



COMMODITY FUTURES TRADING COMMISSION

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93-98

**DIVISION OF
TRADING AND MARKETS**

September 28, 1993

Re: Request for Relief from CPO and CTA
Registration Requirements

Dear :

This is in response to your letter dated August 5, 1993, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your letter, as supplemented, you request on behalf of your clients, "X" and ("Advisor"), that the Division confirm that the commodity pool operator ("CPO") and commodity trading advisor ("CTA") registration no-action positions issued by the Division to "X" and the Advisor, respectively, by letter dated October 29, 1992 (addressed to "B", of your office), in connection with the operation of (the "Fund"), remain in effect notwithstanding a factual change, namely that the Fund has added "A" as an additional director.

Initially, the Division notes your representation that all facts and representations delineated in the Division's October 29, 1992, letter are incorporated herein by reference, including the representations made in "B"'s incoming correspondence, dated October 2, 1992.^{1/} By your August 5, 1993 letter, as supplemented, you have informed us that the Fund has added "A" as an additional director. "A" is a United States citizen and resident. He also is registered with the Commission as an associated person ("AP"), and listed as a principal, of "Y", a registered CTA unaffiliated with "X", the Advisor or the Fund.

In order to protect members of the investing public, the Commodity Exchange Act ("Act")^{2/} contemplates the identification and qualification as to fitness of all persons who deal with customers or customer funds. In this regard, the Division

^{1/} Such representations were made during the course of telephone conversations with Division staff.

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

generally has interpreted the CPO registration requirement to apply to each United States person^{3/} who is a director of a commodity pool. In the instant case, "A", as a registered AP of a CTA, has undergone fitness and qualification examinations. In addition, in support of your request, you have represented that "A" will become registered as an AP of "C", a registered commodity pool operator ("CPO"), who also owns all of the shares of "X" and the Advisor.

Based upon on the foregoing representations, and subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against "A" for his failure to register as a CPO of the Fund in connection with his serving as a director of the Fund. In addition, the Division confirms that the October 29, 1992, letter, wherein the Division granted "X" and the Advisor a no-action position for failure to register as a CPO and CTA, respectively, in connection with the operation of the Fund remains applicable. This no-action position and our confirmation of the no-action positions issued by the Division on October 29, 1992, are, however, subject to the condition that "A" becomes registered as an AP of "C".

The relief issued by this letter does not excuse "A", "X" or the Advisor from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, each remains subject to the antifraud provisions of Section 40 of the Act,^{4/} 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. Further, the relief issued by this letter is applicable to "X" and the Advisor solely in connection with their serving as the CPO and CTA, respectively, of the Fund, and to "A" solely in connection with his serving as a director of the Fund.

This letter is based on the representations you have made to us and is subject to compliance with the condition set forth 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 its shareholder and board of directors composition, change in any way from those as represented to us.

^{3/} The definition of "United States person" set forth in Interpretative Letter No. 92-3 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992) applies for purposes of this correspondence.

^{4/} 7 U.S.C. § 60 (1988).

Page 3

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 Tina Paraskevas Shea, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel