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U.S. COMMODITY FUTURES TRADING COMMISSION
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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING & MARKETS

November 1, 1996

Re: Request for Relief from Registration as a CTA under Rule 4.14(a)(6)

Dear :

This is in response to your letter dated September 23, 1996 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), by which you request relief from registration as a commodity trading advisor ("CTA") under Rule 4.14(a)(6).[1/]

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the facts to be as follows. You are the sole proprietor of an introducing broker ("IB"), "X". You have about 35 clients. You hold a power of attorney over two or three of these accounts, although you typically speak to the client before trading for his account. Between February and April of this year, you established a hotline service for your customers. The service allows clients to call in and receive daily commentary and trading strategies. The same advice is given to all clients, even when they call and speak to you individually. A mailbox and a personal identification number are required in order to access the service, and no fee is charged to clients for using the service. The advice given out over the hotline is generated solely by you, and about half of your clients listen to the hotline. Shortly after establishing the hotline, you decided to allow non-clients to use the service for a fee. You keep track of the names, addresses and phone numbers of non-clients who request access to the hotline, and they are charged a fee of $1.50 per minute.[2/]

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

2/ You represent that one non-client is charged a flat yearly rate for accessing the system, and you believe the rate will approximate $1.50 per minute.

You state that the main purpose of the hotline is to service the needs of your existing clientele and to generate new clients. On an average day, the hotline will receive about 25 to 30 calls and all but two or three of those calls will be from current clients. You represent that so far about half of the non-clients who access the hotline have become clients, but it is possible for a non-client to continue to access the hotline without ever becoming a client.

Rule 4.14(a)(6) provides an exemption from CTA registration for any registered IB whose "trading advice is solely in connection with its business as an introducing broker." Based upon your representations, you are providing advice not only to current clients but also to prospective clients who could potentially utilize the trade information received from the hotline but whose accounts would not be introduced by you. The Division has previously stated that such activity is not "solely in connection with" an IB's business as an IB. CFTC Interpretive Letter 93-43, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,734 (May 19, 1993). Your request for relief is, accordingly, denied.

Based on the foregoing, you are operating as an unregistered CTA without an exemption. Therefore, you must immediately either cease to provide your hotline service to non-clients or register as a CTA. The Division requests that within thirty days of the date of this letter you notify the Division as to whether you have ceased to provide your hotline service to non-clients or applied for registration as a CTA.

If you continue to offer your hotline service to non-clients, and thus are required to register as a CTA, or if you decide to register as a CTA for any other reason, Rule 4.31 prohibits you from soliciting or entering into an agreement with a prospective client to "direct the client's commodity interest account or to guide the client's commodity interest trading" unless you deliver a Disclosure Document to the prospective client. We note that under Rule 4.10(f), a CTA "directs" any accounts for which the CTA holds a power of attorney, and you have indicated that you hold a power of attorney for two or three accounts. The Division would not recommend that the Commission take enforcement action against you under Rule 4.31 based solely upon a failure to provide a Disclosure Document to your current clients for whom you direct or guide accounts.

However, if you continue activities that require registration as a CTA or if you decide to so register, you would be required to provide a Disclosure Document to any new prospective client for whose account you seek to direct or guide trading, and you would also be required to provide all clients for whom you direct or guide trading, including existing clients, with any corrections or

supplements to the Disclosure Document which may be necessary pursuant to Rule 4.31(b). If you were not originally required to provide a client with a Disclosure Document because that client was an existing client, you should provide the client with a Disclosure Document at the time a correction or supplement to the document is required.[3/]

We note that nothing in this letter in any way limits the Commission's ability to proceed against you or "X" for any past violations of the Commodity Exchange Act or the Commission's regulations promulgated thereunder, if the Commission determines that such action is appropriate.

This letter and the relief granted herein are based upon the representations made to us and the relief is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at 202-418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

3/ If you register as a CTA, so long as you do not solicit or enter into an agreement with a prospective client to direct or guide that client's account, you will not be required to prepare a Disclosure Document in the first instance, nor will you be required to provide Disclosure Document corrections or supplements. See CFTC Interpretive Letter 95-62, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,464 (June 21, 1995).