

CFTC Letter No. 02-100**August 21, 2002****Interpretation****Division of Clearing and Intermediary Oversight**Re: Section 4m(1); Request for Relief from Commodity Trading Advisor Registration

Dear :

This is in response to your letter dated May 23, 2002, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"),^[1] as supplemented by e-mails dated June 7 and July 9, 2002, and telephone conversations with Division staff. By your correspondence, you request that the Division not recommend that the Commission commence any enforcement action against "X" based upon "X's" failure to register as a commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act (the "Act"),^[2] in connection with its role as a trading advisor of a commodity pool (the "Fund")^[3] to be operated by "Y", a registered commodity pool operator ("CPO") and CTA.^[4]

Based upon your representations, we understand the facts to be as follows. "X" is a Bermuda corporation that provides advisory services to non-U.S. investment funds that are sold exclusively to non-U.S. persons. The principals of "Y" have known "X's" sole shareholder for six years and have reviewed his simulated trading and investment results. "Y" intends to establish the Fund so that "X" actually manages a portfolio for "Y" and "Y" can further evaluate "X's" trading performance. "Y" will be the managing member and CPO of the Fund. The other members of the Fund will be limited to officers of "Y" with the title of Vice President and above who: (1) have a minimum of three years experience at "Y"; (2) have at least five years of experience in the trading of commodity interests; and (3) are "qualified eligible persons" ("QEPs") as defined in Commission Rule 4.7.^[5] In addition, "X" will not solicit any participants for the Fund.

Based upon the foregoing, the Division will not recommend that the Commission commence any enforcement action against "X" based upon "X's" failure to register as a CTA in connection with its activities on behalf of the Fund. However, this relief is subject to the conditions that: (1) "Y" remains the managing member and CPO of the Fund; and (2) "Y" remains registered as a CPO and a CTA.

The position taken in this letter is based upon the representations you have made to the Division. Any different, changed, or omitted facts or conditions might render this position void. You must notify the Division immediately in the event the operations or activities of "X", "Y", or the Fund change in any material way from those represented to the Division.

The relief issued by this letter does not excuse "X" from compliance with any other applicable

requirements contained in the Act or the Commission's regulations issued thereunder. For example, it remains subject to all 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 to all applicable provisions of Part 4. Moreover, this letter is applicable to “X” solely with respect to advisory activities on behalf of the Fund.

The position taken in this letter is that of the Division only and does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe
Director

^[1] As of July 1, 2002, a reorganization of Commission staff became effective. The responsibility for addressing requests for interpretative, no-action, and exemptive letters (including letters such as your May 23, 2002, letter) is now with the Division of Clearing and Intermediary Oversight. Accordingly, for purposes of this letter, the term “Division” includes the Division of Clearing and Intermediary Oversight and its predecessor, the Division of Trading and Markets, as the context requires.

^[2] 7 U.S.C. § 6m(1) (2000).

^[3] The Fund has yet to be formed.

^[4] You represent both “X” and “Y” in connection with making the request for relief.

^[5] Commission rules cited herein are found at 17 C.F.R. Ch. 1 (2002).