

CFTC Letter No. 97-04**February 6, 1997****Division of Trading & Markets**

Re: Request for Relief from the Disclosure and Reporting Requirements of Rules 4.26(a)(2), 4.22(a) and 4.22(c)

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated November 26, 1996, as supplemented by telephone conversations with Division staff. You request on behalf of X , a registered commodity pool operator ("CPO") and commodity trading advisor, relief from the requirements of Rules 4.26(a)(2), 4.22(a) and 4.22(c)¹ in connection with the operation of the Fund", a commodity pool for which X is the sole general partner and CPO. A is the president and sole principal of X .

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund was organized in July 1995. X solicited investors pursuant to a Disclosure Document dated August 17, 1995, and the Fund began trading commodity interests on October 1, 1995. During the Fund s five-month period of activity, none of the 16 limited partners² redeemed their interests in the Fund. The CPO suspended the Fund s trading on February 29, 1996³ and required a liquidating distribution of all of the limited partners capital with the express understanding that, if it elected to resume trading activities, the former limited partners ("Former Limited Partners") would have an opportunity to reinvest in the Fund.⁴

The Fund did not engage in any trading activities from March 1, 1996 through December 31, 1996. Prior to December 31, 1996, A discussed reinvestment in the Fund with some of the Former Limited Partners. Although the Former Limited Partners were not obligated to reinvest in the Fund, you represent that six indicated an interest in doing so. Each of these six Former Limited Partners is a QEP. Four have chosen to become limited partners once again, and the Fund resumed trading with their contributions and additional contributions from A on January 2, 1997.

You seek relief from the prohibition in Rule 4.26(a)(2) against using a Disclosure Document that is dated more than nine months prior to the date of its use. In support of your request, you state that there are no material changes to the Disclosure Document dated August 17, 1995. Based upon

your representations, we do not believe that it would be contrary to the public interest to grant the relief requested. Accordingly, the Division will not recommend that the Commission take any enforcement action against X for failure to comply with Rule 4.26(a)(2) if it continues to use its August 17, 1995 Disclosure Document in soliciting any of the Former Limited Partners. However, with respect to any new limited partners, X remains subject to the requirement that it may not use a Disclosure Document dated more than nine months prior to the date of its use.

In addition, you seek confirmation that the Fund is not required to: (1) provide pool participants with the Account Statements required by Rule 4.22(a) until 30 calendar days after the first reporting period in 1997; and (2) provide pool participants with and file with the Commission the Annual Report required by Rule 4.22(c) until 90 calendar days after the end of the Fund's 1997 fiscal year. With regard to the requisite Account Statements, you represent that each Former Limited Partner received Account Statements for each of the five months that the Fund traded commodity interests. As for the Annual Report, you note that by letter dated March 5, 1996, the Division granted A's request that X be permitted to conduct a single audit for the five-month time period instead of two separate audits for 1995 and 1996.⁵ Inasmuch as the sole partners of the Fund for the period in question will be X and A, we confirm to you that for the period March 1, 1996 through December 31, 1996, X is not required to comply with Rule 4.22(a) or Rule 4.22(c) with respect to the Fund.⁶

We note that this letter relieves X solely from compliance with certain reporting requirements under Part 4 and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁷ or the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act,⁸ the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable requirements of Part 4, including Rules 4.24(w) and 4.26(c). Further, this letter is applicable to X solely in connection with its operation of the Fund.

The position taken herein is based upon the representations that have been made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations and activities of X or the Fund change in any way from those as represented to us. Further, nothing in this letter should be construed as limiting in any way the Commission's ability to take enforcement or other action against X or any other person for any past violation of the Act or Commission regulations. Finally, this letter represents the position of this Division only. It does not necessarily reflect the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Andrea M. Corcoran

Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

² You represent that at least 11 of the 16 limited partners are qualified eligible participants ("QEPs"), as defined in Rule 4.7(a). All of the limited partners are accredited investors, as defined in Regulation D, 17 C.F.R. § 230.501 (1996), under the Securities Act of 1933, as amended.

³ A decided to suspend trading for an indeterminate period of time because of personal reasons.

⁴ Prior to December 31, 1996, the Fund had \$6,000 in assets, which consisted of the general partner's original \$5,000 contribution and a \$1,000 contribution from B, A's spouse, who became a limited partner on March 1, 1996. B redeemed her interest on December 31, 1996.

⁵ Accordingly, X filed a certified Annual Report covering the Fund's activities from October 1, 1995 through February 29, 1996.

⁶ For purposes of Rule 4.26(b), X may attach its 1995-1996 Annual Report to its updated Disclosure Document for solicitations through December 31, 1997.

⁷ 7 U.S.C. § 1 et seq. (1994).

⁸ 7 U.S.C. § 60 (1994).