint card.