

CFTC Letter No. 00-61**May 12, 2000****No-Action****Division of Trading & Markets**

Re: Section 4m(1): Request for CTA Registration No-Action
Position for Registered Investment Adviser to a Family of
Canadian Mutual Funds

Dear :

This letter is in response to your letter dated March 21, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your correspondence, you request relief on behalf of "X", an investment adviser registered as such with the Securities and Exchange Commission, from the requirement to register as a commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act ("Act")¹ in connection with "X's" provision of commodity interest trading advice to "Funds Manager", the manager of a family of funds, each of which is established under the laws of, and has its principal place of business in Canada (collectively, the "Funds").²

Based upon the representations made in your correspondence, and subject to the condition set forth below, it appears that granting the requested relief would not be contrary to the public interest or the purposes of Section 4m(1) of the Act. Accordingly, and consistent with the Division's prior practice in this area,³ the Division will not recommend that the Commission commence any enforcement action under Section 4m(1) against "X" based solely upon its failure to register as a CTA in connection with its provision of commodity interest trading advice to the Funds Manager.

The Division's position is based upon your representations, among other things, that: (1) "X" is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940;⁴ (2) the Funds and the Funds Manager are organized outside of the United States; (3) no United States person will participate directly or indirectly in the Funds;⁵ and (4) "X" will comply with all applicable requirements of Rule 4.14(a)(8), including the manner in which it provides commodity interest trading advice to the Funds.

The foregoing position is subject to the condition that, at the Division's request, "X" will provide the Division with information demonstrating its compliance with the terms and conditions of the relief

granted in this letter.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations and to the operational and advertising requirements of Rules 4.30 and 4.41, respectively, which apply to each person who comes within the CTA definition, regardless of registration status.

This letter, and the no-action position issued herein, is based upon the representations that you have made to us and are subject to compliance with the condition set forth above. Any different, changed, or omitted material facts or circumstances might render these positions void. You must notify us immediately in the event that the operations or activities of "X", the Funds, or the Funds Manager change in any material way from those represented to us. Further, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or any other division or office of the Commission.

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 7 U.S.C. § 6m(1) (1994).

2 Schedule A to your letter lists each Fund.

3 *See, e.g.*, CFTC Staff Letter No. 97-96, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,200 (November 18, 1997); CFTC Staff Letter No. 97-05, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,972 (February 12, 1997).

4 15 U.S.C. § 80b-1 *et. seq.* (1994).

5 For the purposes of this letter, a non-United States person is a person defined as such in Rule 4.7 at the time of the sale of an interest in a Fund to such person.