

**CFTC Letter No. 99-19****February 11, 1999****Exemption****Division of Trading & Markets**

Re: Rule 4.21 -- Request for Relief from Disclosure Document Delivery Requirement

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Dear :

This is in response to your letter dated December 18, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by letter dated April 6, 1998 and telephone conversations with Division staff. By your letters, as supplemented, you request on behalf of ("R"), a registered commodity pool operator ("CPO"), that the Division exempt "R" from the requirement in Commission Rule 4.21<sup>1</sup> that "R" provide a Disclosure Document to the participants of: (1) "S"; (2) "T"; and (3) "U" (collectively, the "Funds"), each a commodity pool for which "R" serves as the general partner (in the case of "S") or as the managing member (in the case of "T" and "U") and the CPO thereof.

Based upon the representations made in your letters, as supplemented, we understand the relevant facts with respect to the operation of the Funds to be as follows. As noted above, "R" is registered with the Commission as a CPO. "S" has been formed as a "master" fund for two commodity pool "feeder funds" for which "R" serves as the general partner and CPO. These two commodity pools are "V" and "W". "V" and "W" will be the only investors in "S".

"T" is a limited liability company owned approximately 99 percent by "S" and approximately one percent by "R". "R" serves as the managing member and CPO of "T". "S" invests in offshore investment funds that are "passive foreign investment companies" ("PFICs") through "T" in order to permit "T", as a U.S. entity, to make a "qualified electing fund" election with respect to the PFIC.<sup>2</sup> "T" and "R" will be the only investors in "T".

"U", like "T", was formed as a master fund for two commodity pool feeder funds for which "R" will serve as the general partner and CPO thereof. These two feeder funds are "X" and "Y", which will be the only investors in "U".

In support of its request for relief from Rule 4.21, "R" represents that it will include all relevant disclosures regarding "S" and "T" in the Disclosure Documents for "V" and "W".<sup>3</sup> Similarly, "R" represents that it will include all relevant disclosures regarding "U" in the Disclosure Documents for "X" and "Y".

As you are aware, Commission Rule 4.21 generally requires that, prior to soliciting, accepting or receiving funds or other property from a prospective pool participant, a CPO deliver to the prospective pool participant a Disclosure Document that contains specified information. Thus, absent the relief requested herein, "R": (1) as the CPO of "S", would be required to deliver a Disclosure Document to itself as the CPO of "V" and "W"; (2) as the CPO of "T", would be required to deliver a Disclosure Document to itself as the CPO of "S"; and (3) as the CPO of "U", would be required to deliver a Disclosure Document to itself as the CPO of "X" and "Y".<sup>4</sup>

Based upon the representations contained in your letter, and consistent with our prior practice in this area,<sup>5</sup> the Division believes that an exemption from Rule 4.21 would not be contrary to the public interest and the purposes of the rule. Specifically, we note that: (1) "R" is either the general partner or managing member, as applicable, and serves as the registered CPO of each of "S", "T", "V", "W", "U", "X" and "Y"; (2) the only investors in "S" will be "W" and "V"; (3) the only investors in "T" will be "S" and "R"; and (4) the only investors in "U" will be "X" and "Y". Accordingly, under the authority delegated to it by Rule 140.93(a)(1), the Division hereby exempts "R" from Rule 4.21 to the extent that it would be required to provide itself: (1) as the CPO of "V" and "W", a Disclosure Document for "S"; (2) as the CPO of "S", a Disclosure Document for "T"; and (3) as the CPO of "X" and "Y", a Disclosure Document for "U". This relief is, however, subject to the condition that "R" remains the general partner or managing member, as applicable, and the registered CPO of "S", "T", "V", "W", "U", "X" and "Y".

This letter, and the exemptions granted herein, are based upon the representations you have made to us and are subject to compliance with the condition stated above. Any different, changed or omitted material facts or circumstances might render these exemptions void. You must notify us immediately in the event that the operations of "R", "S", "T", "V", "W", "U", "X" or "Y" change in any material way from those represented to us. Further, this letter is applicable to "R" solely in connection with its acting as the CPO of "S", "T" and "U".

This letter does not excuse "R" from compliance with any other applicable requirements contained in the Commodity Exchange Act, as amended (the "Act"),<sup>6</sup> or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act<sup>7</sup> to the reporting re-quire-ments for traders set forth in Parts 15, 18 and 19 of the Commis-sion's regulations and to all other applicable provi-sions of Part 4, including Rules 4.22 and 4.23.

If you have any questions concerning this correspondence, please contact Lawrence T. Eckert, an attorney on my staff, at (202) 418-5450.

Very truly  
yours,

I. Michael  
Greenberger

## Director

<sup>1</sup> Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1998).

<sup>2</sup> Under applicable tax laws, as a non-U.S. person neither "S" nor "V" could make this election. The election would instead have to be made by each U.S. person who was an investor in "V", which you claim would be "very burdensome."

<sup>3</sup> "R" will not charge any advisory or management fees to "S".

<sup>4</sup> Where a prospective participant in a commodity pool is itself a commodity pool, the CPO of the investee pool delivers that pool's disclosure document to the CPO of the investor pool (but not to the individual participants therein), who bases its decision whether to invest its pool's assets in the investee pool based upon the information contained in the disclosure document.

<sup>5</sup> See CFTC Interpretative Letter No. 97-62 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) § 27,122 (July 15,1997).

<sup>6</sup> 7 U.S.C. § 1 et seq. (1994).

<sup>7</sup> 7 U.S.C. 60 (1994).