

**CFTC letter No. 03-32****August 13, 2003****Exemption****Division of Clearing and Intermediary Oversight**Re: Request for Confirmation of Exemption from Rule 4.7

Dear :

This is in response to your letter dated May 2, 2003, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request confirmation that the relief from Rule 4.7<sup>[1]</sup> that the Division previously issued to "X", a registered commodity pool operator ("CPO") and the CPO of "Master Fund", continues to apply notwithstanding certain changed facts.<sup>[2]</sup>

Based upon the representations made in your correspondence, we understand the facts to be as follows. In addition to the Master Fund, "X" serves as the CPO of "Feeder Fund I", and an affiliate of "X", "Y", with the same ownership as "X", serves as the CPO of "Feeder Fund II" (collectively with Feeder Fund I, the "Feeder Funds"). The Feeder Funds (and other feeder funds that may be formed by "X" or "Y" at a future date for which "X" or "Y" will be the sole CPOs) were the only investors in the Master Fund at the time the original no-action relief was granted. "X" has previously claimed relief pursuant to Rule 4.7 with respect to the Master Fund and Feeder Fund I and "Y" has claimed relief with respect to Feeder Fund II pursuant to the same rule. By the 2002 Staff Letter, the Division exempted "X" from the Rules 4.21 and 4.22, which would require it to provide reports to itself in connection with its operation of the Master Fund and Feeder Funds. That exemption was based, among other things, on the conditions that (1) "X" limits participation in the Master Fund to the Feeder Funds and any fund for which either "X" or "Y" is the CPO; and (2) that the Annual Reports of the Feeder Funds contain financial statements that include, among other information, the fees associated with the operation of the Master Fund expressed in dollars and a detailed schedule of the investments made by the Master Fund. You are now writing to advise us of certain changed facts.

Due to regulatory limitations under the Employee Retirement Income Security Act of 1974 on the percentage of pension plan investors that are allowed to participate in Feeder Fund I, two related investors (the "Investors") in Feeder Fund I transferred their investments to the Master Fund. "X" provided the disclosure and periodic and annual reports of Feeder Fund I, required by 4.7(b)(1), 4.7(b)(2) and 4.7(b)(3), to the two related shareholders during the time they were investors in Feeder Fund I. Since becoming investors in the Master Fund, "X" has provided the Investors with these same Rule 4.7 disclosures and periodic and annual financial reports for the Master Fund. "X" seeks confirmation that it may continue to rely on the 2002 Staff Letter, which granted it relief, if it continues to allow the Investors to invest in the Master Fund and it provides them with periodic and annual financial reports for

the Master Fund in accordance with the requirements of Rules 4.7(b)(1), 4.7(b)(2) and 4.7(b)(3).

Based upon the representations contained in your letter, the Division believes that allowing “X” to rely on the previously-granted exemption would not be contrary to the public interest and the purposes of Rules 4.7(b)(1), 4.7(b)(2) and 4.7(b)(3). Accordingly, by the authority delegated to it under Rule 140.93 (a)(1), the Division confirms that “X” may continue to rely on the previous exemption issued in the 2002 Staff Letter from the disclosure and the periodic and annual reporting requirements of Rules 4.7(b)(1), 4.7(b)(2) and 4.7(b)(3) in connection with “X’s” operation of the Master Fund. This relief is subject to the conditions that: (1) “X” comply with all the conditions set forth in the 2002 Staff Letter, except that it may allow the Investors to participate in the Master Fund; and (2) “X” continues to provide periodic and annual financial reports to the Investors in accordance with the requirements of Rules 4.7(b)(2) and 4.7(b)(3).

This letter does not excuse “X” from compliance with any other applicable requirements contained in the Commodity Exchange Act (the “Act”),<sup>[3]</sup> or in the Commission’s regulations issued thereunder. For example, “X” remains subject to all antifraud provisions of the Act<sup>[4]</sup> and the Commission’s rules, 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. Finally, this letter is applicable to “X” solely in connection with its operation of the Master Fund.

This letter, including the exemption confirmation provided herein, is based upon the representations you have made to the Division. Any different, changed or omitted material facts or circumstances might render this confirmation void. You must notify the Division immediately in the event the activities or operations of “X”, “Y”, the Master Fund or the Feeder Funds change in any material way from those represented to the Division.

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

Very truly yours,

Jane Kang Thorpe  
Director

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<sup>[1]</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (2003).

<sup>[2]</sup> The Division issued relief to “X” in Staff Letter 02-102 (August 29, 2002) (the “2002 Staff Letter”).

<sup>[3]</sup> 7 U.S.C. §1 *et seq.* (2000)

<sup>[4]</sup> *See, e.g., 7 U.S.C §§6b and 6o.*