

CFTC Letter No. 97-03**January 15, 1997****Division of Trading & Markets**

Re: Request for Relief from Registration as a CPO under Section 4m(1)

Request for Relief from Rule 4.31 CTA Disclosure Document
Requirement

Dear :

This is in response to your letter dated December 13, 1996 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, by which you requested on behalf of "X" that the Division grant "X" relief from registration as a commodity pool operator ("CPO") under Section 4m(1) of the Commodity Exchange Act ("Act").¹ In addition, you request on behalf of "Y" that the Division grant relief from the Disclosure Document requirements of Rule 4.31² in connection with "Y" providing commodity interest trading advice to an offshore client.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "X" is a Canadian corporation registered as an investment adviser with the Ontario Securities Commission. "Y" is registered with the Commission as a commodity trading advisor ("CTA") and as an investment adviser with the Securities and Exchange Commission. "Y" and "X" are both wholly-owned, indirect subsidiaries of "Z". "X" operates "Fund", a non-United States mutual fund. The Fund is comprised of a series of Canadian-based no load mutual funds.³ Shares in the Fund will be offered and distributed solely in Canada and solely to Canadian citizens and/or residents exclusively by means of prospectus. Shares in the Fund may not be sold to any United States person.⁴ The Fund invests primarily in government securities issued by the Government of Canada. The Fund anticipates depositing up to twenty percent of its assets as margin and option premiums for commodity futures and options on futures positions in the S&P 500 Index contract traded on the Chicago Mercantile Exchange. "X" intends to engage "Y" as the CTA for the Fund. "X" engages in no other business which involves the use of commodity futures or options on futures. None of the directors of the Fund are subject to statutory disqualification under Section 8a(2) or 8a(3) of the Act.⁵

Based upon the foregoing, and consistent with prior practice, the Division will not recommend that the Commission take any enforcement action against "X" based solely upon its failure to

register as a CPO in connection with its operation of the Fund.⁶ In addition, based on your representations that (1) "X" and "Y" are affiliated corporations, both of which are wholly-owned by "Z", and (2) shares in the Fund will only be offered to Canadian citizens and/or residents of Canada, the Division believes that granting "Y" an exemption from the Disclosure Document requirement of Rule 4.31 in this instance would not be contrary to the public interest or the purpose of Rule 4.31. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts "Y" from Rule 4.31.

The relief issued by this letter does not excuse "X" or "Y" from compliance with any other applicable requirements contained in the Act⁷ or the Commission's regulations thereunder. For example, "X" and "Y" remain subject to the anti-fraud provisions of Section 40 of the Act,⁸ to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and to all otherwise applicable provisions of Part 4. Moreover, it is applicable to "X" solely in connection with its operation of the Fund and to "Y" solely in connection with providing commodity interest trading advice to the Fund.

The relief granted in this letter is based upon the representations you have made to us, and is subject to compliance with the condition 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 if the clients or activities of "X" or "Y" change in any way from those as represented to us.

Finally, the no-action position taken herein represents the views of the Division of Trading and Markets only. It does not necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions regarding this correspondence, please do not hesitate to contact me, or Charles O'Brien of my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ 7 U.S.C. § 6m(1) (1994).

² 17 C.F.R. § 4.31 (1996). Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

³ Each fund that makes up the Fund was created as an unincorporated open-end mutual fund under the laws of the Province of Ontario by Declarations of Trust dated October 22, 1996.

⁴ For this purpose, the definition of "United States person" is identical to the definition of that term set forth in Rule 4.7(a).

⁵ 7 U.S.C. § 12a(2) or 12a(3) (1994).

⁶ *See, e.g.*, Interpretative Letter No. 76-21, [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,222 (August 15, 1976) (wherein Commission staff granted relief from registration pursuant to Section 4m(1) of the Act to CPOs who operate commodity pools outside of the territorial United States when the pool activities are confined to areas outside of the United States, none of the participants in the pool is a resident or citizen of the United States, and none of the funds or capital contributed to the pools are from United States sources).

⁷ 7 U.S.C. § 1 *et seq.* (1994).

⁸ 7 U.S.C. § 60 (1994).