U.S. COMMODITY FUTURES TRADING COMMISSION
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97-22

COMMODITY FUTURES TRADING COMMISSION RECEIVED FOR PUBLIC RECORD
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DIVISION OF
TRADING & MARKETS

March 21, 1997

Re: Request that "A" Not be Required to Register as an AP

Dear :

This is in response to your letter dated January 17, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated March 10, 1997 and telephone conversations with Division staff. By your correspondence, you request that "A" be exempted from registration as an associated person ("AP") of "U").

Based upon the representations made in your letter and conversations with you and "B", the treasurer of "V" (which is the general partner of "W"), we understand the pertinent facts to be as follows. "U" is a registered commodity trading advisor ("CTA") which has two listed principals, you and "A",[1] and two registered APs, you and "C". You serve as President of "U" and "A" serves as Secretary. "U's" office is located in Ohio, and you do business in Ohio as "X", a guaranteed introducing broker. "U" has had one client, "W", a commodity pool engaged in speculative trading in futures using multiple CTAs. "W" became a client of "U" on January 2, 1996. "W" terminated its CTA arrangement with "U" effective November 30, 1996. "U" does not intend to solicit any additional accounts, and its only customer activity is providing a futures advisory newsletter to subscribing customers.

The National Futures Association ("NFA") conducted an audit of "U" on December 9, 1996. NFA found that "A" was the only principal located in the office and therefore was responsible for the supervision of "C". Accordingly, NFA determined that "A" was

[1] "A" is not registered with the Commission. He is registered with the Securities and Exchange Commission as a registered representative and registered investment adviser, and "A" is the owner of the broker/dealer "Y".

acting as an AP of "U" and needed to register as such. Section 4k(3) of the Commodity Exchange Act ("Act")[2] requires any "partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), [engaged in] (i) the solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any person or persons so engaged" to register as an AP of a CTA. You dispute NFA's finding and represent that "A" is not engaged in activities that would necessitate his registration as an AP.

You have proposed replacing yourself as president of "U" with "C". You would remain as a director and "C" would be responsible for supervising any other APs hired by "U" as well as other duties of the office. In addition, you would withdraw your AP registration with "U". Under this arrangement, "A" would remain vice president of "U" and would not supervise "C". Based on your representations and subject to the conditions specified herein, the Division will not recommend that the Commission commence enforcement action against "A" or "U" pursuant to Section 4k(3) of the Act based solely upon the failure of "A" to register as an AP in connection with his activities on behalf of "U". This relief is subject to the following conditions: (1) "C" becomes president of "U" and remains in charge of all futures-related activities of the company; (2) neither "A" nor any other employee or agent of "U" will engage in, or supervise any AP engaged in, the solicitation of any client or potential client on behalf of "U"; and (3) "A" remains listed as a principal of "U".

We note that nothing in this letter in any way limits the Commission's ability to proceed against "U" or "A" for any past violations of the Act or the Commission's regulations promulgated thereunder, if the Commission determines that such action is appropriate. Further, the relief issued by this letter does not excuse "U" or "A" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of Section 4o of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4.

This letter is based upon the representations made to us, is subject to compliance with the conditions set forth above, and is applicable to "A" solely with respect to "U". 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 your activities or those of "A", "C" or "U" differ in any respect from those as represented to us. This letter represents the views of this Division only and does not necessarily represent the views of the Commission or any other office or division of the Commission. If

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[2] The Act is found at 7 U.S.C. §§ 1 et seq. (1994).

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