



U.S. COMMODITY FUTURES TRADING COMMISSION

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97-11

DIVISION OF
TRADING & MARKETS

March 11, 1997

COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
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Re: Section 4m(1)--Relief from Registration as a CPO

Dear :

This is in response to your letter dated February 18, 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 your correspondence, you request that the Division concur with your view that "X" need not register with the Commission as a commodity pool operator ("CPO").

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The "Partnership", a Delaware limited partnership formed on October 1, 1982, is a private investment partnership which invests in a variety of securities and commodity interest contracts. "A", a registered CPO, has been the general partner of the Partnership since 1982. "A" is responsible for all investment decisions of the Partnership and is the president and 100% owner of "X". The Partnership recently added "X" as a general partner to, among other things, provide a measure of continuity to the Partnership in the event of "A's" death or legal incapacity.

"X" provides administrative systems and services, computer research systems and services, and office facilities and personnel to the Partnership. "X" does not solicit participants or take part in any investment of funds for the Partnership. However, inasmuch as "X" will be a general partner of the Fund, it will be serving as a CPO of the Fund and, absent relief, must register as a CPO. In support of the instant request, you represent that "A" will remain registered as a CPO and "A" and "X" will, by written and dated acknowledgments, accept joint and several liability for any violations of the Commodity Exchange Act¹ (the "Act") or Commission rules promulgated thereunder applicable to CPOs in connection with "X" and "A" serving as general partners of the Partnership.

¹ The Act is found at 7 U.S.C. §§ 1 et seq. (1994).

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" if it fails to register as a CPO in connection with its position as a general partner of the Partnership. This position is subject to the following conditions: (1) that "X" will not exercise discretion, supervision or control over, or take part in (a) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Partnership, or (b) the investment, use or other disposition of funds or property of the Partnership; and (2) that within thirty days of the date of this letter the Division receives a copy of the joint and several liability acknowledgments executed by "A" and "X".

This letter does not excuse York from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all otherwise applicable provisions of Part 4.

The position taken herein is based upon the representations that 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 operations or activities of the Partnership, "X" or "A" change in any way from those as represented to us.

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 concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5447.

Very truly yours,

Susan C. Ervin
Chief Counsel