



COMMODITY FUTURES TRADING COMMISSION

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94-27

DIVISION OF  
TRADING AND MARKETS

March 16, 1994

Re: Request for Relief from CPO Registration

Dear :

This is in response to your letter dated July 19, 1993, as supplemented by telephone conversations with Division staff, in which you request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief from registration as a commodity pool operator ("CPO") to "A" and "X" a Delaware limited partnership in connection with their serving as general partners of "Y" a Delaware limited partnership (the "Partnership").

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 which has four general partners: "A", "X", "B" and "C". "B" and "C" are registered CPOs. "B", "C" and "A" also are the three general partners of "X". The Partnership is not marketed as a commodity pool. A claim for exemption pursuant to Rule 4.12(b) has been filed with respect to the Partnership.<sup>1/</sup>

Although "A" and "X" are general partners of the Partnership, you represent that neither exercises discretion, supervision or control over: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Partnership or (ii) the investment, use or disposition of funds or property of the Partnership. Rather, "A" works in a "back office" capacity for the Partnership and performs order entry functions pursuant to instructions from Messrs. "B" and "C". "X" performs no operational or trading functions for the Partnership and serves as a general partner solely to provide tax-advantaged income to non-executive employees of "B" partners, the Partner-

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<sup>1/</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

ship's investment manager and a registered commodity trading advisor.<sup>2/</sup> You further represent that neither "A" nor "X" is subject to a statutory disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").<sup>3/</sup>

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "A" or "X" if they fail to register as CPOs in connection with their activities as general partners of the Partnership. This position is based upon, among others, your representations that: (1) "B" and "C", two of the Partnership's four general partners, are registered with the Commission as CPOs; (2) a Rule 4.12(b) claim for exemption has been filed for the Partnership; (3) the Partnership is not marketed as a commodity pool; and (4) neither "A" nor "X" is subject to any statutory disqualification under Section 8a of the Act. This relief, however, is subject to the conditions that "A" submit a Form 8-R and fingerprint card to the National Futures Association for clearance purposes and that "B" and "C" provide the Division, within thirty days of the date of this letter, written and dated acknowledgments whereby each accepts joint and several liability for any violation of the Act or Commission regulations committed thereunder in connection with "A"'s and "X"'s activities as general partners and CPOs of the Partnership.

The relief issued by this letter does not excuse "A" or "X" 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 Act, 7 U.S.C. §60 (1988 & Supp. IV 1992), 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. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to take action with respect to any past violation of the Act, 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992) or the Commission's regulations thereunder. The no-action relief provided herein is prospective only.

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<sup>2/</sup> In this connection, you explain that the limited partners of "X" will consist of non-executive employees of "B" Partners and that "X" was formed to provide these employees with an opportunity to augment their salaried compensation with certain tax-advantaged (i.e., capital gains) income without the necessity of any investment directly in the Partnership, as is required of the Partnership's direct limited partners. The Division expresses no opinion as to the tax implications of the contemplated arrangement. You represent that "X" has not yet been used for the purpose described herein.

<sup>3/</sup> 7 U.S.C. §§ 12a(2) and 12a(3) (1988 & Supp. IV 1992).

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This letter is based upon 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 that the Partnership's operations or "A"'s or "X"'s responsibilities in connection therewith, including the nature of the Partnership's commodity interest trading, change in any way from those as 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 Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin  
Chief Counsel