

**CFTC Letter No. 97-81****September 24, 1997****Division of Trading & Markets**Re: Rule 3.1 -- Request for Relief from Being Listed as a Principal

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Dear :

This is in response to your undated letter received August 26, 1997 by the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") as supplemented by telephone conversations with Commission staff. By your correspondence, you request relief from being listed as a principal of the "Company", <sup>1</sup> a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA") since 1991 and 1997, respectively, and X , a registered independent introducing broker since 1989.

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. You have been registered as an associated person ("AP") for the Company since March 1993 and as an AP for X , an affiliated firm, since April 1992. Your title is Senior Vice President for both firms. You request relief from being listed as a principal of the Company and X because you state that you have "no power, directly or indirectly through agreement or otherwise to exercise a controlling influence over the activities of the entity." In a telephone conversation with Division staff, you advised that your day-to-day responsibilities for the Company consist of finding clients for the Company's managed account programs and providing customer service to these accounts, such as assisting clients in completing opening account documentation. You state that your title of Senior Vice President is "strictly a title to show current clients and prospective clients that I am a reliable and knowledgeable employee of our firm."

Commission Rule 3.1 defines the term "principal" for registration purposes.<sup>2</sup> 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, 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, stating 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.<sup>3</sup> (Emphasis added)

We believe that the Office of General Counsel's interpretation remains applicable and that because of your position as a senior vice president, you should be deemed to be a principal of the Company and X .

Moreover, we do not consider the requirements for listing as a principal unduly burdensome for you in this instance, especially as you are already registered as an AP and have a Form 8-R on file with the National Futures Association ("NFA") as well as a completed fingerprint card.<sup>4</sup> The only additional step that would be required would be for the Company and X to file a Form 3-R to amend their respective Form 7-R to add you as a principal. 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 Monica S. Amparo, an attorney on my staff, at (202) 418-5450 if you have any questions regarding this matter.

Very truly yours,

Susan C. Ervin

Chief Counsel

<sup>1</sup> Your request arose from a comment letter received from Division staff on the Disclosure Document for Y , for which the Company serves as the general partner and CPO. The Company also serves as the general partner and CPO for Z .

<sup>2</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997). Although you refer to Rule 4.10(e) in your letter, the operative rule for registration purposes is Rule 3.1. These two rules are substantially equivalent.

<sup>3</sup> CFTC Interpretative Letter No. 76-15, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,194 (August 2, 1976).

<sup>4</sup> NFA Rule 203 provides that for a principal who is also registered as an AP, the registration fee of \$70 does not apply.