



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

95-62

June 21, 1995

Re: Application of Rule 4.31 to a CTA Previously Exempt
From Registration Under Section 4m(1) of the Act

Dear :

We are in receipt of your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated May 12, 1995, which we have treated as a request for advice as to whether a commodity trading advisor ("CTA") who has been trading client accounts pursuant to an exemption ("Exempt Clients") under section 4m(1)^{1/} of the Commodity Exchange Act (the "Act") is required to provide a Disclosure Document to such Exempt Clients should the CTA later register with the Commission.

Rule 4.31^{2/} states that "no [CTA] registered or required to be registered under the Act may solicit or enter into an agreement with a prospective client to direct the client's commodity interest trading account or to guide the client's commodity interest trading . . . unless the [CTA], at or before the time it engages in the solicitation or enters into the agreement" delivers a Disclosure Document to the prospective client. Section 4m(1) of the Act provides an exemption from registration for a CTA who: (1) has not had more than fifteen clients within the preceding twelve-month period; and (2) does not hold himself out to the public as a CTA.

A CTA providing commodity trading advice pursuant to a Section 4m(1) exemption may determine to register with the Commission as a CTA at some later date for a variety of reasons. In such a case, the CTA must provide a Disclosure Document to any new clients and to any clients for whom the CTA has begun trading within the twelve months prior to the effective date of such registration. The CTA is not required to provide a Disclosure Document to clients who

^{1/} 7 U.S.C. 6m(1) (1994).

^{2/} Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1994).

have been clients of the CTA for greater than twelve months prior to the CTA's registration, provided that the CTA traded for such clients pursuant to a valid Section 4m(1) exemption.^{3/} The CTA is, however, required to provide all clients with any corrections or supplements to the Disclosure Document which may be necessary pursuant to Rule 4.31(b). If a CTA was not originally required to provide a client with a Disclosure Document due to a Section 4m(1) exemption that existed prior to the CTA's registration, the CTA should provide the client with a Disclosure Document at the time a correction or supplement to the document is required.

This letter is for informational purposes only. We take no position herein on the validity of the Section 4m(1) exemption pursuant to which you state that you have acted as a CTA. Further, we make no finding as to the time period during which your clients were obtained and, specifically, as to whether any of your clients have been obtained within the last twelve months.

We trust that the above information is helpful to you. If you have any questions regarding this letter, please call me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} A client who cancels for any period of time the power of attorney granted to a CTA is considered a new client for purposes of receiving a Disclosure Document if the client later re-grants power of attorney to the same CTA.