



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

94-40

April 18, 1994

Re: Request for Relief from CPO Registration

Dear :

This is in response to your letter dated February 7, 1994, 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 corporation ("X"), in connection with their serving as general partners of 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 three general partners: "A", "X", and "Y". "Y" is a registered CPO and is the managing general partner of the Partnership. "A" is the president, sole stockholder and a director of "Y", as well as the president, a director and 70% stockholder of "X". "B", a director and executive vice president of both "X" and "Y", owns the remaining 30% of "X". The other principal officers and/or directors of "Y" and "X" are "C" and "D". "C" is a senior vice president, the secretary and the general counsel of both "Y" and "X" and "D" is a senior vice president and the treasurer of both "Y" and "X". "A", "B", "C" and "D" are all listed principals of "Y" and "A" and "B" are registered associated persons ("APs") of "Y". "Y" and "X" are registered investment advisers ("IAs") under the Investment Advisers Act of 1940 and, together with their affiliates, manage over \$2 billion.

Under the Amended and Restated Agreement of Limited Partnership, "Y", as the managing general partner, is solely responsible for managing the investment activities of the Partnership and for the day-to-day operations of the Partnership. You represent that "A" and "X" serve as general partners for "certain internal organizational purposes and as such are not involved in the day-to-day operations of the Partnership." In this connection, you

explain that "X" serves as a general partner because of its status as a registered IA and that "A" serves as a general partner to ensure that the Partnership may take advantage of a safe harbor under the Internal Revenue Code (the "Code"), which ensures limited partnership treatment of the Partnership under the Code so long as there is a bona fide general partner, *i.e.*, "A", who can meet the financial obligations of the Partnership.^{1/} The Partnership is not marketed as a commodity pool. Further, you represent that the Partnership will be operated pursuant to the criteria set forth in Rule 4.12(b).^{2/}

In support of the instant request, by letter dated February 7, 1994, "A", "X", and "Y" provided the Division with a written acknowledgment whereby each 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 any of the general partners as general partners and CPOs of the Partnership. Further, you represent that neither "A" (except in his capacity as an AP of "Y") nor "X" will exercise 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. You further represent that neither "A" nor "X" is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").^{3/}

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 status as general partners of the Partnership. This position is based upon, among others, your representations that: (1) "Y", the other general partner of the Partnership, is registered with the Commission as a CPO; (2) the Partnership will be operated pursuant to the criteria set forth in Rule 4.12(b); (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.

The relief issued by this letter does not excuse "A" or "X" from compliance with any other applicable requirements contained

^{1/} We express no opinion as to the status of the Partnership for purposes of the Code.

^{2/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

^{3/} 7 U.S.C. §§ 12a(2) or 12a(3) (1988 & Supp. IV 1992).

in the Act or the Commission's regulations thereunder. For example, each remains 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.

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 activities of the Partnership or of "A" or "X" in connection therewith 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