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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

July 8, 1996

Re: Request for Relief from Registration as Commodity Trading Advisors under Section 4m(1) of the Commodity Exchange Act with Regard to Producing and Distributing Materials on Commodity Interest Trading

Dear :

This is in response to your letter dated April 29, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your correspondence, you request on behalf of "Company" and "A" relief from registration as commodity trading advisors ("CTAs") under Section 4m(1) of the Commodity Exchange Act ("Act")^{1/} with respect to producing and distributing materials on commodity interest trading.

Based upon the representations contained in your letter, as supplemented by the written materials that the Company distributes to persons interested in commodity interest trading, we understand the relevant facts to be as follows. Neither the Company nor "A" currently is registered with the Commission in any capacity. The Company publishes "U" and "V", and the Company distributes them for a fee to students/subscribers ("W") as part of "X". Although "U", written by "B", does include general information on trading in commodity interests and approximately one hundred pages of detailed information on price forecasting using technical analysis, it also provides specific advice on market conditions that signal when persons should trade in the futures markets. In addition, "U" and "V" promote the Company's hotline and newsletter services as an integral part of the "X".^{2/}

^{1/} 7 U.S.C. § 6m(1) (1994). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

^{2/} "U" also specifically, and strongly, recommends that "W" use "Y", a registered guaranteed introducing broker, for their brokerage needs. You represent that this recommendation is based
(continued...)

You state that relief from CTA registration should be granted because the Company and "A" are "providing educational opportunities and disseminating financial news and opinions." You represent that the Company and "A" are neither directly or indirectly involved in the solicitation of funds or trades or the trading of accounts. They receive a flat fee from their "W", have no financial interest in whether the "W" follow their market opinions and receive no money or other compensation from "Y".

As we explained in our letter of March 13, 1996 to "A" ("March 13 letter"), Section 1a(5) of the Act defines a CTA as "any person who, for compensation or profit, engages in the business of advising others . . . as to the value of or the advisability of trading in" commodity futures contracts, commodity options or leverage transactions.^{3/} Under the circumstances you have presented, none of the enumerated exceptions to the Act's CTA definition apply,^{4/} and it appears that the Company is engaging in the business of advising "W" about trading in the futures markets through the sale of books, a hotline and a newsletter.^{5/}

^{2/} (...continued)
upon "Y's" quality of service, rather than upon any compensation from "Y".

^{3/} See 7 U.S.C. § 1a(5) (1994). The Division has found that persons who make commodity interest trading advice available through newsletters or hotlines are engaged in activities that require CTA registration under the Act. See, e.g., CFTC Interpretative Letters No. 95-85, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,540 (October 12, 1995); No. 93-43, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,734 (May 19, 1993); and No. 93-16, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,692 (February 26, 1993).

^{4/} See 7 U.S.C. § 1a(5)(B) and (C) (1994).

^{5/} As discussed in our March 13 letter, such activity also results in the indirect solicitation of customer orders since the Company seeks to influence customers to establish customer relationships with "Y". The Company therefore would be required to register as an introducing broker, and "A" would be required to be listed as a principal and registered as an associated person. We note that, in a May 3, 1996 letter to the Division, "C", the CFO/Compliance for "Y", denies any relationship with "A", states that the "U" courses are educational and includes a copy of a letter instructing "A" to stop using "Y's" name in any of his materials.

For the reasons outlined above, the Division continues to believe that the Company is required to register as a CTA and "A" is required to be listed as a principal and registered as an associated person of the Company.^{6/} You are advised that failure to comply with the registration requirements for CTAs and the use of misleading marketing materials constitute violations of the Act and the Commission's regulations, and may result in enforcement proceedings or other Commission actions. In addition, the Company, "A" and any persons participating in or aiding or abetting such conduct may be subject to prosecution for violation of the antifraud provisions of Section 40 of the Act,^{7/} regardless of registration status. Immediate compliance with the Commission's registration requirements does not necessarily preclude the Commission from taking action against the Company, "A" or any other persons for any past, present or future violations of the Act or the Commission's regulations thereunder.

^{6/} However, since it does not appear that they would be directing or guiding accounts, they would not be required to prepare and provide disclosure documents. See CFTC Interpretative Letter No. 95-101, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,565 (November 21, 1995).

^{7/} 7 U.S.C. § 60 (1994). "U" includes statements such as the following that emphasize the huge profit potential of investing in commodity interests by following "X's" advice without an equally prominent statement of the risk of loss:

If you have not obtained that dream lifestyle yet, I will not only show you how to reach for it, but I will be there to guide you in the right direction, offering support as you need it.

You should easily triple whatever money you have invested on almost every trade. Though there will be some losses, . . . those losses will be minimal. Your profits, on the other hand, should be enough to achieve your dreams.

Such statements appear in both "U" and the "V".

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If you have any questions concerning this correspondence, please contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel