



COMMODITY FUTURES TRADING COMMISSION
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93-111

**DIVISION OF
TRADING AND MARKETS**

November 29, 1993

Re: Request for CPO Registration Relief

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated September 29, 1993, wherein you request that the Division not recommend that the Commission take any enforcement action against "X" for failure to register as a commodity pool operator ("CPO") in connection with its serving as the general partner of the "Fund".

Based upon your letter, as supplemented, we understand the facts to be as follows. The general partner of the Fund is "X", a California limited partnership. The only general partner of "X" is "Y", a registered CPO. "A" and "B" are registered associated persons ("APs") and listed principals of "Y", are the only principals, officers and employees of "Y" and are the only limited partners of "X". The only business of "X" and "Y" is operating the Fund.

Inasmuch as "X" will be the general partner of the Fund, it will be serving as the CPO of the Fund and, absent relief, must register as a CPO.^{1/} In support of the instant request, by

^{1/} You represent that "X" serves as the general partner of the Fund for tax reasons. Specifically, you state that:

The revenues of the general partner of the [Fund] are based on the capital appreciation of the general partner's capital account, a fixed quarterly management fee (one-quarter of one percent of the assets of the [Fund] per fiscal quarter) and an incentive allocation that complies with Rule 205-3 under the Investment Advisers Act of 1940. Each separate source of revenue is characterized differently for tax purposes.

(continued...)

letter dated September 23, 1993, "Y" provided the Division with a written acknowledgment whereby it accepts joint and several liability for any violation of the Commodity Exchange Act (the "Act"), 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992), or Commission regulations thereunder committed by "X" in connection with its serving as a general partner and CPO of the Fund. In addition, by letter dated November 1, 1993, "X" provided the Division with a written acknowledgment whereby it accepts joint and several liability for any violation of the Act or Commission regulations committed thereunder in connection with "Y"'s activities as a general partner and CPO of the Fund.

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" for its failure to register as a CPO in connection with its serving as the general partner of the Fund. This position is, however, subject to the conditions that "X" in its capacity as the general partner of the Fund will not exercise discretion, supervision or control over, or take part in: (1) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Fund, or (2) the investment, use or other disposition of funds or property of the Fund but, rather, that "Y" and Messrs. "A" and "B" as APs of "Y" will engage in such activities.

We note that "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o (1988 & Supp. IV 1992), and to all otherwise applicable provisions of the Act and the Commission's regulations thereunder, e.g., the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations and Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition, regardless of registration status. Moreover, the position which we have taken herein is solely applicable to "X" in connection with its serving as a CPO of the Fund.

^{1/} (...continued)

In addition, Messrs. "A" and "B" share in each of these revenue sources in different proportions. In order to accommodate these differing proportions and retain the appropriate tax characterization for each revenue source, it was necessary to have a partnership as the general partner of the [Fund]. Messrs. "A" and "B" were more comfortable if a corporation (that is, ["Y"]) conducted all activities of ["X"] as its general partner.

Page 3

The position taken in this letter is based upon the representations that have been made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities of "X" or "Y" change in any way from those as represented to us.

Further, this letter represents the position of the Division of Trading and Markets only. It does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning this correspondence please contact me or Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel