

**CFTC Letter No. 02-87****July 1, 2002****Interpretation****Division of Trading and Markets**Re: Section 4m(1) of the Act: Request for CPO Registration No-Action Position

Dear :

This is in response to your letter dated June 20, 2002 to the Division of Trading and Markets (the "Division")<sup>[1]</sup> of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your electronic mail messages dated June 27, 2002 and June 28, 2002 and by telephone conversations with Division staff. By your correspondence, you request on behalf of "X", a Delaware limited liability company (the "Investment Manager"), assurance that the Division will not recommend that the Commission commence any enforcement action against "Y", a Cayman Islands exempted company (the "General Partner"), if the General Partner fails to register under Section 4m(1) of the Commodity Exchange Act (the "Act")<sup>[2]</sup> as a commodity pool operator ("CPO") in connection with acting as the general partner of "Z", a Cayman Islands exempted limited partnership (the "Pool").

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows.

*The Pool and its General Partner*

The Investment Manager formed the Pool on June 13, 2002 to function as the "master fund" within a master fund/feeder fund complex.<sup>[3]</sup> The Investment Manager formed the General Partner solely to comply with a requirement of Cayman Islands law that a Cayman Islands limited partnership have a Cayman Islands entity serving as a general partner. The Investment Manager is the sole shareholder of the General Partner. The General Partner has delegated all authority to make investment decisions for the Pool to the Investment Manager, and the General Partner will not be involved in either the solicitation of funds for, or investment decisions of, the Pool or any other commodity pool.

*Role and Responsibility of the Investment Manager*

The Investment Manager has applied for registration as a CPO. You represent that the Investment Manager will make all investment decisions with respect to the Pool and will undertake all CPO responsibilities, including the performance of all activities subject to regulation by the Commission. Each of the Investment Manager and the General Partner has executed and provided to Division staff a written cross-acknowledgment of joint and several liability with the other for any violation by the other of the Act or Commission rules in connection with performance of CPO functions and responsibilities

with respect to the Pool.

### *Conclusion*

Based upon the representations made in your correspondence and consistent with our prior positions in this area,<sup>[4]</sup> the Division will not recommend that the Commission commence any enforcement action against the General Partner based solely upon the failure of the General Partner to register as a CPO under Section 4m(1) of the Act. This position is subject to the conditions that the Investment Manager's application for CPO registration is accepted and that the Investment Manager remains registered as a CPO.

The position taken in this letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, the General Partner remains subject to all antifraud provisions of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules and to all otherwise applicable provisions of Part 4.

This letter is based upon the representations you have made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might render the position taken herein void. You must notify us immediately in the event that the operations or activities of the Investment Manager, the General Partner or the Pool change in any material way from those represented to us. Furthermore, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

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

Very truly yours,

Jane Kang Thorpe  
Director

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<sup>[1]</sup> As of July 1, 2002, a reorganization of Commission staff became effective, and the task of responding to requests for interpretative, no-action and exemptive letters (including letters such as your June 20, 2002 letter) has become the responsibility of the Division of Clearing and Intermediary Oversight. Accordingly, for purposes of this letter, the term "Division" includes the Division of Clearing and Intermediary Oversight and its predecessor the Division of Trading and Markets, as the context requires.

[\[2\]](#) 7 U.S.C. § 6m(1) (2000).

[\[3\]](#) A domestic (U.S.) feeder fund and a Cayman Islands feeder fund contribute assets to the Pool. The US feeder fund accepts U.S taxable investors and the offshore feeder fund accepts non-U.S. persons and U.S. tax-exempt investors. The Investment Manager acts as investment manager for both feeder funds. For tax reasons, the general partner of the U.S. feeder fund is another separate entity (whose principals are identical to those of the Investment Manager), which has applied for registration as a CPO.

[\[4\]](#) *See*, CFTC Staff Letter 98-20 [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,278 (March 24, 1998), and CFTC Staff Letter 97-65 [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,125 (July 31, 1997).