



U.S. COMMODITY FUTURES TRADING COMMISSION

95-97

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

DIVISION OF
TRADING & MARKETS

November 15, 1995

Re: Section 4m(1) of the Commodity Exchange Act -- Request
for Relief from Registration as a Commodity Pool
Operator

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated September 13, 1995, as supplemented by letter dated October 24, 1995 and telephone conversations with Division staff, in which you request on behalf of the "X" relief from registration as a commodity pool operator ("CPO").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The "X" is an international labor union with over 1.3 million members. Pursuant to its governing constitution, the "X" derives its operating revenue primarily from membership dues submitted by individual members, a monthly per capita tax on each member of the "X" and investment income on these assets. These monies (referred to as the "General Fund")^{1/} are used by the "X" for general operation and administration and to improve the working and economic conditions of its members.

The "X", acting through an executive committee (the "Executive Committee"),^{2/} is diversifying the investment of its General Fund for the purpose of minimizing risk of loss and,

^{1/} The assets of the General Fund are distinguished from other assets of the "X", e.g., those assets subject to regulation under the Employee Retirement Income Security Act of 1974.

^{2/} The Executive Committee is composed of elected representatives of the "X" and its affiliate local unions and meets on a regular basis, with special meetings scheduled as needed, to review the status and investment performance with respect to its assets and make decisions with respect thereto.

toward this goal, uses a small portion of the "X's" assets in the trading of commodity interests.^{3/} In this regard, the Executive Committee has retained an investment consultant to assist it in the investment and diversification of its assets.^{4/} The consultant is registered as an investment adviser with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940. The consultant recommends and oversees several investment managers to the Executive Committee and, subsequent to the selection by the Committee of an investment manager, monitors and reviews the manager's performance and trading activities.

The "X" conducts its commodity trading activities solely for bona fide hedging purposes, as defined in Rule 1.3(z)(1)^{5/}. Such trading is and will be conducted only by investment managers who are registered as commodity trading advisors ("CTAs"). At no time will the General Fund enter into futures and options contracts for which the aggregate initial futures margin and option premiums exceed five percent of the total liquidation value of the General Fund's assets.

The "X" does not receive any compensation, directly or indirectly, for operating the General Fund except for the payment of administrative expenses. The General Fund is administered by the "X" as part of its union governance structure and the General Fund is the only fund of the "X", at this time, which engages in commodity interest trading. The "X" is not otherwise required to register with the Commission, nor is it a business affiliate of any person registered or required to register with the Commission. Further, the "X" has not and will not market participations in the General Fund assets to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the futures markets.

As a labor organization, the "X" is subject to reporting, disclosure, and administration requirements under the Labor-Management Reporting and Disclosure Act of 1959, as amended. 29 U.S.C. § 401 et seq. (1988). Specifically, the "X" must file

^{3/} To date, the aggregate initial margin and premiums committed by the General Fund to establish commodity interest trading positions has fluctuated between one to two million dollars (or between .7% and 1.4% of the assets in the General Fund.)

^{4/} The investment consultant is "Y", a firm wholly-owned and operated by "A", a listed principal and registered associated person of "Z", a registered CPO.

^{5/} Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

a detailed annual financial report with the Department of Labor, providing information with respect to its financial condition and operations, including its assets and liabilities. This information is available to "X's" members upon request. Failure to comply with this requirement, including the disclosure of false or misleading information, is punishable by criminal and civil penalties.

Based upon your representations and consistent with prior Division practice,^{6/} the Division will not recommend that the Commission take any enforcement action against the "X" for failure to comply with the CPO registration requirements of Section 4m(1) of the Commodity Exchange Act (the "Act")^{7/} in connection with its operation of the General Fund. This no-action position is conditioned upon the "X" maintaining all books and records prepared in connection with its activities as a CPO for a period of five years from the date of preparation, and keeping such books and records readily accessible during the first two years of the five-year period. All such books and records shall be open to inspection by representatives of the Commission or the United States Department of Justice. This position is further subject to the condition that any investment consultant retained by the Executive Committee who provides commodity interest-related advice or selects commodity trading advisors ("CTAs") is registered with the Commission as a CTA or is exempt from such registration.^{8/}

The relief issued by this letter does not excuse the "X" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act,^{9/} to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's

^{6/} The Division granted relief under similar facts in Division of Trading and Markets Interpretative Letter No. 92-4 [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,232 (January 10, 1995).

^{7/} 7 U.S.C. §6m(1) (1994).

^{8/} See also the term "trading manager" which is defined in Rule 4.10(h) as "any person, other than the commodity pool operator of [a] pool, having sole or partial authority to allocate pool assets to the commodity trading advisors or investee pools." 60 Fed. Reg. at 38182. In the preamble accompanying the Commission's recent final rules revising Part 4 of its regulations, the Commission emphasized that "trading managers are CTAs and are required to be registered as such." 60 Fed. Reg. at 38153.

^{9/} 7 U.S.C. §6o.

regulations, and to all other applicable provisions of Part 4. This relief is applicable to the "X" solely in connection with its operation of the General Fund.

This letter is based on the representations you have made to us and is subject to compliance with the conditions set forth 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 General Fund's operations change in any way from those represented to us. Further, the relief granted herein is provided on a prospective basis only. Nothing in this letter should be construed as limiting in any way the Commission's ability to take enforcement or other action against the "X" for any past violation of the Act or Commission regulations.

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 Lawrence Eckert, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel