

**CFTC Letter No. 98-29****April 1, 1998****Division of Trading & Markets****Re: Request for Interpretations Regarding the Meaning of "Principal" under Rule 3.1 and Regarding Duty to Amend Disclosure Document under Rule 4.36**

Dear :

This is in response to your letter dated October 23, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission (the "Commission") as supplemented by your letters dated November 17, 1997 and December 8, 1997 and by telephone conversations with Division staff. By your correspondence, you request clarification on behalf of "X", a registered commodity trading advisor ("CTA"), as to: (1) whether "X" must treat certain officers as principals;<sup>1</sup> and (2) whether "X", pursuant to Rule 4.36, must amend its Disclosure Document and supply all existing and previously solicited persons with an amended Disclosure Document each time there is a personnel change with regard to an employee who qualifies as a principal.

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" is one of the largest securities investment advisers registered under the Investment Advisers Act of 1940, with approximately \$75 billion in assets (primarily debt securities) under management. "X" uses futures to hedge portfolio assets and currency risk, and has as clients large institutional accounts. "X" generally requires a minimum account size of \$10 million for its balanced and equity oriented accounts, \$75 million for fixed income accounts and \$100 million for enhanced index accounts.<sup>2</sup>

"X" is organized as a Delaware general partnership. "X" uses the titles "Vice President," "Senior Vice President," and "Executive Vice President" to designate certain individuals in its organization who have worked at "X" for a designated number of years and who have prominent roles within the organization. Your letter discusses sixteen "X" employees who are either Vice Presidents, Senior Vice Presidents, or Executive Vice Presidents (collectively, the "Select Officers"). You contend that the functions performed by these individuals are administrative in nature and do not involve the solicitation or trading of futures. Thus, you assert that such individuals do not exercise sufficient influence, control or power over "X's" operations to be characterized as principals.

Based on current Commission rules, we are unable to grant your request that the Select Officers not be required to be listed as "principals" of "X", or your request for relief from the obligation

under Rule 4.36 that "X" amend its Disclosure Document to correct any material inaccuracies.<sup>3</sup> We believe the appropriate procedure for addressing the issues raised in your letter is through notice and comment rulemaking. To that end, Division staff may recommend that the Commission initiate a rulemaking in the near future to address which employees in organizations like yours should be considered "principals" for listing purposes.

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> Although your letter did not specifically refer to the requirements for the listing of principals for registration purposes, we believe this is a closely related issue and address it herein.

<sup>2</sup> These statements were taken from a May 22, 1996 letter to Commission staff from "A", Investment Counsel at "X".

<sup>3</sup> See CFTC Interpretative Letter No. 76-15, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,194 (August 2, 1976). See also CFTC Interpretative Letter No. 95-19, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,346 (February 24, 1995) (CTA required to list its corporate secretary as a principal despite contention that she performed only clerical functions.)