

**CFTC Letter No. 00-31****August 11, 1999****Exemption****Division of Trading & Markets**

Re: Request for Continued Relief from Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11)

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Dear :

This is in response to your letter dated December 18, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated March 16, 1998 and October 5, 1998 and telephone conversations with Division staff. By your correspondence, you request continued exemptive relief on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), from the disclosure, reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11),<sup>1</sup> respectively, in connection with "X" serving as the managing general partner of the "Partnership", if "X" admitted three new partners (the "New Partners") into the Partnership.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Partnership was formed to create a vehicle for the investment purposes of several of "X's" executive employees. The Partnership's participants: (1) are all familiar with "X's" operations; (2) have daily access to all information concerning the Partnership; and (3) are in regular contact, and consult with, "X" concerning the Partnership. Further-more, "X" does not receive compensation from the Partnership, other than its pro rata percentage of any Partnership profits.

By letter dated March 23, 1992, the Division exempted "X" from compliance with Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11) in connection with its operation of the Partnership. This relief was granted subject to the condition that "X" immediately notify the Division in the event the Partnership's operations, including its participant composition, changed in any way from those represented in support of the exemption. By your correspondence, you informed the Commission that "X" had accepted the New Partners into the Partnership, effective January 1, 1998. The New Partners are:

- (1) "A." "A" currently is listed as a principal of "X", where she serves as a vice-president and controller, a position she has held since 1995. In her role as controller, she generally is involved in the review and analysis of all investment activities of the Partnership. For example, "A" reviews all trades

made by the Partnership on a daily basis, as well as other financial matters. She not only has full access to "X's" books and records, but she creates and maintains such records. She has been employed by "X" since May of 1987. She initially joined "X" as a tax accountant and was promoted to vice-president - tax accounting. Moreover, "A" is an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933.

(2) "B." "B" was created as a charitable trust by "C" in the Fall of 1997 under section 501(c)(3) of the Internal Revenue Code. "C" is listed as a principal of "X" and acts as its president and as a director. The corpus of "B" results solely from contributions made by "C", who makes all of the investment decisions for "B" and chooses the charities to benefit from it. "C" is a "qualified eligible participant" ("QEP") as that term is defined in Rule 4.7 and he is an original partner in the Partnership (*i.e.*, he is one of the partners upon which the relief granted by our March 23, 1992 letter was based).

(3) "D". "D" was created as a charitable foundation by "E" in the Fall of 1997 under section 501(c)(3) of the Internal Revenue Code. "E" is listed as a principal of "F", which is registered as a CPO and CTA and which itself is listed as a principal of "X". Additionally, "E" is listed as a principal and registered as an associated person of "G", a registered CPO and CTA. He currently serves as senior trader with "X", a position he has held since 1991. The corpus of "D" results solely from contributions made by "E", who makes all of the investment decisions for "D" and chooses the charities to benefit from it. "E" also is a QEP and an original purchaser in the Partnership.

Based upon the foregoing representations, we believe that it would not be contrary to the public interest or the purposes of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11) to grant the relief you have requested in light of the facts, among others, that each New Partner or the person that has created and makes the investment decisions of each New Partner: (1) is a principal of "X"; (2) has been employed by "X" for at least the past four years; and (3) should have access to the information otherwise required by Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) as a result of his or her employment. Accordingly, under the authority delegated to it by Rule 140.93(a)(1), the Division hereby confirms that "X" may continue to claim the exemption from the disclosure, reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23 (a)(10) and (a)(11) granted by the March 23, 1992 letter in connection with its operation of the Partnership.

We note that this letter relieves "X" solely from compliance with the disclosure, reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11) in connection with its operation of the Partnership. This letter does not excuse "X" from compliance with any other applicable

requirements contained in the Commodity Exchange Act<sup>2</sup> ("Act") or Commission regulations issued thereunder. For example, "X" remains subject to all of the antifraud provisions of the Act and Commission 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 Partnership, as discussed above, and is prospective only. Since the New Partners were admitted prior to this grant of relief, nothing herein should be construed as limiting in any way the Commission's ability to institute enforcement proceedings or other action against "X" for any past violation of the Act or the Commission's regulations.

This letter, and the exemption granted herein, are based upon the representations you have made to us. 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 Partnership, including the composition of the Partnership's participants, change in any material way from those 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,

I. Michael Greenberger

Director

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

2 7 U.S.C. § 1 et seq. (1994).