

CFTC letter No. 03-20

April 17, 2003

No-Action

Division of Clearing and Intermediary Oversight

Re: Request for Relief from Commission's Temporary No-Action Relief

Dear :

This is in response to your letter dated February 3, 2003 to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by emails dated March 4, 2003 and March 21, 2003 from "A" of your office, and telephone conversations with Division staff (collectively, the "correspondence"). By your correspondence, you request on behalf of your client "W", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), that the Division confirm that it will not recommend that the Commission commence any enforcement action against "W" in connection with its operation of "X", "Y" and "Z" in the manner set forth in your correspondence.

Preliminarily, the Division notes that on March 17, 2003, the Commission published proposed amendments to Part 4 of its regulations (the "Proposed Rules"),^[1] which concerns the activities and operations of CPOs and CTAs. In the same Federal Register release announcing the Proposed Rules, the Commission included temporary registration no-action relief for certain CPOs and CTAs (the "No-Action Relief"). Specifically, the Commission stated that it would not commence any enforcement action against a CPO or CTA that has filed a Claim for Registration No-Action Relief for failing to register if the pools operated and/or advised by the CPO or CTA met certain criteria. The No-Action Relief provided exemption from registration for a CPO or CTA that manages or advises pools for which the level of commodity interest trading remains within certain criteria and where participation is limited to certain sophisticated investors.^[2]

Based upon the representations made in your correspondence, we understand the facts to be as follows. "W" is the general partner and investment advisor of "X", "Y" and "Z". "X" trades commodity interests, and "W" has registered as a CPO and CTA in connection with its operation of that fund. Currently, "Y" and "Z" trade exclusively securities. "W", however, is interested in having "Y" and "Z" trade commodity interests, too.

"W" would like to operate "Y" and "Z" in a manner consistent with the No- Action Relief. However, "W" cannot claim the No-Action Relief as issued. This is because: (1) "W" is already registered as a CPO and CTA in connection with its operation of "X", and the No-Action Relief is intended for an unregistered person seeking exemption from registering; (2) the trading strategies employed by "W" in operating and advising "X" are not consistent with the No-Action Relief; and (3) "W" believes that changing those strategies might disadvantage "X's" participants. Accordingly, "W" seeks to remain

registered as a CPO and CTA in connection with its operation of “X”, but to operate “Y” and “Z” as if “W” were an unregistered CPO or CTA claiming the No-Action Relief.

Based upon the representations contained in your letter, the Division believes that granting “W’s” request would not be contrary to the public interest and the purposes of the Commission’s No-Action Relief. This is because, pursuant to Proposed Rule 4.13(e)(2), if adopted, “W” would be entitled to operate “X” as a registered CPO or CTA and would still be able to operate “Y” and “Z” as if “W” were an unregistered CPO or CTA.^[3] Accordingly, pending final action on the Proposed Rules, the Division will not recommend that the Commission commence any enforcement action against “W” for failure to operate “Y” and “Z” in accordance with the Part 4 requirements applicable to registered CPOs and CTAs, provided it operates these funds in accordance with the criteria of the No-Action Relief.^[4]

The no-action position taken in this letter shall cease when the Commission takes final action on the Proposed Rules. If the Proposed Rules are not adopted, or are adopted with provisions that would be contrary to this letter, then this letter will cease to be effective with regard to “W’s” operation of “Y” and “Z”. Also, this no-action position does not excuse “W” from compliance with any other applicable requirements contained in the Commodity Exchange Act (the “Act”),^[5] or in the Commission’s regulations issued thereunder. For example, “W” remains subject to all antifraud provisions of the Act^[6] and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations and to all other applicable provisions of Part 4. Further, this letter is applicable to “W” solely in connection with the operation of “Y”, “Z” and “X”.

This letter is based upon the representations you have made to the Division. Any different, changed or omitted facts or circumstances might render the position taken herein void. You must notify the Division immediately in the event the activities or operations of “W”, “X”, “Y” or “Z” change in any material way from those represented to the Division. Lastly, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact Peter Sanchez, an attorney on my staff, at (202) 418-5432.

Very truly yours,

Jane Kang Thorpe
Director

^[1] See, Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors, 68 Fed. Reg. 12622 (March 17, 2003). See also, Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of

Certain Pools and CTAs Advising Such Pools. 67 Fed. Reg. 68785 (Nov. 13, 2002).

^[2] See, 68 Fed. Reg. 12622, 12630 – 32.

^[3] See, 68 Fed. Reg. 12622, 12636.

^[4] In the past the Division has provided registration relief on a case-by-case basis to persons whose facts and circumstances merited relief from the registration requirements applicable to CPOs and CTAs but who did not meet the requirements of Rule 4.5 or Section 4(m)(1) of the CEA. The Commission has directed the Division “to continue to issue such relief in appropriate cases.” 68 Fed. Reg. 12622, 12633.

^[5] 7 U.S.C. §1 *et seq.* (2000).^[1]

⁶ See, *e.g.*, Sections 4b and 4o, 7 U.S.C §§6b and 6o (2000).