

CFTC Letter No. 00-02**December 22, 1999****Exemption****Division of Trading & Markets**

Re: Rules 4.21 and 4.22(d); Request for Relief from Disclosure Document and Annual Report Requirements

Dear :

This is in response to your letter dated September 8, 1999, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated October 13, 1999 and telephone conversations with Division staff. By your correspondence, you request on behalf of "X", a registered commodity pool operator ("CPO"), that the Division exempt "X" from the requirement in Rule 4.21 that "X" provide a Disclosure Document to the participants of the "Fund" and from the requirement in Rule 4.22(d) that "X" distribute to the participants in the Fund and file with the Commission a certified annual report for the Fund.¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" serves as the CPO and general partner of the Fund. "X" is solely owned and managed by "A". Of the fourteen limited partners of the Fund, thirteen are related to "A" and one is a long-time acquaintance.² "X" is also the CPO of "Y". "X" plans to invest most of the assets of the Fund into the "Investee Fund" and the Fund will become a limited partner in the Investee Fund.³ "X" will not accept any additional investors into the Fund. Furthermore, as is the case with the current operation of the Fund, the limited partners will be assessed certain expenses incurred in operating the Investee Fund.⁴ However, the limited partners of the Fund currently do not pay any advisory or management fees to "X" and will not be assessed any such fees by the Investee Fund.

In lieu of preparing and distributing a separate Disclosure Document for the Fund as required by Rule 4.21 and a separate annual report for the Fund as required by Rule 4.22 (d), "X" proposes to distribute the Disclosure Document and the annual report prepared in connection with the Investee Fund to the fourteen limited partners of the Fund. Since most of the capital of the Fund is invested in the Investee Fund, the Investee Fund's activities, interests and performance will approximate those of the Fund. Thus, the Disclosure

Document and annual report of the Investee Fund should provide the limited partners of the Fund with the type of information required by Rules 4.21 and 4.22(d).

Based upon the foregoing representations, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.7(a). Specifically, we note that: (1) “X” is the CPO of both funds and the general partner of the Fund; (2) the only investors in the Fund are either related to or a close acquaintance of the sole owner of “X”; (3) the Fund’s only investment will be in the Investee Fund; and (4) the limited partners of the Fund will receive copies of the Investee Fund’s Disclosure Document and annual report. Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts “X” from Rules 4.21 and 4.22(d) to the extent that “X” would have to provide a Disclosure Document and an annual report to the limited partners of the Fund. This relief, however, is subject to the conditions that: (1) “X” remains the general partner and CPO of the Fund and the CPO of the Investee Fund; and (2) in addition to distributing to the participants in the Fund the Disclosure Document of the Investee Fund, “X” make all disclosures relevant to the Fund to the participants in the Fund.⁵

This letter does not excuse “X” from compliance with any other applicable requirements contained in the Commodity Exchange Act⁶ (“Act”) and the Commission’s regulations issued thereunder. For example, “X” remains subject to all of the antifraud provisions of the Act and the Commission’s regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission’s regulations and all otherwise applicable provisions of Part 4. Moreover, this relief is applicable to “X” solely in connection with its operation of the Fund, as discussed above.

This letter, and the exemptions granted herein, are based upon the representations you have made to us and are subject to compliance with the conditions stated above. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of “X” or the Fund change in any material way from those as represented to us.

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

Very truly yours,

John C. Lawton

Acting Director

¹ While your letter sought a “no-action” position, we are treating it as a request for exemption.

Commission rules referred to herein are found at 17 C.F.R. Ch.1 (1999).

2 The thirteen relatives of “A” are his parents, spouse, two siblings, a brother-in-law, a sister-in-law, an aunt and one uncle of his spouse, two cousins of his spouse, one of his aunts and one of his cousins. The non-relative has been a business acquaintance and personal friend of “A” since 1979.

3 After the investment in the Investee Fund, the Fund’s remaining asset will be a minimal checking account balance.

4 Operating expenses, including brokerage, accounting, and legal fees, for the Fund and the Investee Fund typically have been less than one percent of total assets.

5 For example, “X” must disclose whether it has any conflicts of interest in connection with the Fund that are different than those that “X” discloses in connection with the Investee Fund and whether the fee structure for the Fund is any different than that for the Investee Fund.

6 7 U.S.C. § 1 *et seq.* (1994).