COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

95-60

June 1, 1995

Re: Rule 3.34 -- Request for Partial Relief

Dear :

This is in response to your letter dated April 18, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by letter dated May 23, 1995 and telephone conversations with Division staff. By your letter you request partial relief from Commission Rule 3.34[1/] on behalf of "A" and "B" (collectively, the "Registrants"), employees of "W", as explained more fully below.

Based upon the representations contained in your letter, as supplemented, we understand that the facts are as follows. "A" became employed by "W" on April 26, 1993 and is registered as an associated person ("AP") thereof. Prior to her affiliation with "W", "A" was registered as an AP of "X" from December 3, 1991 until April 23, 1993, and as an AP of "Y" from October 11, 1989 until November 8, 1991.

Notwithstanding that "A" began her employment with "W" on April 26, 1993, you state that the processing and finalization of "A's" Form 8-R was delayed as a result of an inadvertent clerical oversight on the part of "W". "A's" Form 8-R was submitted to the National Futures Association ("NFA") on June 29, 1993, she received a temporary AP license on June 30, 1993, sixty-seven days after the time "A's" registration was withdrawn from "X", and permanent registration as an AP of "W" on July 27, 1993. All Disciplinary History questions on "A's" Form 8-R are answered in the negative. As a consequence of the delay, however, "A" missed the sixty-day

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

registration transfer window afforded certain Commission registrants under Rule 3.12(d) by seven days.[2/]

Similarly, "B" was employed by "W" on March 1, 1993 and is registered as an AP thereof. Prior to his affiliation with "W", "B" was registered as an AP of "X" from April 13, 1989 until March 1, 1993, and as an AP of "Z" from September 9, 1987 until March 28, 1989. As with "A", you represent that, as a result of an inadvertent clerical oversight on the part of "W", the processing and finalization of "B's" application as an AP of "W" was delayed such that a total of sixty-five days elapsed from the time "B's" registration was withdrawn from "X" until his temporary license became effective at "W".[3/] As a consequence, "B" missed the sixty-day registration transfer window afforded certain Commission registrants under Rule 3.12(d) by five days.

As you know, Section 4p(b) of the Commodity Exchange Act ("Act")[4/] and Rule 3.34 impose certain ethics training requirements on all Commission registrants. Rule 3.34(d)(4) provides generally, in relevant part, that APs registered as of April 26, 1993 must attend an ethics training program within three years of April 26, 1993, and requires the duration of such initial training to be two hours for registrants who have not previously attended an ethics training program. You state that neither Registrant has

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2/ In general, Rule 3.12(d) permits a special temporary licensing and registration procedure which enables a person whose AP registration has terminated within the preceding sixty days to expedite the registration process so that if he satisfies the conditions set forth in the Rule, including, among other things, no pending adjudicatory proceedings under the Commodity Exchange Act and no new "yes" answers to Disciplinary History questions, he may become affiliated with a new sponsor upon the filing of a new Form 8-R. It is designed to allow APs to move from one sponsor to a new sponsor and essentially is viewed as continuous registration by an AP. Because of "W's" time delay in forwarding "A's" application, "A" could not avail herself of Rule 3.12(d), although you represent that she otherwise would have satisfied the requirements of the Rule.

3/ "B's" Form 8-R was submitted to NFA on April 28, 1993, he received a temporary license on May 6, 1993, and permanent registration as an AP of "W" on June 7, 1993. "W" inadvertently did not submit "B's" application pursuant to Rule 3.12(d), although you represent that all Disciplinary History questions on "B's" Form 8-R are answered in the negative, and he otherwise would have satisfied the requirements of the Rule.

4/ 7 U.S.C. § 6p(b) (1994).

previously attended an ethics training program which would satisfy the requirements of Rule 3.34. You ask the Division to take the position that, notwithstanding "A's" and "B's" seven day lapse and five day lapse, respectively, beyond what is essentially treated as continuous registration under Rule 3.12(d), each Registrant be allowed to satisfy his initial ethics training requirement by completing two hours of ethics training by April 26, 1996.[5]

In light of your representations that, with the exception of the time lapse noted above, the Registrants have been duly registered since prior to April 26, 1993, that the delay in processing the applications of the Registrants is attributable to a clerical oversight on the part of "W", and that "W" has implemented internal procedures to prevent the re-occurrence of such clerical errors, the Division believes that granting limited relief with respect to the timeframe for compliance and duration of ethics training program would not be contrary to the public interest. Accordingly, the Division will not recommend that the Commission take any enforcement action against the Registrants or "W"[6] if the Registrants complete two hours of initial ethics training by April 26, 1996, as required by Rule 3.34(d)(4).[7] The Registrants remain subject to the requirements to attend all subsequent ethics training programs in accordance with the Act and the Commission's regulations promulgated thereunder.

The positions set forth herein are based upon the representations made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the circumstances material to your request differ from those as represented to us. Further, this letter represents the positions of this Division only and does not necessarily represent

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5/ Under Rule 3.34, without the relief requested herein, the Registrants would be required to attend an initial ethics training program of at least four hours in duration within six months of the granting of their registration.

6/ As the Commission stated when it enacted Rule 3.34, it is "part of the firm's supervisory obligation to assure that training has been attended by APs and failure of an AP to attend as required could subject both the AP and his sponsors to enforcement action." 58 Fed. Reg. 19575, 19587 (April 15, 1993).

7/ The Division notes that it is not excusing, or in anyway limiting the Commission's ability to proceed against the Registrants or "W" for, any past violations of the Act or the Commission's regulations promulgated thereunder, if the Commission determines that such action is appropriate.

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 Tina Paraskevas Shea, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel