UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

February 25, 2000

VIA FACSIMILE AND EXPRESS MAIL

The Ken Roberts Company, The United States Chart
Company, The Ken Roberts Institute, Inc.,
and The Ted Warren Corporation
c/o Neil A. Goteiner, Esquire
Henry C. Fong, Esquire
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Re: Petition of The Ken Roberts Company, The United States Chart Company, The Ken Roberts Institute, Inc. and The Ted Warren Corporation To Quash Civil Investigative Demands -- File No. 9923259

Dear Messrs. Goteiner and Fong:

This letter advises you of the Federal Trade Commission's ruling on the petition of The Ken Roberts Company, The United States Chart Company, The Ken Roberts Institute, Inc. and The Ted Warren Corporation (collectively "petitioners") to quash civil investigative demands ("CIDs") in the above-referenced matter (the "petition"). The petition is **denied** for the reasons stated below.[1] The new deadline for petitioners to respond to, and otherwise comply with, the CIDs is **March 17, 2000.**

Because the petition raised questions regarding the jurisdiction of the Commission, Commissioner Sheila F. Anthony, the Commission's delegate for ruling on petitions to quash,

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[1] Petitioners' request for oral argument is also denied. Petitioners set forth their arguments in substantial detail in their thirty-seven page petition. Moreover, petitioners state that "the fundamental and dispositive jurisdictional issues are unalloyed questions of law, and . . . that no additional facts are necessary to decide whether this investigation is preempted by the CFTC and the SEC." Petition at 2. Additional argument is therefore unnecessary and would only further delay this investigation.

referred this petition to the full Commission for a determination. *See* 16 C.F.R. § 2.7(d)(4). Accordingly, this decision was reached by the full Commission, and petitioner does not have the right to request further review of this matter by the full Commission. *See* 16 C.F.R. § 2.7(f).

I. BACKGROUND

Petitioners are companies that sell various sets of instructional materials, including written materials, videos, cassettes, and online and facsimile updates, that purport to teach customers how to make significant sums of money by trading commodities or stocks. Petitioners advertise and market those materials on several web sites that allow customers to order their products online or by telephone, facsimile, or mail. The web sites also include numerous earnings claims and customer testimonials.

On September 30, 1999, the Commission issued CIDs for written interrogatories and documentary material to petitioners seeking substantiation for, *inter alia*, eighteen earnings claims and dozens of customer testimonials. Petitioners submitted responses to some of the interrogatories (subject to their jurisdictional concerns) on October 15, 1999, and October 22, 1999, and filed their petition to quash all the CIDs on October 28, 1999.[2] Although petitioners present their arguments in several different ways, their basic contention in the petition is that the Commission is barred from investigating their advertising and marketing practices because the Commodity Exchange Act ("CEA") provides the Commodity Futures Trading Commission ("CFTC") with exclusive jurisdiction with respect to the advertising and marketing practices of commodities trading advisers ("CTAs").[3] Petition at 7-33. Petitioners also make a brief argument to the effect that the FTC is barred from investigating investment advisers because the Securities and Exchange Commission ("SEC") has exclusive jurisdiction to regulate the advertising and marketing practices of investment advisers. *Id.* at 33-36.

After careful review of the CIDs, the petition, the declarations and various correspondence filed with the petition, and the relevant statutes and case law, the Commission finds that none of petitioners' arguments provides a basis for quashing the CIDs.

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[2] The Commission provided petitioners with two extensions for producing the documents requested in the CIDs for documentary materials as well as two additional extensions for filing their petition to quash.

[3] This is not the first time that the Commission has investigated or sought to prevent deceptive practices by a CTA. Indeed, the Commission has brought several actions against defendants in the commodity futures industry. *See, e.g., FTC v. Osborne*, No. 94-55615, 1995 U.S. App. LEXIS 31570 (9th Cir. Oct. 27, 1995) (upholding injunction against defendant corporations for deceptive trade practices in the sale of options for precious metals to consumer investors).

II. ANALYSIS

Section 5 of the Federal Trade Commission Act ("FTC Act") gives the Commission broad authority to "prevent persons, partnerships, or corporations" from "using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2) (1999). Section 5 also sets forth a few limited exceptions to this grant of authority: the Commission is not empowered to prevent deceptive or unfair practices by banks, savings and loan institutions, federal credit unions, common carriers and air carriers, insofar as those entities are subject to specified regulations, or by anyone subject to the Packers and Stockyards Act. *Id.*

The Commission's investigative authority is even broader. Section 6 of the FTC Act, 15 U.S.C. § 46 (1999), gives the Commission the power to

> gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

Absent a specific statutory exemption, the Commission thus has authority to investigate or prohibit deceptive practices by any person or commercial enterprise.[4] *See Blue Ribbon Quality Meats, Inc. v. FTC*, 560 F.2d 874, 876 (8th Cir. 1977) (noting that "the investigatory power granted the FTC under 15 U.S.C. § 46 reaches further than the regulatory power granted it under 15 U.S.C. § 4" in holding that FTC had authority to investigate meat packer).[5]

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[4] A few other industries, such as the insurance industry, are also partially or wholly excluded from the Commission's investigative and enforcement authority by virtue of other explicit statutory provisions. *See, e.g.*, 15 U.S.C. § 1012 (1999) (FTC Act applies to insurance business only insofar as business is not regulated by state law).

[5] Importantly, the fact that another agency also has regulatory power over a specific industry does not bar the FTC from investigating a company in that field as well. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (D.C. Cir. 1977) ("this is an area of overlapping agency jurisdiction under different statutory mandates"). For example, the FTC and the Securities and Exchange Commission ("SEC") have, on occasion, both taken action against the same defendant. *See, e.g., Securities and Exchange Comm'n v. Glenn W. Turner Enters.*, 474 F.2d 476 (9th Cir. 1973) (upholding preliminary injunction against fraudulent sales scheme); *In the Matter of Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975) (order requiring party to cease engaging in unfair and misleading commercial practices); *see also Thompson Medical Co. v. FTC*, 791 F.2d 189, 192 (D.C. Cir. 1986) (FTC can regulate drug-related advertising regardless of Food and

Among the Commission's investigatory powers is the ability to use CIDs to gather information and to enforce those demands in federal district court. *See* 15 U.S.C. § 20. In deciding whether to enforce compulsory process issued by the Commission, the federal courts apply a deferential standard, asking only whether (a) the investigation at issue is within the Commission's authority, (b) the information sought is reasonably relevant to the investigation, and (c) the request is not unduly burdensome. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992). In this matter, petitioners argue that the investigation does not fall within the Commission's authority.[6] According to petitioners, the CFTC's exclusive jurisdiction over the commodity futures market under Section 2(i) of the CEA bars an FTC investigation of their advertising practices. However, because the FTC Act gives the FTC broad authority to investigate and prohibit unfair trade practices in all areas of commerce except those specifically excluded, this argument can only succeed if petitioners can demonstrate that the CEA expressly or impliedly repealed the FTC Act as it applies to CTAs. As detailed below, petitioners are unable to do so.[7]

A. Express Repeal

Prior to 1974, commodities were generally regulated by the Commodity Exchange Authority (the "Authority"), which was statutorily authorized to regulate futures trading on certain agricultural products. Because the Authority's jurisdiction was quite narrow, however, a great deal of trading in the futures market was unregulated and thus subject to dangerous speculation and manipulation. In 1974, Congress responded to this danger by overhauling the CEA and creating the CFTC. In doing so, Congress' stated intent was "to institute a more comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 836 (1986) (citing H.R. Rep. No.

Drug Administration's regulation of advertisers; "[n]owhere in the case law or in the FTC's grant of authority is there even a hint that the FTC's jurisdiction is so constricted").

[6] Petitioners also state in the petition that the Commission's investigation is "duplicative" of the efforts of the CFTC, which has also sought documents from petitioners on numerous occasions. Petition at 3-7. Because the Commission's investigation is not directed at the same practices as the CFTC's, only some of the document requests overlap. However, to the extent that petitioners are concerned that re-production of certain documents would be unduly burdensome, Commission staff has agreed to retrieve any overlapping documents sought by the Commission directly from the CFTC, and petitioners need not produce them again.

[7] Petitioners set forth their basic argument -- that the CEA's exclusive jurisdiction clause prohibits the Commission from investigating CTAs -- under several different argument headings. For the sake of clarity, our decision separates their arguments into three sections: express repeal (which addresses arguments made in Sections I.A, I.B and I.E of the petition), implied repeal (which addresses arguments made in Section I.D.1 of the petition), and finally, preemption and the specific remedy rule (which addresses arguments made in Sections I.A, I.C and I.D.2 of the petition).

93-975, at 1 (1974)). Accordingly, a key provision in the new law was a "limited grant of exclusive jurisdiction to the Commodity Futures Trading Commission" to create uniform rules for the operation of the futures market. 120 Cong. Rec. 34,736 (1974) (statement of Rep. Poage). Under the new provision, the CFTC was given "exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market." 7 U.S.C. § 2(i) (1999).

In order to ensure that the limited exclusive jurisdiction provision in the CEA was not misinterpreted as broadly preempting other federal laws and regulations, Congress went out of its way to make clear that its grant of exclusive jurisdiction did not abrogate other laws of general application. Accordingly, the statute provides that

> Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

7 U.S.C. § 2(i) (1999). Congress thus provided that the CFTC's exclusive jurisdiction only applies to the regulation of the futures market itself (*i.e.*, promulgating rules and regulations) and does not, outside that narrow area, supersede any other federal regulatory authority. *See American Agric. Movement, Inc. v. Board of Trade of Chicago*, 977 F.2d 1147, 1157 (7th Cir. 1992) ("Laws of general application of course operate in a variety of arenas, and are preempted only when plaintiffs attempt to use them in a manner that would, in effect, regulate the futures markets.").

In analyzing the CFTC's jurisdiction, several courts have recognized that the CEA does not prevent a law enforcement agency (such as the Commission) from enforcing generally applicable laws against CTAs. According to the *Abrahams* decision,

> where the [CFTC's] jurisdiction is exclusive, the jurisdiction of other regulatory agencies, state and federal, is preempted. This frees the exchanges from having to conform their practices to conflicting agency standards. However, these decisions do not establish that law enforcement agencies are precluded from prosecuting alleged frauds under criminal provisions other than those contained in the Act.

Abrahams, 493 F. Supp. at 301.[8]

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[8] As part of their efforts to demonstrate that the Commission is barred from investigating their advertising and marketing practices, petitioners discuss, at considerable length, the anti-fraud provisions in the CEA. Among their arguments, petitioners state that the breadth of these

In sum, preserving the ability of other agencies such as the FTC to enforce general laws is consistent with the letter and the spirit of the CEA.[9] Accordingly, petitioners have failed to show that the CEA expressly repealed Sections 5 and 6 of the FTC Act.

B. Implied Repeal

Petitioners have also failed to show that the FTC's authority was impliedly repealed. "The law is well settled . . . that repeal by implication is not favored and that it follows only where the later act is clearly intended to be in substitution for the earlier act." *U.S. v. Abrahams*, 493 F. Supp. 296, 300 (S.D.N.Y. 1980). The Supreme Court has thus developed -- and lower federal courts have applied -- a very strict standard for finding implied repeal. Under this standard, we consider first whether "Congress expressed an intent partially to repeal" the prior statute, and second, "whether there is a repugnancy in the subject matter of the two statutes which would justify an implication of repeal." *Id.*; *see also Matsushita Electric Indus. Co. v. Epstein*, 516 U.S. 367, 381 (1996) (citation omitted) (implied repeal occurs only where there is "an irreconcilable conflict between the two federal statutes at issue"); *Strobl v. New York Mercantile Exchange*, 768 F.2d 22, 27 (2d Cir. 1985) (repeal of a law is only to be implied when "there is a plain repugnancy" between two statutes) (citation omitted). In arguing that the CEA impliedly repealed Sections 5 and 6 of the FTC Act (insofar as they are applied to CTAs), petitioners have failed to provide any evidence that Congress intended to abrogate the Commission's authority under Sections 5 and 6 to prohibit unfair practices by CTAs. Moreover, the two statutes at issue in this matter (the FTC Act and the CEA) are in no way repugnant to each other.

First, in passing the CEA, Congress did not demonstrate any intent to repeal prior anti-fraud laws such as Section 5 of the FTC Act. To the contrary, as noted above, Section 2(i) of the CEA contains two savings clauses. The first preserves the jurisdiction of other federal agencies except as they are superseded by the limited grant of exclusive jurisdiction. The second unqualifiedly preserves the jurisdiction of the federal and state courts. The latter clause provides particularly strong textual support for the proposition that Congress did not intend to abrogate generally available federal causes of action -- such as, for example, FTC actions under Section 13(b), 15 U.S.C. § 53(b). Furthermore, in introducing the bill, Senator Talmadge, chairman of

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provisions "is another strong indicator that the CFTC has occupied the field" of CTA advertising and solicitation. Petition at 14. As discussed in Part I.C, *infra*, however, the concept of field preemption does not apply to the relationship between two federal agencies. Moreover, as discussed in Part I.B, *infra*, the CEA and the FTC Act can both operate to regulate similar behavior as long as they are not repugnant to each other.

[9] Petitioners themselves inadvertently make this point by citing several cases recognizing that the CEA explicitly preserves the jurisdiction of federal courts to decide private rights of action involving the commodity futures trading industry that arise under other federal laws. Petition at 21 n. 11.

the Senate Committee on Agriculture and Forestry, emphasized that "it is not the intent of the committee to exempt persons in the futures trading industry from existing laws and regulations such as the antitrust laws." 120 Cong. Rec. 30,459 (1974) (statement of Sen. Talmadge). Thus, rather than suggest that it intended to repeal prior laws, Congress made clear its intent that CTAs continue to comply with "existing laws and regulations," such as the FTC Act.[10]

Second, petitioners are unable to demonstrate the type of "repugnancy" between the CEA and FTC Act that is necessary for a finding of implied repeal. The Commission's investigation of petitioners is intended to enforce a general anti-fraud law; the Commission is not purporting to ***regulate*** advertising practices by CTAs.[11] Moreover, there is no "irreconcilable conflict" between the two statutes. To the contrary, insofar as the purpose of the FTC Act is to prohibit fraudulent trade practices, it actually supports (rather than conflicts with) the CEA, which also contains anti-fraud provisions. *See* 7 U.S.C. § 6b (1999) (making it unlawful to "cheat or defraud" another person in connection with the sale of a commodity).

Two federal courts faced with similar issues have held that the CEA did not impliedly repeal federal antitrust law or the federal mail fraud statute. *See Strobl*, 768 F.2d at 26-28; *U.S. v. Abrahams*, 493 F. Supp. at 296. In *Strobl*, the U.S. Court of Appeals for the Second Circuit held that an individual could bring claims under the Sherman Act and the Clayton Act in connection with alleged price manipulation that led to a 1976 default of potato futures. The court

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[10] Petitioners' argument that the creation of the CFTC in 1974 somehow abrogated the FTC's jurisdiction over CTAs is also rebutted by the fact that the FTC Act has been amended twice since 1974 to exclude savings and loan associations and federal credit unions from the FTC's jurisdiction. *See* 15 U.S.C. § 46(a) (1999). Had Congress also intended to exclude CTAs, it could have done so. *See Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.").

[11] Petitioners consistently fail to distinguish between regulatory activity and law enforcement actions. For example, petitioners cite numerous cases for the proposition that only the CFTC can "exercise regulatory authority over the commodity futures trading industry and its activities." Petition at 20-22 (emphasis in original). These cases include *Mullis v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 492 F. Supp. 1345, 1349-50 (D. Nev. 1980), cited for the proposition that the "CFTC preempts all other agency regulation in the commodities field." Petition at 21. However, the *Mullis* case draws a distinction between the application of non-CEA statutes and the application of non-CFTC rules to the commodities industry, holding that federal courts have jurisdiction to hear cases brought under federal securities statutes (but not under SEC rules or regulations) where the dominant purpose of the security is for trading in commodity futures. *Mullis*, 492 F. Supp. at 1350-51. Because the Commission is investigating petitioners pursuant to the FTC Act and not a Commission rule or regulation, the reasoning of the *Mullis* court clearly allows this investigation to continue. We need not reach the question of whether the Commission could apply its own rules or regulations to petitioners' business practices.

held that Congress did not intend to limit the application of the antitrust laws simply by establishing an overlapping regulatory scheme. *See Strobl*, 768 F.2d at 27. Rather, the correct test was whether the two statutes were in conflict, and the court held they were not. *Id.* The court's conclusion regarding price manipulation holds true for the advertising fraud at issue here as well.

> As price manipulation also violates antitrust laws, none of [the anti-manipulation] provisions [in the CEA] conflicts with the purposes and standards of the antitrust laws. There is no built-in balance in the regulatory scheme of the Act that permits a little price manipulation in order to further some other statutory goal. Quite the opposite, price manipulation is an evil that is always forbidden under every circumstance by both the Commodity Exchange Act and the antitrust laws. Therefore, application of the latter cannot be said to be repugnant to the purposes of the former.

Strobl, 768 F.2d at 28.

The *Abrahams* court used similar logic in holding that the CEA does not bar the prosecution of CTAs under the mail fraud statute. Like petitioners here, the defendant in *Abrahams* attempted to argue that the CEA's own fraud provisions were "intended by Congress to be the sole means by which fraudulent conduct in the commodities field . . . should be prosecuted." *Abrahams*, 493 F. Supp. at 299. The court disagreed. While recognizing that "where the Commission's jurisdiction is exclusive, the jurisdiction of other regulatory agencies, state and federal is preempted," the court found that such exclusive jurisdiction does not preclude law enforcement agencies "from prosecuting alleged frauds under criminal provisions other than those contained in the Act." *Id.* at 301 n.10. *See also Mullis*, 492 F. Supp. at 1349-50 (plaintiff could bring private right of action under securities statutes but not under SEC rules and regulations regarding a securities/commodities matter within the CFTC's exclusive jurisdiction).

The conclusion reached by the *Abrahams* court regarding the CEA and the mail fraud statute applies equally to the CEA and the FTC Act. "The mail fraud statute and the criminal provisions of the Act are not in conflict," the court held. "[I]nstead, they complement each other. The Court concludes that there is no conflict between the two statutory provisions which would justify an implication of repeal." *Id.* at 303. The CEA's fraud provisions and Sections 5 and 6 of the FTC Act similarly complement each other, and thus, here too, there is no conflict that would justify a finding of repeal.

C. Field Preemption and the Exclusive Remedy Rule

Petitioners also attempt to argue that the FTC is barred from investigating their advertising practices under a "field preemption" theory and under the "specific remedy rule." These arguments similarly fail.

First, the concept of field preemption, which is based on the Supremacy Clause of the

Constitution, applies to the relationship between federal and state laws and not the relationship between two different federal laws. *See American Mfg. Mut. Ins. Co. v. Tison Hog Market, Inc.*, 182 F.3d 1284, 1287-88 (11th Cir. 1999) ("Field preemption occurs when Congress regulates a field so pervasively . . . that an intent to preempt state law can be inferred."). Thus, petitioners' discussion regarding preemption is inapplicable to analyzing the relationship between federal agencies.[12]

Second, petitioners' argument regarding the "specific remedy rule" is just another twist on their "implied repeal" argument (*see* Section II.B, *supra*) and therefore fails for the same reasons. "[A]lthough the 'specific over general' principle is an accepted rule of statutory interpretation, it is not to be followed blindly." *Strobl*, 768 F.2d at 30 (holding that specific remedy rule does not bar application of antitrust laws to commodities futures trading). Rather, "[s]tatutes are to be construed together to effectuate, to the greatest extent possible, the legislative policies of both." *Id.* Because the CEA and the FTC Act can be construed together to effectuate the legislative policies of both, the specific remedy rule is inapplicable.

D. Investment Advisers

Petitioners' final argument is that the Commission also lacks jurisdiction to investigate The Ken Roberts Institute, Inc. ("KRI") and the Ted Warren Corporation ("Warren"), the two petitioners that are involved in providing securities advice, because KRI and Warren "fall under the SEC's definition of 'investment advisers' and, as such, are subject to the exclusive regulation of the SEC." Petition at 33. Petitioners do not provide any statutes or case law in support of their statement that the SEC has exclusive jurisdiction over investment advisers, and we have found no legal authority in support of their views. Thus, even if KRI and Warren can be regulated by the SEC as investment advisers, that does not bar the FTC from investigating their

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[12] In any event, the cases that petitioners cite in support of their field preemption argument do not buttress their conclusions. For example, petitioners cite to *Board of Trade of Chicago v. Securities and Exchange Comm'n*, 677 F.2d 1137 (7th Cir.), *vacated as moot*, 459 U.S. 1026 (1982), to support their argument that the savings clause in the CEA does not preserve this Commission's jurisdiction over their advertising practices. Petition at 13-14, 19-20. However, the *Chicago Board of Trade* decision merely considers whether the sale of Government National Mortgage Association mortgage-backed pass-through certificates ("GNMAs") are "transactions involving contracts of sale of a commodity for future delivery," and therefore fall within the CFTC's exclusive jurisdiction. *Id.* The court ruled that, because GNMA options should be included within the statutory definition of commodities for future delivery, the CFTC had exclusive jurisdiction, the savings clause did not apply and the SEC could not regulate their sale. *Id.* at 1161. Thus, the analysis of the CFTC's exclusive jurisdiction focused on what constitutes a commodity future -- not on what constitutes pervasive regulation -- and is therefore inapplicable to the issue at hand.

advertising practices.[13]

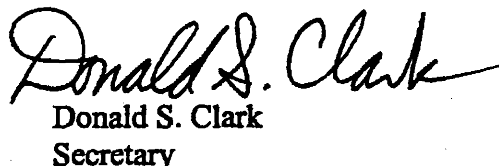
The one case petitioners rely upon in arguing for exclusive SEC jurisdiction, *Spinner Corp. v. Princeville Dev. Corp.*, 849 F.2d 388 (9th Cir. 1988), is not controlling. *Spinner* involved whether the Hawaii "baby FTC Act" applied to a private cause of action against an investment adviser -- and did not in any way rule on the jurisdiction of the Commission itself. *Id.* at 393. Rather, the court only considered this Commission's practices in light of a state statute that commands courts to be guided by judicial interpretations of the FTC Act. *Id.* at 389-90. Because the court found that the FTC Act has not been regularly applied to securities transactions, it did not allow the private cause of action to go forward under the "baby FTC Act." Importantly, the court did not rule on the jurisdiction of the Commission itself. Indeed, the *Spinner* decision itself recognizes that the FTC Act "read literally, would include security transactions." *Id.* at 392 n. 4. As noted above, the FTC and the SEC have brought cases against the same entities, alleging violations of their respective statutes for the same conduct.[14] *See* note 5, *supra.*

III. CONCLUSION

The Commission's investigation of petitioners is a proper and statutorily authorized investigation. Neither the CFTC nor the SEC has exclusive authority to enforce laws of general applicability as they apply to CTAs or investment advisers.

For the foregoing reasons, the petition is **denied**, and pursuant to Rule 2.7(e), 16 C.F.R. § 2.7(e), **petitioner is directed to comply with the CIDs on or before Friday, March 17, 2000.**

By direction of the Commission.



Donald S. Clark
Secretary

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[13] We do not address whether KRI and Warren fall within the definition of investment advisers, because such a determination is not relevant to our decision.

[14] In addition, the FTC and the SEC have participated in joint law enforcement efforts. In 1998 both agencies brought cases against sellers of investments in general partnerships or "private placement" stock offerings. *See, e.g., FTC v. Affordable Media, LLC,* 1999-1 Trade Cas. (CCH) ¶ 72,547 (11th Cir. 1999)(in upholding entry of preliminary injunction, court described defendants' sale of partnership units as a Ponzi Scheme); *Securities and Exchange Commission v. Rynell & Associates, Inc.,et al.,* Civil Action No. 98-6508 WMB (Cwx)(C.D. Cal., Aug. 11, 1998)(sale of general partnership units for movie "Desert Gold").