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COMMODITY FUTURES TRADING COMMISSION
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**DIVISION OF
TRADING AND MARKETS**

January 25, 1993

[Name and Address of
Attorney]

Re: [B] -- Relief from Rule 1.46

Dear [Attorney]:

This is in response to your letter dated December 8, 1992 to the Division of Trading and Markets (the "Division"), as supplemented by telephone conversations with Division staff. You request on behalf of [B], a registered futures commission merchant ("FCM"), relief from the requirements of Rule 1.46 as they would otherwise apply with respect to four accounts of [B]'s prospective customer, [D].

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows. [D] plans to open four trading accounts at [B]. Trading in each of the four accounts will be conducted solely pursuant to signals from a separate trading hotline service selected by [D] for each account. The services of each of these four hotlines are marketed separately from the others and each is independent of the other hotlines to be utilized in connection with the trading in [D]'s accounts. Thus, trading in each of the separate accounts would follow separate trading systems.

[D] has approached [A], who is a registered associated person ("AP") sponsored by [C], a registered introducing broker ("IB") and registered commodity trading advisor ("CTA"). [D] proposes to give to [A] discretionary trading authority over [D]'s four accounts at [B] subject to the conditions that [A] obtain and employ all trade recommendations generated by each hotline selected by [D] and that [A] enter each recommended trade in the appropriate account in one or two contract increments.^{1/} Although each system will generate trade signals independently of the others, you state that a possibility exists that [D] may have a short position in one of the accounts in the same contract and contract month for which he holds a long position in another account handled by [A] utilizing one of

^{1/} We note that during a telephone conversation with Division staff on December 15, 1992, you stated that [A] will not provide any of her own or [C]'s advice in connection with [D]'s accounts.

the hotline services.

Rule 1.46(a) generally requires that an FCM close out a customer's or an option customer's previously held short or long commodity futures or option position if an offsetting purchase or sale is made for such customer's or option customer's account, and that the FCM furnish promptly to such customer or option customer a purchase-and-sale statement showing the financial result of the transactions involved.^{2/} Recently, the Commission adopted Rule 1.46(d)(9) which provides an exception to the offset requirement where the customer has granted discretionary trading authority to a CTA, an FCM or an AP of an FCM whereby the trading for the account of the customer is pursuant to separate trading programs that have been marketed separately.^{3/} While you acknowledge that Rule 1.46(d)(9) does not apply where discretionary trading authority has been given to an AP of an IB rather than an AP of an FCM and where the trading advice is not the AP's but rather that of separate hotline services, you state that the rationale for the recent exception to the rule applies with equal force to the situation you have represented to us and that we should take the position that we would not recommend that the Commission take enforcement action against [B] based solely upon a failure to comply with Rule 1.46(a) under the circumstances.

Based upon the foregoing, the Division believes that the relief requested would not be inconsistent with the recently adopted Rule 1.46(d)(9) in that such relief will permit [D] to maintain separate accounts and have the benefit of separate trading systems that are separately marketed, nor would such relief be contrary to the public interest or the purposes of the provision from which relief is sought. Accordingly, the Division will not recommend that the Commission take enforcement action against [B] based solely upon [B]'s failure to comply with Rule 1.46 in connection with the four accounts maintained by [D] at [B] which are to be managed by [A] as described herein.

The position taken herein is based upon the representations you have made to us. Any different, changed or omitted facts or circumstances may cause us to reach a different conclusion. This relief is applicable to [B] solely with respect to the requirements of Rule 1.46. The position taken herein does not excuse [B] from compliance with any otherwise applicable requirements contained in

^{2/} We note that Rule 1.46(b) generally provides that if the short or long position held in the account is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously held short or long position, unless the customer or option customer specifically instructs otherwise.

^{3/} See 57 Fed. Reg. 55082 (November 24, 1992).

the Commodity Exchange Act or the Commission's rules thereunder. Further, this is the opinion of the Division only and does not necessarily represent the opinion of the Commission or any other division or office of the Commission.

If you have any questions about this correspondence, please feel free to contact me or George G. Wilder, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

cc: Daniel A. Driscoll, National Futures Association

GGW/gw