

CFTC Letter No. 97-31**April 21, 1997****Division of Trading & Markets**

Re: Request by X , on Behalf of Operators of Pools Advised by X , for Exemptive Relief from Requirement of Rule 4.24(f) To Disclose the Business Backgrounds of Certain X Principals

Dear :

This is in response to your letter dated March 6, 1997 to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by facsimile transmissions dated April 1 and 4, 1997 from A¹ and by telephone conversations with Division staff. By your correspondence, X requests relief on behalf of commodity pool operators (CPOs) of pools advised by X to permit such CPOs to omit from their pools Disclosure Documents the business backgrounds of certain of the principals of X . Specifically, your correspondence seeks relief on behalf of such CPOs from the requirement of Commission Rule 4.24(f)² to disclose the business background for each principal of each of the pool s major commodity trading advisors (CTAs) who participates in, or supervises persons engaged in, making trading or operational decisions for the pool.

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. X is a registered CTA and CPO. You represent that at the present time X has twenty-four principals. Because disclosure of the business backgrounds of all of X s principals takes up three to four pages of X s Disclosure Document (and of the Disclosure Documents for the pools advised by X), several of X s CPO clients have asked X to reduce the number of its principals or to agree to exclude certain principals from prospectus disclosure. You state that because all of the principals currently listed as principals of X fall within the definition of principal set forth in Rule 4.10(e)(i)³, X was unable to comply with such requests.⁴ You contend that granting relief along the lines proposed in your correspondence will result in more concise and meaningful disclosures to investors.

You propose that four groups of X principals be identified by name and title without disclosure of their respective business backgrounds. You contend that the functions performed by these individuals are insignificant to investors in pools advised by X because, to the extent that such functions are performed for pool investors at all, they are performed by the CPO or its agents.

These groups and the affected X principals employed therein are as follows:

1. Principals involved in marketing and selling X s advisory services. This group includes B (director of investor services), C (a vice president responsible for general business development and investor services support), D (also a vice president responsible for general business development and investor services support) and E (director of marketing⁵). In support of your request, you claim that these principals are not involved in marketing the pools advised by X and that the business background of the principal responsible for X s sales and marketing functions would continue to be disclosed. Currently, this person is F .

2. Principals responsible for X accounting functions not relevant to pool investors. This group includes G (a vice president and the director of X s Investment Support Department) and H (controller for X ⁶). In support of your request, you claim that pool accounting functions would be performed by the CPO s agents and that the business background of the X principal responsible for accounting functions would continue to be disclosed. As of the date of your letter, this person was I , who has since become a managing director responsible for marketing efforts to foundations and endowments.⁷ While X fills I s position, G and H are accountable to the senior officers of X (specifically, F and J).

3. Principals involved in certain X internal administrative or operational activities. This group includes L (director of the office of the chairman, responsible for managing and coordinating projects involving M), N (director of technology) and O (human resources director). In support of your request, you claim that the functions performed by these individuals are irrelevant to investors in pools advised by X and that the business background of the officer responsible for supervising these principals would continue to be disclosed. Currently, this person is J .

4. Principals who are junior officers in X s trading department. This group includes P (an assistant vice president, responsible for overseeing many of the daily operations of X s trading department), and Q (an assistant vice president and manager of X s overseas trading desk). In support of your request, you claim that both P and Q are supervised by principals whose business backgrounds would continue to be disclosed (R , senior vice president and director of trading administration, and S , senior vice president and chief trader.

Under your proposal, then, the business backgrounds of each of X s directors, (M , K , AA and BB) and its senior officers, M , K , AA and BB , CC, S , F , I , DD, EE, FF, R , BB and J), the members of the Investment Policy Committee (M , EE , S , FF and R) and its sole shareholder (the M Trust) would continue to be disclosed.

Rule 4.24(f) requires disclosure of the business backgrounds of each principal of a pool s major

CTAs who participates in making trading or operational decisions for the pool or who supervises persons so engaged, including, without limitation, the officers and directors of [the major CTA]. Although X has listed as principals each of the persons whose business backgrounds would be omitted from the Disclosure Documents of pools advised by X, you argue that the activities of such principals are unrelated to (or insignificant to) the trading decisions and activities of such pools. Accordingly, you believe that the business backgrounds of these principals are not relevant to prospective or existing participants in pools advised by X⁸.

Based upon the representations made in your correspondence, we believe that your request has merit. Accordingly, the Division will not recommend that the Commission take any enforcement action against any registered CPO of a pool for which X provides commodity interest trading advice solely based upon such CPO's failure to include in its pool Disclosure Document the business backgrounds of G, L, O, or B, C, D, E, H, N, P or Q, provided that such individuals identified by name and title in the Disclosure Document.

This letter is based upon the representations provided to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations or activities of the persons referred to above change in any way from those as represented to us. This letter represents the position of the Division of Trading and Markets only and does not necessarily represent the views of the Commission or of any other office or division of the Commission. Further, this letter is applicable to registered CPOs of pools advised by X solely in connection with their disclosure of the business backgrounds of certain X principals in the Disclosure Documents for such pools.

We note that this letter does not excuse X or any CPO of a pool advised by X from compliance with any applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, they remain subject to the antifraud provisions of Sections 4b and 4c of the Act, 7 U.S.C. §§ 6b and 6c (1994), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations.⁹

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5445.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ A is employed by X as a compliance associate.

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996). Although your letter also requests relief from Rule 4.24(e), you have confirmed to Division staff that the principals in question would continue to be identified by name and title. Moreover, you have explained that your letter seeks relief from the requirements of Rules 4.34(e) and (f) not in order to permit X to omit business background disclosures from its own Disclosure Document, but to permit X to advise CPOs that they may omit the business backgrounds of specified X principals from their pool Disclosure Documents. Accordingly, we treat your request as seeking relief solely with respect to paragraph (f) of Rule 4.24.

³ Rule 4.10(e)(1)(i) defines a principal of an entity as:

Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity.

⁴ We make no determination hereby with respect to whether any or all of X's principals have been correctly listed as such. We note, however, that Rule 4.24(f) requires business background disclosure with respect to a major CTA principal only if that principal participates in making trading or operational decisions for the pool or supervises persons so engaged.

⁵ We note that by letter to K of X, dated June 22, 1994, the Division stated that it would not recommend enforcement action if X failed to identify B as a principal and provide background information about him in its Disclosure Document.

⁶ You represent that H performs corporate accounting functions for X, and G performs accounting functions related to maintaining customer accounts. H is not responsible for preparation of performance information. G is involved in compiling performance information for accounts traded by X, but hers is a ministerial, rather than a policy-making, function.

⁷ I was X's Chief Financial Officer until March 15, 1997. You indicate that X is conducting a search for new CFO, whose name and business background will be disclosed in accordance with Rule 4.24(f) after a new CFO is hired.

⁸ You note that pursuant to your proposal the business backgrounds of all of X's directors, its sole shareholder, all senior officers and all members of the Investment Policy Committee would be disclosed in the Disclosure Documents of pools advised by X.

⁹ Further, this letter does not affect in any way X's registration obligations under Part 3 or its disclosure obligations under Part 4 of the Commission's regulations. Thus, X's CTA Disclosure Document and the Disclosure Document of each pool for which X serves as CPO must list all of X's principals and provide

their business backgrounds.