



U.S. COMMODITY FUTURES TRADING COMMISSION

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Records

DIVISION OF
TRADING & MARKETS

95-89

June 5, 1995

Re: Rules 4.13(a)(1) and 4.14(a)(8) -- Availability
of Registration Exemptions

Dear :

This is in response to your letter dated March 16, 1995, as supplemented by your letters dated March 24, 1995 and April 20, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), and by telephone conversations with Division staff. By your correspondence you request certain relief with respect to the registration status of "X".

Based upon the representations made in your March 16, 1995 letter, as supplemented, we understand the relevant facts to be as follows. "X" is registered as an investment adviser ("IA") under the Investment Advisers Act of 1940. "X" is the IA of ("X" Funds"), an investment company registered under the Investment Company Act of 1940. "X" Funds has filed a notice of exclusion from the definition of the term commodity pool operator ("CPO") pursuant to Rule 4.5 and "X" has filed a claim for exemption from commodity trading advisor ("CTA") registration pursuant to Rule 4.14(a)(8).^{1/} "X" does not hold itself out to the public as a CPO or CTA.

"X" has formed (the "Partnership") to expand its activities with respect to commodity interest trading advice for clients in addition to "X" Funds. The Partnership will be used on an "in-house" basis to test and validate various investment strategies and to establish a reportable track record that may in the future be provided to prospective clients. The Partnership will invest in a portfolio consisting primarily of financial futures.

^{1/} Commission records indicate that the notice of exclusion was filed on July 13, 1994 and the claim of exemption was filed on May 8, 1995. Commission rules referenced herein are found at 17 C.F.R. Ch. I (1994).

The Partnership has commenced operations with \$250,000 in capital contributions. You do not expect that any additional capital contributions would cause this sum to exceed \$1 million in the aggregate. "X" serves as general partner and manager of the Partnership and will direct the Partnership's commodity interest trading. It has contributed fifty percent of the initial capital, with the remainder of the capital provided by the following eight investment professionals, who are full-time employees of "X": "A", "B", "C", "D", "E", "F", "G" and "H". The ninth limited partner, "I", is an employee of "Y", the parent company of "X". The limited partners all hold the functional equivalent of the title of Vice President or above. "X" will not receive any compensation or other payment for operating the Partnership.

First, you ask whether "X" may claim relief from CPO registration pursuant to Rule 4.13(a)(1) in connection with its serving as a general partner of the Partnership. Based upon your representations it appears that "X" satisfies the requirements of the rule in that: (1) it will not receive any compensation for operating the pool; (2) it will operate only one commodity pool;^{2/} (3) it is not otherwise required to register with the Commission and is not a business affiliate of any person required to register with the Commission; and (4) the pool is not advertised. Based upon the foregoing, it appears that "X" may claim relief from CPO registration under Rule 4.13(a)(1).

You next request whether, by claiming CPO registration relief pursuant to Rule 4.13(a)(1), "X" would invalidate the relief from CTA registration it has claimed pursuant to Rule 4.14(a)(8) with respect to "X" Funds. In this regard we note that upon commencement of operations of the Partnership, including providing commodity interest trading advice thereto, "X" will no longer comply with each condition of Rule 4.14(a)(8). However, we further note that "X": (1) will continue to be registered as an IA; and (2) will not be holding itself out as a CTA. In addition, the Partnership, as noted above, is owned by "X" and nine investment professionals who are employed as vice president (or equivalent) or higher by "X" or its parent. Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" for failure to register as a CTA based solely upon its failure to comply with the criteria set forth in Rule 4.14(a)(8) in connection with its activities on behalf of the Partnership, as set forth above.

^{2/} In this regard, we note that "X" is not the operator of "X" Funds and, further, that "X" Funds is excluded from the CPO definition pursuant to the Rule 4.5 notice it has filed.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations issued thereunder. For example, "X" 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 rules, and to all otherwise applicable provisions of Part 4. In addition, the Division notes that it is not excusing or in anyway limiting the Commission's authority to proceed against "X" for any past violation of the Act or the Commission's rules thereunder. The position stated herein is prospective only.

The views expressed herein are based upon the representations that you have made to us and are applicable to "X" solely in connection with its serving as the general partner of the Partnership. 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 "X", "X" Funds or the Partnership change in any way from those as represented to us.

Finally this letter represents the views 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 concerning this correspondence, please contact me or Myra R. Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} 7 U.S.C. §§ 6b and 6o (1988).