

CFTC Letter No. 99-30**July 14, 1999****No-Action****Division of Trading & Markets**

Re: Section 4m(1) - - Request for CPO Registration No-
Action Position

Dear :

This is in response to your letter dated December 21, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile transmission dated February 2, 1999 and telephone conversations with Division staff. By your correspondence, you request that the Division not recommend that the Commission commence any enforcement action against "X" registered investment adviser under the Investment Advisers Act of 1940, for failure to register as a commodity pool operator ("CPO") under Section 4m(1) of the Commodity Exchange Act (the "Act")¹ in connection with "X's" serving as a co-general partner of the "Fund".

Based upon the representations made in your correspondence, we understand the facts to be as follows. "A" is currently the sole general partner of the Fund, a Texas limited partnership. To provide certain tax benefits, "A" proposes that "X" become a co-general partner of the Fund. Currently, "X" receives payments from the Fund for investment advisory services, and these payments are treated as ordinary income. However, as a co-general partner, "X" will be able to treat compensation received from the Fund as a partnership allocation, thereby qualifying all or a portion of such compensation for capital gains treatment rather than treatment as ordinary income.²

In support of your request, you represent that "A" is a registered CPO and the sole shareholder, president, and employee of "X". "A" will undertake all CPO responsibilities in connection with the Fund, including performing all activities subject to regulation by the Commission. Conversely, "X's" activities will be limited to providing to the Fund investment advice on investments not subject to regulation by the Commission. Additionally, you have represented that, upon becoming co-general partners, "A" and "X" will be jointly and severally liable for any violations of the Act or the Commission's regulations committed by the other in connection with the operation of the Fund.

The purposes of registration are, among other things, to assure that those who offer commodity interest investments or advice to the public are: (1) qualified; and (2) adequately supervised.³ Because "A" will be registered as a CPO, undertake all CPO responsibilities, and be jointly and severally liable with "X", investors will receive as much information about who is managing their investments, and be as protected from an unfit advisor, as they would if "X" were required to register as a CPO.

Based upon the representations you have made to us, it appears that in this situation no regulatory purpose would be served by requiring "X" to register as a CPO. Accordingly, the Division will not recommend that the Commission commence any enforcement action against "X" for failure to register a CPO under Section 4m(1) in connection with its serving as a co-general partner of the Fund.

This letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder.⁴ For example, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations and to all other provisions of Part 4.

This letter, and the no-action position issued herein, are based upon the representations that have been made to us and are applicable to "X" solely in its capacity as the general partner of the Fund.⁵ Any different, changed, or omitted material facts or circumstances might render this position void. You must notify us immediately in the event the operations or activities of "A" or "X" change in any material way from those represented to us. Further, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or any other division or office of the Commission.

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

Very Truly Yours,

I. Michael Greenberger

Director

¹ 7 U.S.C. § 6m(1) (1994).

² See generally 26 U.S.C. §§ 701-709 (1994)(governing taxation of partnership operations).

³ H.R. Rep. No. 97-565, 97th Cong., 2nd Sess., pt. 1, at 50 (1982); *see also* CFTC v. Savage, 611 F.2d 270, 280 (9th Cir. 1979) (stating, "[R]egistration assures a public source of information about those upon whom customers rely and protects the public from individuals unfit to act as advisors.")

⁴ Nor does this letter excuse "X" from compliance with any other applicable requirements contained in any other legislation - - *e.g.*, the Internal Revenue Code.

⁵ Furthermore, because this letter applies only to "X", any additional general partners of the Fund must register as CPOs.