

**CFTC Letter No. 98-21****March 23, 1998****Division of Trading & Markets**Re: Request for Relief from Rule 4.31

Dear :

This is in response to your letter dated October 20, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmission dated December 11, 1997 and telephone conversations with Division staff. By your correspondence, you request on behalf of "X", a registered commodity trading advisor ("CTA"), relief from the requirement of Rule 4.31<sup>1</sup> to deliver a Disclosure Document to prospective clients, who will be solely residents or citizens of Canada (the "Non-U.S. Clients").

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The sole shareholder of "X" is "Y", of which "A" and "B" each own fifty percent of the total issued and outstanding shares of stock. "A" is: (1) the sole director and sole officer of "X"; (2) the sole registered associated person ("AP") of "X"; and (3) the sole person who will make trading decisions on behalf of "X" in connection with its provision of commodity interest trading advice to the Non-U.S. clients.

"A" also is registered with the Commission as a CTA in his individual capacity and directs the commodity interest trading accounts of various persons in that capacity. As of November 1997, he had [several hundred] clients and [tens of millions of dollars] under management. "X" will use the same trading programs as "A" does, although the fee structure it will charge its clients will be different from that which "A" charges his clients.

Unfortunately, we are unable to grant the relief you request. Commission Rule 4.31 requires generally that a CTA deliver to prospective clients, U.S. or foreign, a Disclosure Document that contains specified information about the CTA and its principals, including past performance information, before the CTA can enter into an agreement to direct a client's account. Under the circumstances described in your letter, we do not think a departure from this requirement is appropriate. We particularly note that because "A" will be using the same trading programs for "X's" discretionary account clients that he uses for his own discretionary account clients, he can deliver to prospective "X" clients a Disclosure Document substantially identical to his existing Disclosure Documents, with little additional burden.<sup>2</sup>

If you have any questions concerning this correspondence, please contact Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>2</sup> *Cf., e.g.*, Division of Trading and Markets Interpretative Letter No. 97-42, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,077 (May 28, 1997), wherein the Division exempted a CTA from the Disclosure Document requirement of Rule 4.31 because the CTA provided advice solely to non-U.S. persons and had no U.S. persons as clients.