

**CFTC letter No. 05-12**

**June 3, 2005**

**Exemption**

**Division of Clearing and Intermediary Oversight**

Re: Request for Relief Under Rule 4.13(a)(2)

Dear :

This is in response to your letter dated January 26, 2004 to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by subsequent emails to, and telephone conversations with, Division staff (collectively, the "correspondence").<sup>[1]</sup> By the correspondence, you requested relief from the requirement of Rule 4.13(a)(2) that, for a commodity pool operator ("CPO") to be eligible to claim the CPO registration exemption available under that rule, none of the pools that the CPO operates may have more than 15 participants at any time.<sup>[2]</sup>

Based upon the representations made in the correspondence, we understand the facts to be as follows. "X" operates two commodity pools pursuant to the CPO registration exemption of Rule 4.13(a)(2) and has filed a notice of exemption for each pool. By your request, you seek to increase participation in these pools beyond 15 participants while continuing to operate under the CPO registration exemption of Rule 4.13(a)(2).

On August 8, 2003, the Commission adopted various amendments to Rule 4.13(a)(2), thereby making that exemption from the CPO registration requirement available to more persons.<sup>[3]</sup> In particular, the Commission expanded the range of persons that could be excluded from the calculation of the number of pool participants for purposes of determining a CPO's eligibility for the registration exemption of Rule 4.13(a)(2). The Commission did not, however, increase the number of persons permitted to participate in a pool operating pursuant to that exemption.

Accordingly, in light of the Commission's recent action, the Division does not believe that it is appropriate to grant your request for relief, and your request is hereby denied. The Division notes as well that, unless you are eligible to claim one of the other CPO registration exemptions under Rule 4.13, you may not lawfully operate a pool with more than 15 participants, nor may you accept more than \$400,000 in total gross capital contributions in the aggregate for all the pools you operate, unless you are properly registered with the Commission as a CPO.

If you have any questions concerning this correspondence, please contact R. Stephen Painter Jr., an attorney on my staff, at (202) 418-5416.

Very truly yours,

James L. Carley  
Director

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<sup>[1]</sup> On the following day, January 27, 2004, you filed an application for registration as a commodity trading advisor on behalf of “Y”, the previous name of “X”. Within a month of that, you filed an application for registration as an associated person. Following an oral hearing, the National Futures Association denied both applications on February 1, 2005, and the time within which to appeal those denials to the Commission has passed. The Division determined to hold its response to your letter in abeyance pending the consideration of the registration applications.

<sup>[2]</sup> Rule 4.13(a)(2) also requires that total gross capital contributions for all pools operated by the CPO not exceed \$400,000 in the aggregate. The gross capital contribution requirement is not at issue here.

Commission rules referred to herein may be found at [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/17cfrv1\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/17cfrv1_03.html).

<sup>[3]</sup> The proposing and adopting *Federal Register* releases may be found on the Commission’s website: <http://www.cftc.gov/foia/fedreg03/foi030317b.htm> and <http://www.cftc.gov/foia/fedreg03/foi030808a.htm>, respectively.