

CFTC Letter No. 97-100**July 14, 1997****Division of Trading & Markets**

Re: Section 4m(1) -- Request for Relief from Commodity Trading Advisor
Registration

Dear:

This is in response to your letters dated April 11 and May 15, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By this correspondence, you request on behalf of "X" relief from registration as a commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act ("Act")¹ in connection with "X" providing commodity interest trading advice to the "Trust".²

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The Trust is comprised of "separate and financially segregated" series trusts (each a "Series"), *i.e.*, it is a family of unit trusts. The Trust and each Series are organized and operated pursuant to the laws of the Cayman Islands. Shares in a Series may not be offered or sold, directly or indirectly, to any United States person.³ Neither the Trust nor any Series accepts any capital contributed, directly or indirectly, from United States sources. Furthermore, you represent that all meetings and activities of the Trust's and Series' shareholders and officers will be conducted outside of the United States.

"X", a Delaware corporation with its principal place of business in "V", is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. "X" is the only investment manager for each Series. "X" primarily provides discretionary asset management investment advice to institutional customers worldwide, primarily managing investments in corporate debt securities rated below investment grade, as well as other debt and equity securities of emerging market countries. You state that because of the non-U.S. nature of the Trust and each of the Series, neither the Trust nor any Series is permitted to register as an investment company under the Investment Company Act of 1940. Therefore, neither the Trust nor any Series is a qualifying entity under Rule 4.5(a) and, absent relief, "X" may not claim relief from CTA registration pursuant to Rule 4.14(a)(8) in connection with its activities on behalf of the Trust and the Series.

In support of your request, you represent that: (1) "X" intends to furnish commodity interest

trading advice to one or more Series pursuant to the criteria of Commission Rule 4.5(c)(2)⁴ and in a manner solely incidental to its provision of securities advice to each such Series; (2) “X” has not and will not hold itself out to the public as a CTA; and (3) neither “X” nor any of its officers, directors or principals is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.⁵

Based upon the foregoing, subject to the following conditions and consistent with our 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 CTA under Section 4m(1) of the Act in connection with its commodity interest trading advice to a Series.⁶ This position is subject to the conditions that: (1) “X” will restrict its commodity interest trading advice to the Series; and (2) “X” will submit to such special calls as the Division may make of it to demonstrate compliance with the terms and conditions of the relief granted herein.

The relief issued by this letter does not excuse “X” from compliance with any other applicable requirements contained in the Act⁷ or the Commission's regulations issued thereunder. For example, “X” remains subject to the antifraud provisions of Section 4o 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, including the operational and advertising requirements of Rules 4.30 and 4.41, respectively, which apply to each person who comes within the CTA definition, regardless of registration status. Moreover, this relief is applicable to “X” solely in connection with the advisory services it will provide to the Trust and the Series thereunder.

The relief granted by this letter is based upon 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 if the clients or activities of “X” change in any way from those as represented to us. Finally, the no-action position taken herein represents the position of the Division 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 By your April 11, 1997 letter you also requested on behalf of “X” relief from the commodity pool operator registration requirements of Section 4m(1). However, you subsequently withdrew that portion of your request inasmuch as, based upon discussions with Division staff, it did not appear that “X” would be acting as a CPO with respect to the Trust.

³ You have represented that for the purpose of this request, the definition of "United States person" is the same as that employed in Commission Rule 4.7(a). Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

⁴ Your April 11, 1997 letter states that at least one of the Series would limit its investment in commodity interests to ten percent of its total assets. However, you subsequently confirmed to Division staff that each Series intends to trade commodity interests solely as specified by Rule 4.5(c)(2).

⁵ 7 U.S.C. § 12a(2) or 12a(3) (1994).

⁶ *See, e.g.*, Interpretative Letter No. 95-91, [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,585 (July 24, 1995) (the Division granted relief from registration as a CTA to a domestic investment adviser in connection with its providing commodity interest trading advice to an offshore fund having no United States persons as investors).

⁷ 7 U.S.C. § 1 *et seq.* (1994).

⁸ 7 U.S.C. § 6o (1994).