

COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581 (202) 254 - 8955 (202) 254 - 8010 Facsimile

93-165

DIVISION OF TRADING AND MARKETS

September 27, 1993

Re: Request for Relief from the Disclosures Required with Respect to Principals under Rule 4.21

Dear :

KK Sections

This is in response to your letter dated July 13, 1993, as supplemented by telephone conversations with Division staff in which, on behalf of "X", a registered commodity pool operator ("CPO"), you request relief from certain disclosure requirements of Rule $4.21^{1/2}$ in connection with "X"'s operation of the "Pool". $^{2/2}$

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The "General Partner" is the sole general partner of "X". "Y", a registered CPO and commodity trading advisor, owns one-half of the limited partnership shares of "X" strictly for passive investment purposes and, as a more than ten percent equity owner, is a principal of "X".

"A", the president, director and sole shareholder of the General Partner, developed "X"'s trading approach and has had and continues to have sole responsibility for "X"'s trading and operation. "Y" has not been nor will it be in any way involved in the trading or other operations of "X". Specifically, you

Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

In your letter, you also advise the Division that "X" is withdrawing the notice of claim for exemption filed pursuant to Rule 4.7 in connection with the Pool. Our records will indicate such withdrawal as of July 14, 1993, the date of receipt of your letter.

You represent that "X"'s limited partnership agreement grants to the limited partners of "X" the right to remove the General Partner in certain defined circumstances and requires the (continued...)

represent that the General Partner will exercise its trading and operational authority "without supervision, review or direction from "Y"."

Rule 4.21 requires the Disclosure Document a CPO must deliver for each pool it operates or intends to operate to disclose, among other things, various information concerning the pool's CPO and the CPO's principals. For example, the Disclosure Document must contain the name, five year business background and three year past performance record of each principal and information as to whether any of the principals was subject to any administrative, civil or criminal actions within the five years preceding the date of the Disclosure Document or has any actual or potential conflict of interest regarding any aspect of the pool.

Based upon your representations that "Y"'s investment as a limited partner in "X" is a passive investment and that "Y" is in no way involved in any aspect of "X"'s daily activities, the Division has determined that it will not recommend that the Commission take any enforcement action against "X" if the Pool's Disclosure Document does not include the information with respect to "Y" as a principal of "X", the Pool's CPO otherwise required by Rule 4.21.

This letter is based upon the representations provided to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations or activities of "X" or "Y" change in any way from those represented to us.

We note that this letter relieves "X" solely from certain disclosure requirements of Rule 4.21 as set forth above and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. 1992), or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. § 60 (1988), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.

 $[\]underline{3}$ (...continued)

limited partners' consent if the General Partner proposes certain fundamental changes in "X"'s operations and you note that such rights are customarily granted to limited partners in partnership agreements for similar investment vehicles.

Page 3

Further, 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 me or France M.T. Maca, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin Chief Counsel