

CFTC Letter No. 97-09**February 6, 1997****Division of Trading & Markets**

Re: Rule 4.31--Request that "W" not be required to prepare and deliver a Disclosure Document

Dear :

This is in response to your letter dated December 12, 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 your letter you request that the Division exempt "W" from the requirement that Omega prepare and deliver a Disclosure Document pursuant to Rule 4.31.¹

Based upon the representations contained in your letter, as supplemented, we understand the pertinent facts to be as follows. "Z" Manager and "Z" Administrator act as manager and administrator to several investment funds for non-United States persons sponsored by "Z", a Bermudian company ("Z"). "Z" has recently formed "V" and the Fund, each a British Virgin Islands company. Non-United States persons² will be solicited to invest in "V", which in turn will contribute the net proceeds of its offering to the Fund for investment. The Fund will accept investments only from non-United States persons.

"W" is a registered commodity trading advisor ("CTA"). "W" currently acts as investment manager to two Cayman Islands-based investment funds and several managed accounts. "W" is controlled by "A", a registered commodity pool operator ("CPO") and an associated person of "W". "W's" client base is comprised solely of qualified eligible clients ("QECs") and "W" has filed a Notice of Claim for Exemption with respect to these clients under Rule 4.7.³ "V" has selected "W" to be the investment advisor with respect to the Fund. The Fund may invest in a broad range of financial instruments, including futures contracts and options on futures contracts. Investors in the Fund will be limited to non-United States persons. All of the officers and directors of the Fund will be non-United States persons and all meetings of the Board of Directors of the Fund will be held outside the United States.

The Division has previously granted relief from Rule 4.31 to CTAs whose clients were

exclusively non-United States persons.⁴ Here, although some of “W’s” clients are United States persons, all of these clients are QECs for whom “W” has claimed relief from Rule 4.31. Based on the foregoing, we believe that an exemption from the Disclosure Document requirement of Rule 4.31 is appropriate. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts “W” from compliance with Rule 4.31 solely with respect to its contemplated services on behalf of the Fund.

The relief issued by this letter does not excuse “W” from compliance with any other applicable requirements contained in the Commodity Exchange Act (“Act”)⁵ or the Commission’s regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act, 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.

This letter is based upon the representations made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities of “W” or the Fund differ in any respect from those as represented to us. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996). You also request that the Division confirm that it will not recommend that the Commission take enforcement action against “Z” Fund Managers (Isle of Man) Limited (“Z” Manager), “Z” Administration Limited (“W” Administrator”) or “W” based upon “Z” Manager and “Z” Administrator not registering as commodity pool operators (“CPOs”) with respect to the “Fund”. In light of the proposed activities of “Z” Administrator and “Z” Manager, these entities are not required to register as CPOs in connection with the Fund.

² For the purpose of this letter, the term “United States person” has the same meaning as that set forth in Rule 4.7(a)(1)(ii)(C).

³ Commission records indicate that the Notice of Claim for Exemption was filed on March 15, 1993.

⁴ See, e.g., CFTC Interpretive Letter No. 95-73, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,503 (August 24, 1995).

⁵ 7 U.S.C. § 1 et seq. (1994).