

CFTC Letter No. 97-79**September 29, 1997****Division of Trading & Markets**

Re: Section 4m(1) -- Request for Relief from Commodity Pool Operator
Registration

Dear :

This is in response to your letter dated May 12, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated July 18, 1997 and telephone conversations with Division staff. By this correspondence, you request on behalf of X relief from registration as a commodity pool operator ("CPO") under Section 4m(1) of the Commodity Exchange Act ("Act")¹ in connection with its serving as the general partner of the "Fund".

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The Fund is organized as, a limited partnership. It commenced operations in January 1997 and currently has approximately \$6,000,000 in assets. Each investor in the Fund is and will be an accredited investor as that term is defined in Regulation D under the Securities Act of 1933. The Fund requires a minimum investment of \$500,000, which X does not intend to waive. The Fund was formed "to seek current income and capital appreciation from a balanced portfolio of mortgage-backed and Treasury securities which the Fund believes to be undervalued." It was not and will not be marketed as a commodity pool or otherwise as a vehicle for trading commodity interests.

X wishes to hedge the Fund's investments through the use of interest rate futures contracts or options thereon. In this regard, you represent that the Fund will trade commodity interests solely for bona fide hedging purposes within the meaning and intent of Rule 1.3(z)(1)² and that it will commit no more than two percent of its net asset value to establish its commodity interest positions.

The Fund's sole general partner is X, a wholly-owned subsidiary of Y, a holding company³ X does not and will not serve as the CPO of any other commodity pool. Z, also a wholly-owned subsidiary of Y, serves as the sole securities investment adviser to the Fund. A registered commodity trading advisor (CTA) that is affiliated with Y (e.g., as a wholly-owned subsidiary)

will serve as the Fund's CTA.⁴

In support of your request on behalf of X, you claim that it is neither beneficial nor cost effective for X to register as a CPO given the de minimis investment of Fund assets that would be committed to establishing commodity interest contracts and the limited risk to Fund assets that would arise from such an investment. You also note that X does not act as a CPO of any other commodity pool and that neither X nor any of its officers, directors or principals is subject to statutory disqualification under Section 8a(2) or 8a(3) of the Act.⁵

Based upon the foregoing, and, in particular, your representations that: (1) X will commit no more than two percent of the Fund's net asset value to establish commodity interest positions; (2) the Fund will trade commodity interest contracts solely for bona fide hedging purposes within the meaning and intent of Rule 1.3(z)(1); (3) each investor in the Fund is or will be an accredited investor; (4) the minimum investment in the Fund is \$500,000; (5) the Fund will not be marketed as commodity pool or a vehicle for trading commodity interests; and (6) X does not and will not serve as the CPO of any other commodity pool, the Division will not recommend that the Commission take any enforcement action against X based solely upon its failure to register as a CPO under Section 4m(1) of the Act in order to operate the Fund. This position is, however, subject to the condition that within thirty days following the selection of the Fund's CTA, X and the CTA provide the Division with a signed and dated acknowledgment whereby each accepts joint and several liability with the other for any violation of the Act or the Commission's rules issued thereunder applicable to CPOs.

The relief issued by this letter does not excuse X from compliance with any other applicable requirements contained in the Act⁶ or the Commission's rules. For example, it remains subject to the antifraud provisions of Section 4o of the Act,⁷ 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 Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition, regardless of registration status. Moreover, this relief is applicable to X solely in connection with its serving as the CPO of the Fund.

The relief granted by this letter is based upon the representations you have made to us and is subject to compliance with the condition 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 activities of X or the Fund change in any way from those as represented to us. Finally, the position taken herein represents the position of the Division of Trading and Markets 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 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

³ W , another Y wholly-owned subsidiary, is registered with the Commission as a futures commission merchant ("FCM").

⁴ X does not know at this time specifically who the CTA will be.

⁵ 7 U.S.C. § 12a(2) or 12a(3) (1994).

⁶ 7 U.S.C. § 1 *et seq.* (1994).

⁷ 7 U.S.C. § 6o (1994).