



COMMODITY FUTURES TRADING COMMISSION

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95-24

DIVISION OF
TRADING AND MARKETS

March 13, 1995

Re: Section 4m(1) -- Request for Relief from Registration
of Co-CPO

Dear :

This is in response to your letter dated February 21, 1995, as supplemented by your letter dated March 7, 1995 and 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" in connection with "A's" recent admission as a general partner of (the "Partnership"), a New York limited 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 currently has three general partners: "B", "C" and "A". "B" is registered as a CPO. "C" is in the process of registering as a CPO and "A" seeks relief from registration as a CPO. The Partnership is not marketed as a commodity pool and will not commit more than ten percent of the fair market value of its assets to establish commodity interest positions. A claim for exemption pursuant to Rule 4.12(b) has been filed for the Partnership.^{1/}

"A" became a general partner of the Partnership effective January 1, 1995. Although he is a general partner, you represent that "A" will not exercise discretion, supervision or control over or participate in: (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, his responsibility will be to serve as principal financial officer. His involvement with the Partnership will be limited to back office activities, such as effecting transfers of funds to accounts held by limited partners and other accounting duties. In further support of your

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

request, you represent that "A" is not subject to a statutory disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").^{2/}

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "A" if he fails to register as a CPO in connection with his serving as a general partner of the Partnership. This relief, however, is subject to the conditions that within thirty days of the date of this letter "A" provides the Division with: (1) a signed and dated acknowledgment whereby he accepts joint and several liability for any violation of the Act or the Commission's regulations issued thereunder involving or resulting from his or Messrs. "B's" and "C's" activities as general partners and CPOs of the Partnership; and (2) Messrs. "B" and "C" provide the Division with signed and dated acknowledgments whereby each accepts joint and several liability for any violation of the Act or the Commission's regulations thereunder involving or resulting from "A's" activities as a general partner and CPO of the Partnership.

The relief issued by this letter does not excuse "A" from compliance with any otherwise applicable requirements contained in the Act or the Commission's regulations. For example, he remains subject to the antifraud provisions of Section 40 of the Act,^{3/} to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other applicable provisions of Part 4. Moreover this letter is applicable to "A" solely in connection with his serving as a general partner of the Partnership. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to proceed against "A" or the Partnership for any past violation of the Act or the Commission's rules thereunder. The position stated herein is prospective only.

This letter is based on the representations you have made to us and is subject to compliance with 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 activities of the Partnership, including the extent of its commodity interest trading or the responsibilities of "A" with respect thereto, 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

^{2/} 7 U.S.C. §§12a(2) or 12a(3) (1988 & Supp. V 1993).

^{3/} 7 U.S.C. §60 (1988).

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

Sincerely,

Susan C. Ervin
Chief Counsel