COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

95-64

May 23, 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 letters dated March 15, 1995 and April 10, 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 "W" in connection with "W" becoming the managing general partner of "X" and "Y" (collectively the "Funds").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. Currently, the general partners of the Funds are "Z", of which 95% is owned by "A" and "B" and which serves as the registered CPO of the Funds, and "A", "B", "C" and "D", to whom the Division has previously issued relief from CPO registration in connection with their serving as general partners and CPOs of the Funds (the "No-Actioned Individuals"). Currently, "A" is the managing general partner of the Funds. Each of the No-Actioned Individuals is listed as a principal of and registered as an associated person ("AP") of "Z". "W" will serve as the managing general partner of the Funds and "A", who previously served as managing general partner of the Funds, and "B" will become the managing directors of "W", and "C" and "D" will become principals of "W".

"X" began its operations in 1984. Its primary business is investment in various securities; however, it does from time to time enter into commodity futures and option transactions. In 1984 the Division exempted "Z", with respect to its operation of "X", from certain of the requirements applicable to registered

CPOs under Rules 4.21 and 4.22[1/] on the condition, inter alia, that "X" does not commit more than ten percent of its assets to initial margin or premiums for all futures contracts or commodity options including stock index futures or options thereon. "Y" began operations in 1989. Its primary business is also investment in various securities, although its investment philosophy and portfolio differ from those of "X". A claim for exemption pursuant to Rule 4.12(b) was filed with respect to "Y" by "Z" on April 3, 1989.

Each of the Funds has solicited and received the requisite consents of its investors to the No-Actioned Individuals' transfer of their interests in the Funds to "W".[2/] "Z" will continue as the other general partner and the registered CPO of the Funds. "Z" will make all investment decisions relating to the Funds' trading of futures and option contracts; and "Z" will exercise discretion, supervision and control over all offerings of interests and sales solicitations and will solicit, accept and receive the funds and property to be used for purchasing interests in the Funds. "W" will have no direct or supervisory involvement in these activities. Further, the No-Actioned Individuals will solicit, accept or receive funds or property to be used for purchasing interests in the Funds only in their capacities as APs of "Z" and not in their capacities as members of "W".

Certain benefits accrue from the continued operation of "Z". The personnel of "Z" are employed by other "affiliated corporations," i.e., corporations controlled by "A". Accordingly, "Z" participates in a common paymaster system which greatly facilitates the payment of salaries and payroll tax deductions where related corporations concurrently employ the same individuals. This common paymaster system provides the administrative convenience of having salaries disbursed by only one entity. It also provides a significant savings to the employer with respect to social security and other payroll tax deductions, such as allowing the employer to pay the maximum FICA contribution only once for each employee, on the aggregate of that employee's salaries received from the employer, rather than paying a FICA contribution on the separate salary of each position an employee

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

2/ Paragraph 12 (c) of each Fund's Agreement of Limited Partnership sets forth the duties and powers of the managing general partner thereof, and limits the scope of activities of each managing general partner by reserving authority over all futures-related activities to the registered CPO.

holds -- which, in light of the maximum FICA contribution cap, could be a significant increase in the amount of FICA taxes the employer pays. An employer is not entitled to a FICA refund if it employs the same person in multiple positions. By law, "W" is precluded from performing these functions, as a common paymaster system is available only to a corporation and not a limited liability company such as "W". You claim that because "Z" is already serving as the registered CPO of the Funds, each of the individual members of "W" is registered as an AP of "Z", and there is no purpose to be served in also requiring "W" to register as a CPO. You also represent that any person who is an officer or member of "W" will also be listed, as appropriate, as an AP or principal of "Z".

Based upon these representations, we believe your request has merit. Accordingly, based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "W" if it fails to register as a CPO in connection with its serving as managing general partner of the Funds. This relief is, however, subject to the conditions that within thirty days of the date of this letter: (1) "W" provides the Division with a signed and dated acknowledgment whereby "W" accepts joint and several liability for any violation of the Act or the Commission's regulations issued thereunder involving or resulting from "Z's" activities as a general partner and registered CPO of the Funds; and (2) "Z" provides the Division with a signed and dated acknowledgment whereby "Z" accepts joint and several liability for any violation of the Act or the Commission's regulations thereunder involving or resulting from "W's" activities as managing general partner and non-registered CPO of the Funds.

The relief issued by this letter does not excuse "W" from compliance with any otherwise applicable requirements contained in the Act or the Commission's regulations. For example, "W" remains subject to the antifraud provisions of Section 4o 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. Further this letter is applicable solely to "W" in its capacity as a general partner, and co-CPO of the Funds.

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 operations or activities of either Fund, including the extent of its

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3/ 7 U.S.C. §6o (1988 & Supp. V 1993).

commodity interest trading or the responsibilities of "W" and the No-Actioned Individuals 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 Commission. If you have an questions concerning this correspondence, please contact me or Myra Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel