

CFTC Letter No. 01-77

August 9, 2001

No-Action; Interpretation

Division of Trading and Markets

Re: “Y” CFTC Staff Letter 00-83 (July 5, 2000)

Dear :

This is in response to your letter dated July 10, 2001, to the Division of Trading and Markets (the “Division”) of the Commodity Futures Trading Commission (the “Commission, as supplemented by your letter dated July 24, 2001 and by telephone conversations with Division staff. On July 5, 2000, the Division issued the above-referenced letter (“Staff Letter 00-83”) to you as counsel for “V”. By your July 10, 2001 letter, you inform us of the following change in facts.

Subsequent to the issuance of Staff Letter 00-83 and as a result of the merger of “W” with and into a subsidiary of “X” (completed November 3, 2000), the name of “V” has been changed to “Y” and the name of “U” has been changed to “Z”.

Staff Letter 00-83 contemplated that “V” (now known as “Y”) would be the sole advisor of the New Puerto Rico Funds (as defined in the letter). It is now intended that one or more of the New Puerto Rico Funds will employ additional trading advisors besides “Y” (each an “Additional Advisor”). Because the Additional Advisors have not been selected yet, you are unable to provide their names at this time. You represent, however, that each Additional Advisor will be either (a) a commodity trading advisor (“CTA”) registered as such pursuant to Section 4m(1) of the Commodity Exchange Act (the “Act”); or (b) a person registered as an investment advisor under the Investment Advisers Act of 1940 (the “IAA”) or excluded from the definition of “investment adviser” pursuant to the provisions of Section 202(a)(2) and Section 202(a)(11) of the IAA. You represent that the proposed New Puerto Rico Funds that will have Additional Advisors will be operated in all other respects in accordance with the requirements set forth in Staff Letter 00-83.

We hereby confirm the positions taken by the Division in Staff Letter 00-83, substituting “Y” for “V” and substituting “Z” for “S”.[\[1\]](#) We also confirm the applicability of the requirements and conditions set forth in Staff Letter 00-83, as modified to permit Additional Advisors to the New Puerto Rico Funds in the manner set forth in your July 2001 correspondence.

The positions taken in Staff Letter 00-83, as confirmed by this letter, do not excuse “Y”, “Z”, “T” or any of their respective directors, officers or employees from compliance with any other applicable requirements contained in the Act or the Commission’s regulations thereunder, including without limitation, all antifraud provisions of the Act and the Commission’s regulations, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations. Further, the

relief provided herein is applicable to “Y” solely in connection with operating and furnishing commodity interest trading advice to the Existing Puerto Rico Funds (as defined in Staff Letter 00-83) and any New Puerto Rico Funds, and to “T” in connection with operating and furnishing commodity interest trading advice to the Existing Puerto Rico Funds.

This letter is based on the representations made to us and is subject to compliance with the condition stated above. Any different, changed or omitted facts or circumstances might render the no-action positions taken herein void. You must notify us immediately in the event that the operations or activities of “Y”, “T”, or any of the Existing Puerto Rico Funds change in any respect from those as represented to us (including the commencement of any New Puerto Rico Funds).

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,

John C. Lawton
Acting Director

[\[1\]](#) This is consistent with prior positions taken by the Division with respect to registered investment advisers unable to claim relief under Rule 4.14(a)(8) solely by reason of advising a foreign investment company that would be operated in compliance with Rule 4.5(c)(2). *See, e.g.* CFTC Staff Letter No. 00-61, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,141 (May 12, 2000); CFTC Staff Letter No. 97-05, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,972 (February 12, 1997).