

**COMMODITY FUTURES TRADING COMMISSION**

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DIVISION OF  
TRADING AND MARKETS

June 24, 1993

Re: Relief from CPO Registration

Dear :

This in response to your letter dated May 12, 1993, as supplemented by letters dated May 19, May 24 and May 27, 1993 and telephone conversations with Division staff, which we have treated as a request that the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission") provide relief to "X" from registration as a commodity pool operator ("CPO") in connection with its activities with respect to the "Fund".

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. In September, 1982 you began the "Old Fund" in order to fulfill the wishes of certain of your family members and friends that you trade their funds "in tandem with" your own pension fund. In July 1987, in response to the capital growth of the Old Fund and the desire of several more of your friends to have you trade their funds, you dissolved the Old Fund, established the Fund and formed "X", a registered CPO and commodity trading advisor ("CTA"), which acts as the CPO and CTA of the Fund. In general, you contend that the cost of maintaining the Fund in accordance with Commission regulations, including, among other things, the cost of certified annual reports, is onerous and unnecessary given the close relationship among and the sophistication of the Fund's participants.

The Fund currently consists of a total of twelve partners. "X", of which you are the sole owner, is the Fund's only general partner. The eleven limited partners, with the exception of the profit-sharing plan of your family's business (the "Trust"), are either your family members or persons who have been close family friends for twenty years or more.<sup>1/</sup> You represent that all of the Fund's individual investors are accredited investors as that

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<sup>1/</sup> You represent that you (through "X") and your family have contributed over 60% of the Fund's capital.

term is defined in Rule 501(a) of Regulation D of the Securities Act of 1933. You further represent that the Fund will not accept any new investors, with the possible exception of your father's grandchildren.<sup>2/</sup>

As of the date of your letter, the Trust had twenty-eight participants and had assets of approximately \$2.5 million. Approximately 10% of these assets are currently invested in the Fund. "Y", the only non-family partner in your family's printing business, is the Trust's trustee. "Y" owns approximately 65% of the Trust's capital and is also an individual investor in the Fund. You state that over 95% of the Trust's total assets are owned by ten Trust participants who have been personal friends of yours for twenty or more years. Moreover, you represent that the portion of Fund investments made by the Trust on behalf of the eighteen Trust participants who are not your close friends varies in amount between approximately \$6 and a maximum of approximately \$2000 (based on a 10% investment by the Trust in the Fund).<sup>3/</sup>

Based upon our review of the representations made in your letter, as supplemented, we will not recommend that the Commission take any enforcement action against "X" if it fails to continue its registration as a CPO of the Fund. This relief is, however, subject to the conditions that: (1) the Fund does not accept any new participants except for your father's grandchildren; and (2) the Trust makes no further capital contributions to the Fund. Furthermore, "X" is hereby granted an exemption from filing a certified Annual Report with the Commission for the period ending on the date "X" ceases operation as a CPO, provided that "X": (1) receives and submits to the Division an original, signed statement from each limited partner consenting to waive receipt of a certified Annual Report upon termination of "X"'s CPO status; (2) files with the Commission and distributes to each participant of the Fund an unaudited Annual Report for the period ending on the effective date of "X"'s withdrawal as a CPO; and (3) complies with all other requirements of Rule 4.22 for the period ending on the effective date of "X"'s withdrawal as a CPO.

This letter does not excuse the Fund or "X" from compliance with any applicable requirements contained in the Commodity

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<sup>2/</sup> You note that your father may wish to transfer a portion of his units of participation in the Fund to his grandchildren for estate planning purposes.

<sup>3/</sup> The actual percentage of the Trust's assets invested in the Fund will, of course, fluctuate with the performance of the Fund and the Trust's other investments. "Y" as trustee of the Trust has control over how the Trust's assets will be invested.

Exchange Act, as amended<sup>4/</sup> (the "Act") or the Commission's regulations thereunder. For example, each remains subject to the anti-fraud provisions of section 40 of the Act, 7 U.S.C. §60 (1988), and to the reporting requirements of Parts 15, 18 and 19 of the Commission's regulations.<sup>5/</sup> Further, the relief issued by this letter is applicable to "X" solely in connection with its serving as CPO of the Fund. We note, additionally, that we have not addressed the issue nor made any determination with respect to what obligations, if any, the Trust may have under the Act.

This letter is based on the representations you have made to us and is subject to the conditions stated above. 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 Fund, including 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

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<sup>4/</sup> 7 U.S.C. § 1 et seq. (1988), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (1992).

<sup>5/</sup> "X" also remains subject to the operating requirements of Rule 4.20 and the advertising requirements of Rule 4.41, both of which apply to each person who comes within the CPO definition, regardless of whether that person must register as a CPO. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992).