

CFTC Letter No. 97-40**June 2, 1997****Division of Trading & Markets**

Re: Relief from Section 4m(1)--Registration as a CPO

Dear :

This is in response to your letter dated May 9, 1997, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission). By your correspondence, you request that the Division concur with your view that A need not register individually with the Commission as a commodity pool operator (CPO).

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. (The Partnership), was formed on March 10, 1997 and was structured for tax purposes and as a way to contribute capital to the Partnership to have two general partners, A and X . X is a registered investment adviser and has filed an application with the National Futures Association (NFA) to register with the Commission as a CPO¹. A , as the president and sole shareholder of X , has filed an application with the NFA to register as an associated person (AP) and to be listed as a principal of X².

X will be responsible for all investment decisions of the Partnership, including all investment decisions with respect to commodity futures and option contracts. You have provided the Division with written acknowledgments from X and A that each accepts joint and several liability for any violations of the Commodity Exchange Act³ (the Act) or Commission regulations committed by the other in connection with the operation of the Partnership.

Based upon the foregoing and subject to the following conditions, the Division will not recommend that the Commission take any enforcement action against A solely for failure to register as a CPO in connection with her position as a general partner of the Partnership. This position is subject to the following conditions: (1) that X becomes registered as a CPO and that A becomes, and remains, duly registered as an AP and listed as a principal of X ; and (2) that A does not, except in her capacity as an AP of X , 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.

This letter does not excuse A from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, she 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, activities or registrations 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5430.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ NFA records indicate that X's application for CPO registration was pending as of March 7, 1997.

² NFA records indicate that A's registration as an associated person and listing as a principal were pending as of March 7, 1997.

³ The Act is found at 7 U.S.C. §§ 1 et seq. (1994).