

CFTC Letter No. 97-51**June 24, 1997****Division of Trading & Markets**

Re: Request for Relief from Certification Requirement in Rule 4.22(d) for Financial Statements in Annual Reports

Dear :

This is in response to your letter dated May 6, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by facsimile materials dated May 16, 1997 and telephone conversations with Division staff. By your correspondence, you request relief from the certification requirement of Rule 4.22(d)¹ with regard to the "Fund", a commodity pool for which you serve as the sole general partner and commodity pool operator ("CPO").

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. You organized the Fund in April 1992 under the laws of the state of Z for the purpose of trading in commodity interests. Since that time, you have operated the Fund pursuant to the exemption from CPO registration in Rule 4.13(a)(2).² Currently the Fund has eight limited partners, all of whom joined the Fund in May 1992, and you represent that interests in the Fund will not be offered to anyone else. Specifically, the limited partners are:

- (1) You, A .
- (2) B , your mother.
- (3)-(4) C and D , your sister and brother.
- (5) E , your aunt.
- (6)-(8) F , G and H , your father-in-law, brother-in-law and sister-in-law, respectively.³

In March 1997, X became registered as a CPO.⁴ You are listed as X's sole principal and registered as its sole associated person. As you acknowledge in your correspondence, registration of X as a

CPO and your status as its sole principal means that you are not eligible to continue to claim the exemption from CPO registration in Rule 4.13(a)(2).⁵

You state that the most "onerous and costly" aspect of losing the Rule 4.13 exemption is the requirement of an annual audit. Accordingly, you request relief from the requirement in Rule 4.22 (d) that the financial statements in the Annual Report that a registered CPO must prepare and distribute be certified by an independent public accountant. In support of your request, you state that annual audits are unnecessary because of the detailed information you provide to each limited partner.⁶

Based upon your representations, we believe that it would not 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 you from compliance with Rule 4.22(d) in connection with your operation of the Fund.

We note that this letter relieves you solely from compliance with the certification requirement of Rule 4.22(d) and does not excuse you from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")⁷ or the Commission's regulations issued thereunder, including the requirement of an oath or affirmation pursuant to Rule 4.22(h). For example, you remain subject to the antifraud provisions of Section 4o of the Act,⁸ 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 you solely in connection with your 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 Commission records indicate that you filed the statement required to claim relief from CPO registration under Rule 4.13(a)(2) on March 2, 1992.

³ The following persons previously were limited partners of the Fund: I , your wife's brother-in-law, who joined the Fund in November 1994 and withdrew in November 1995; J , your wife's sister-in-law, who joined the Fund in May 1992 and withdrew in November 1996; and K , your neighbor and friend for 25 years, who joined the Fund in May 1992 and withdrew in May 1997.

⁴ Specifically, X became registered as a CPO on March 31, 1997. X recently filed a Disclosure Document dated May 1, 1997 with the Commission for Y .

⁵ Rule 4.13(d) provides that, if a person exempt from CPO registration under Rule 4.13(a) registers as a CPO, that person must comply with Part 4 of the Commission's regulations as if the person were not exempt from CPO registration.

⁶ We note that the Fund's Limited Partnership Agreement provides that you must establish accounting procedures for the Fund in accordance with generally accepted accounting principles. You prepare and distribute to each limited partner unaudited monthly reports, which include: (1) a statement of financial condition, a statement of income or loss, and an itemized list of the Fund's expenses for the preceding month; (2) a summary of all equity accounts showing the allocations, additions and distributions for the month; and (3) copies of all account and bank statements. You also prepare and distribute unaudited annual tax returns for the Fund.

⁷ 7 U.S.C. § 1 et seq. (1994).

⁸ 7 U.S.C. § 60 (1994).