

CFTC Letter No. 97-18**March 24, 1997****Division of Trading & Markets**

Re: Request for Relief from Rules 4.21, 4.22(a) and (b), 4.24, 4.25 and 4.26

Dear :

This is in response to your letter dated February 14, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a facsimile dated March 3, 1997 and telephone conversations with Division staff. By your correspondence, you request relief from the requirements of Rules 4.21, 4.22(a) and (b), 4.24, 4.25 and 4.26¹ ("Rules") on behalf of X , a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), with regard to the "Fund", a commodity pool operated by X which invests primarily in United States securities.²

Based upon your representations, we understand the relevant facts to be as follows. On November 4, 1996, the Division granted X an exemption from compliance with the Rules in connection with its operation of the Fund. X now seeks further relief from the Rules to permit it to accept additional persons ("New Limited Partners") as investors in the Fund. You represent that the New Limited Partners are sophisticated investors "fully capable of evaluating the risks of an investment in the Fund without the full disclosure and reporting safeguards of" the Commodity Exchange Act ("Act")³ and the Commission's regulations, and are involved in the trading or management of the Fund. Specifically, the New Limited Partners are:

- (1) A , who is the Assistant Controller of X and its affiliate (X Advisors⁴).
- (2) B , who is a principal of X and an investment manager for a fund in which the Fund invests.
- (3) C , who is the Associate General Counsel of X and X Advisors .
- (4)-(8) D , E , F , G and H , who are investment managers for X Advisors .

In support of your request, you represent that X will: (1) provide each New Limited Partner with the Fund's Limited Partnership Agreement, Private Placement Memorandum, quarterly financial statements and audited annual financial statements; (2) notify each New Limited Partner that the Fund is operated pursuant to exemptive relief granted by the Division; (3) explain the nature and purpose of such exemption; (4) obtain from each New Limited Partner his written acknowledgment that he does not object to the Fund's operation pursuant to exemptive relief; and (5) cause any New Limited Partner who ceases to be an employee of X or X Advisors to redeem or transfer his interests in the Fund. In addition, all limited partners will have access to the Fund's books and records.

Based upon your representations, we do not believe that it would be contrary to the public interest to grant the relief requested. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts X from compliance with Rules 4.21, 4.22 (a) and (b), 4.24, 4.25 and 4.26 in connection with its operation of the Fund.

We note that this letter relieves X solely from compliance with certain disclosure and monthly reporting requirements of Part 4 and does not excuse it from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder, including the requirement of an oath or affirmation pursuant to Rule 4.22(h).

For example, it remains subject to the antifraud provisions of Section 40 of the Act,⁵ 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. Further, this letter is applicable to X solely in connection with its operation of the Fund.

This letter is based upon the representations you have 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 that the operations or activities of the Fund, including the composition of its investors, change in any way from those as represented to us.

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,

Susan C. Ervin

Chief Counsel

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

² CFTC Interpretative Letter No. 96-82 (November 4, 1996), (to be published in Comm. Fut. L. Rep. (CCH)).

³ 7 U.S.C. § 1 et seq. (1994).

⁴ X Advisors is registered as a CTA and CPO and serves as co-investment manager of the Fund. Its sole managing member is I , who also is X's sole managing member and is individually registered as a CPO.

⁵ 7 U.S.C. § 60 (1994).