



COMMODITY FUTURES TRADING COMMISSION

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93-100

DIVISION OF
TRADING AND MARKETS

Re: Relief from CPO/CTA Registration

Dear :

This is in response to your letter dated August 12, 1993, as supplemented by telephone conversations with Division staff, which we have treated as a request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief to the general partners of the "Partnership" from regulation as commodity pool operators ("CPOs") and to "V" from registration as a commodity trading advisor ("CTA").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnership is a private investment limited partnership formed under the laws of the state of Delaware. The Partnership was established by "W", a New York corporation organized for the purpose of providing income tax planning, investment advice, financial planning, philanthropic administration and other miscellaneous services to Family Members (defined below).^{1/} Partnership interests are held by the "descendants of "A", their spouses, trusts and other related entities" (the "Family Members").^{2/} The Partnership currently has four general partners, "B", "C", "D" and "E", all of whom are Family Members (the "General Partners"). Additionally, the Partnership has 255 limited partners, each of whom also is a Family Member.

^{1/} "X" is wholly owned by "Y", a North Carolina corporation which is a privately held company beneficially owned solely by members of the Family.

^{2/} A detailed description of the limited partners' interests is set forth in an application (the "Application") to the Securities and Exchange Commission ("SEC") seeking an order exempting the Partnership, among others, from the provisions of the Investment Company Act of 1940 (the "1940 Act"). The Application is found at 53 Fed. Reg. 37901 (September 28, 1988) and is incorporated herein by reference.

By order dated October 21, 1988, the SEC granted to the Partnership, among others, an exemption from the provisions of the 1940 Act based on the fact that the Partnership is owned and controlled by the Family Members. Pursuant to the SEC's exemptive order, the Partnership agreed to the following conditions, among others: (1) to allow only the Family Members to serve as general partners of the Partnership; (2) to deny admission to any new investors who are not Family Members; (3) to disallow any transfer of interest in the Partnership to any person or entity who is not a Family Member; and (4) to furnish to each investor both quarterly and annual financial statements of "W" which will be audited by an independent Certified Public Accountant.

The Partnership has primarily been engaged in investments in securities. It now desires to hedge its securities portfolio positions with commodity futures and commodity option contracts. In this regard, you represent that (1) the Partnership's commodity interest trading will be solely incidental to its business of investing in securities; (2) the Partnership will enter into commodity futures or commodity options contracts solely for hedging purposes; and (3) the Partnership will commit no more than five percent of the fair market value of its assets to establish its commodity interest positions.

"V", a registered investment adviser under the 1940 Act, serves as investment adviser to the Partnership.^{3/} "V" is a wholly-owned subsidiary of "X", a Delaware corporation, the majority of whose stock is held by the Family Members.^{4/} The remaining outstanding shares of "X"'s stock are traded over the counter. You represent that "V" does not and will not hold itself out to the public as a CTA and that its furnishing of commodity interest trading advice to the Partnership will be solely incidental to its business of providing securities advice to the Partnership.

Based upon the foregoing representations, the Division will not recommend that the Commission take enforcement action against the General Partners if they fail to register as CPOs in connection with their operation of the Partnership, or against "V" if it fails to register as a CTA in connection with its activities with respect to the Partnership.

^{3/} "V" also serves as investment adviser to other private investors, institutional investor accounts and investment companies.

^{4/} Specifically, as of June 30, 1993 the Family Members owned approximately 50.4% of the combined total of outstanding common and preferred stock of "X". No other investor has an ownership interest in "X" which approaches that of the Family Members.

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The relief issued by this letter does not excuse the General Partners or "V" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of Section 40 of the Commodity Exchange Act, as amended (the "Act")^{2/}, 7 U.S.C. §60, 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.

This letter is based on the representations you have made to us and is strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations of the Partnership or "V", including their membership composition, change in any way from those represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission.

If you have any questions regarding this letter, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{2/} 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992)