CFTC Letter No. 00-43

November 29, 1999
No-Action
Division of Trading and Markets

Re: CPO Registration No-Action Position Regarding "X"

Dear :

By letter dated March 12, 1999 you requested on behalf of "X" that the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission") confirm to you that "X" need not register as a commodity pool operator ("CPO") solely as a result of becoming a general partner of "Y" and "Z". In the alternative, you requested confirmation of eligibility for exemption from CPO registration pursuant to Commission Rule 4.13(a).[1] By letter dated May 19, 1999 (reaffirmed by a letter dated August 27, 1999), the Division denied your request. You made a request for reconsideration in a conference with members of Commission staff on September 22, 1999.[2] In support of that request, you made additional representations by letter dated November 1, 1999 to Division staff. This letter is in response to your request for a reconsideration of the denial.

Based upon the representations made by you and "A", the Division understands the following additional facts are relevant to reconsideration of our denial of your request. Since "X" commenced serving as a general partner of "Y" (and of "Z") approximately one year ago, no new investors have been solicited and no new capital has been contributed by anyone outside of the consortium of financial institutions that organized "X". "X" has been engaged in a steady liquidation of "Y's" investments at the rate of one to two percent per week. Essentially, then, "X" operates in the manner of a bankruptcy trustee.

From the date of formation of "X", the market strategy of "Y" has been to effect an orderly reduction of the risk profile of its investments. At all times, instruments within the Commission's jurisdiction have been used solely as risk management tools with respect to "Y's" other investments. Positions taken in Commission-regulated instruments have not resulted in an increase in "Y's" investment exposure in any instance known to "X".

Heretofore, "X" has been reluctant to indicate publicly that it would merely be liquidating positions, since widespread awareness of that purpose could have put "X" at a disadvantage in the financial markets. Moreover, the potential effects of a severe market reaction to that information could have affected other investment vehicles unrelated to "Y".

The interests of all investors in "Y", other than "X", were redeemed for cash during the period of June and July 1999. "Y's" futures margin has now been reduced from $950 million a year ago to $3.2 million. At this rate, "X" expects that the liquidation of "Y's" investments, as well as all related risk management positions, will be complete by the end of the first quarter of 2000 and well in advance of the three-year period anticipated under the rescue arrangement.

You also note that "X" was organized as a vehicle by which a consortium of fourteen financial institutions could rescue "Y", and thereby minimize or avoid risks to the general financial community (and consequently to the public) in the event that "Y" were to collapse. As such, you claim that the involvement of "X" in the operation of "Y" is a unique situation, unlike any normal commodity pool operation.[3]

Based upon the representations made by you and "A" in connection with your request for reconsideration of the Division's prior denial of registration relief to "X", the Division will not recommend that the Commission commence any enforcement action against "X" under Section 4m(1) of the Commodity Exchange Act (the "Act"),[4] based solely upon "X's" failure as of the date hereof or in the future to register as a CPO in connection with serving as a general partner of "Y" or as a general partner of "Z". This no-action position is, however, subject to the condition that "X" completes the process of liquidating "Y's" investments on or before March 31, 2000.

The no-action position taken in this letter is prospective only and applies to "X" solely in connection with the operation of "Y" and "Z" from and after the date hereof. It does not affect any liability for violations of the Act or the Commission's regulations issued thereunder that "X" may have committed prior to the date hereof.

Moreover, the no-action position taken in this letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations. Thus, for example, "X" remains subject to all antifraud provisions of the Act and the regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4. Moreover, this letter applies solely with respect to "X's" operation of "Y" and "Z", as discussed above.

This letter, and the no-action position taken herein, are based upon the representations provided to us and is subject to compliance with the condition stated above. Any different, changed or omitted material facts or circumstances might render this no-action position void.[5] You must notify us immediately in the event that the operations of "X" change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Christopher W. Cummings, an attorney on my staff, at (202) 418-5445.

Very truly yours,

John C. Lawton
Acting Director

1 Commission regulations referred to herein are found at 17 C.F.R. Ch I (1999).

2 Also in attendance at that conference was "A" of your firm.

3 For example, unlike a typical pool operator, as risk was reduced, "X" distributed "Y's" assets to "Y's" investors, instead of further leveraging "Y's" assets.

4 7 U.S.C. § 6m(1) (1994).

5 For example, in the event that "X" is unable to complete the liquidation of "Y's" investments by March 31, 2000, it must contact the Division by that date in writing.