



COMMODITY FUTURES TRADING COMMISSION

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VISION OF
TRADING AND MARKETS

44-64

May 31, 1994

Re: Request for Relief from CPO Registration

Dear :

This is in response to your letters dated July 12, 1993, January 25, 1994 and April 19, 1994, as supplemented by telephone conversations with Division staff, in which you request that the Division of Trading and Markets ("Division") grant relief from registration as a commodity pool operator ("CPO") to "D" in connection with his anticipated association as a general partner of "X" and "Y", both Florida limited partnerships (collectively the "Partnerships").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnerships are private investment limited partnerships each of which has four general partners: "A", who is the managing general partner, "B", "C" and "Z", which is the corporate general partner (collectively, the "General Partners"). "A" is "Z"'s sole shareholder, president, and registered associated person and "B", "C" and "D" are its officers and listed principals. "A" and "Z" are registered CPOs.^{1/} The Partnerships are not marketed as commodity pools and will not commit more than ten percent of the fair market value of their assets to establish commodity interest positions. In this regard, a claim for exemption pursuant to Rule 4.12(b) has been filed for each Partnership.^{2/}

Although "D" will be a general partner of each of the Partnerships, you represent that he will not exercise discretion, supervision or control over: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in

^{1/} By letter dated March 7, 1988, the Division previously issued CPO registration no-action relief to "B" and "C" in connection with their serving as general partners of "X" and "Y".

^{2/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

the Partnerships, or (ii) the investment, use or disposition of funds or property of the Partnerships. Rather, his principal responsibilities will be to assist "A" in analyzing and making decisions with respect to investments in securities on behalf of each Partnership. In addition, "A" provided the Division with written acknowledgments whereby, as the managing general partner and CPO of each Partnership, he accepts joint and several liability for any violation of the Commodity Exchange Act (the "Act"), 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992), or the Commission's regulations issued thereunder committed by any other General Partner in connection with the Partnerships.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "D" if he fails to register as a CPO in connection with his serving as a general partner of the Partnerships. This position is based upon, among others, your representations that (1) "A" and "Z" are registered with the Commission as CPOs; (2) a Rule 4.12(b) claim for exemption has been filed for each Partnership; (3) the Partnerships are not marketed as commodity pools; and (4) "D" is listed as a principal of "Z". This relief, however, is subject to the conditions that, within thirty days of the date of this letter: (1) "D" must provide the Division with a written and dated acknowledgment whereby he accepts joint and several liability for any violation of the Act or Commission regulations issued thereunder in connection with the (other) General Partners' activities as general partners and CPOs of the Partnerships; and (2) the General Partners, other than "A", must provide the Division with a written acknowledgment whereby each of the General Partners other than "A" accepts joint and several liability for any violation of the Act or Commission regulations thereunder committed in connection with "D"'s activities as a general partner and CPO of each Partnership.

The relief issued by this letter does not excuse "D" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, he remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.

This letter is based on the representations you have made to us and is subject to the conditions stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the Partnerships' operations, including the extent of their commodity interest trading or "D"'s responsibilities with respect thereto, change in any way from those as represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not

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necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Barbara Stern Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel