

**CFTC letter No. 04-08**

**January 22, 2004**

**No-Action**

**Division of Clearing and Intermediary Oversight**

Re: Sections 4m(1) and 4n(1) of the Act -- Request for relief from CPO and CTA registration requirements for "X"

Dear :

This is in response to your letter dated May 23, 2003 to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by letter dated November 6, 2003 from "A", Senior Investment Manager, "X". By this correspondence, you request on behalf of "X" that the Division will not recommend that the Commission commence any enforcement action against "X" or any of its officers, directors, principals, employees or agents for failure to register as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") under Sections 4m(1) and 4n(1) of the Commodity Exchange Act (the "Act").  
[\[1\]](#)

Based upon the representations you made in this correspondence, the Division understands the facts to be as follows: "X" is an entity organized and existing under the laws of Australia. "X" intends to operate solely from Australia as the manager and trustee of the Fund. The Fund is organized as a trust under Australian law and is domiciled in the state of New South Wales. The Fund intends to trade on, among other markets, markets regulated by the Commission.

Commission staff historically has taken the position that a person does not need to register as a CPO or CTA with the Commission where: (1) it is located outside the territorial U.S.; (2) none of the participants in any pool it operates is a United States person; and (3) no funds or other capital are contributed to a pool from United States sources.<sup>[2]</sup> You have represented that these three factors are present in the instant case. You have further represented that: (1) "X" has not and will not establish a location in the United States; (2) no person affiliated with the Fund has undertaken or will undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participations from United States persons; and (3) no marketing activities in connection with the Fund will be conducted within the United States.

Accordingly, the Division will not recommend that the Commission commence any enforcement action against "X" any of its officers, directors, principals, employees or agents based solely upon its failure to comply with Sections 4m(1) and 4n of the Act in connection with its operation of the Fund.

This letter does not excuse "X" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, "X" remains subject to all

applicable antifraud provisions of the Act and the regulations and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations. Moreover, this letter is applicable to “X” solely in connection with its operation of the Fund.

This letter, and the no-action position taken herein, is based upon the representations that have been made to the Division. Any different, changed, or omitted material facts or circumstances might render this letter void. You must notify the Division immediately in the event the operations or activities of “X” or the Fund 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 office or other division of the Commission.

If you have any questions concerning this correspondence, please contact Barbara S. Gold, Associate Director, at (202) 418-5450.

Very truly yours,

James L. Carley  
Director

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<sup>[1]</sup> 7 U.S.C. §§ 6m(1) and 6n(1) (2000).

<sup>[2]</sup> *See, e.g.*, CFTC Interpretative Letter No. 01-62, [2000-02 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,575 (June 13, 2001); CFTC Interpretative Letter No. 97-03, [1997-98 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,970 (January 15, 1997).