

COMMODITY FUTURES TRADING COMMISSION

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94-54



DIVISION OF
TRADING AND MARKETS

April 29, 1994

Re: Request for Relief from CPO Registration

Dear :

This is in response to your letter dated January 31, 1994, as supplemented by telephone conversations with staff of the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request that the Division not recommend that the Commission take any enforcement action against a New Jersey limited partnership "X", for failure to register as a commodity pool operator ("CPO") in connection with its serving as a general partner of "Y" and "Z" (collectively the "Partnerships").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnerships are private investment limited partnerships which have twelve general partners: "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", and "X" (collectively the "General Partners"). "A" is the managing general partner of each Partnership. The Partnerships are not marketed as commodity pools and not more than ten percent of each of the Partnership's assets will be deposited as initial margin and option premiums. Each of the General Partners, with the exception of "X", are registered as CPOs. A claim for exemption pursuant to Rule 4.7(a)(3) has been filed with respect to each of the Partnerships.^{1/}

With respect to "X", you represent that it was formed as "A"'s family partnership, that "A" serves as the managing general partner and that it consists of "A", his children, his wife, his brother and his brother's children. None of the partners of "X", other than "A", is involved in making investment decisions on behalf of "X". As of January 1994, "X" had assets in excess of \$42 million and is a "qualified eligible participant" ("QEP") under Rule 4.7 because all of its participants are QEPs.

^{1/} Originally, the Partnerships had been operated pursuant to a claim of exemption under Rule 4.12(b). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

Although "X" is a general partner of both Partnerships, you represent that "X" will not exercise discretion, supervision or control over: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Partnerships, or (ii) the investment, use or disposition of funds or property of the Partnerships. "X" performs no operational or trading functions for the Partnerships. You further represent that none of the partners of "X" is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").^{2/}

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" if it fails to register as a CPO in connection with its activities as a General Partner of the Partnerships. This position is based upon, among others, your representations that: (1) the other eleven General Partners of each Partnership are registered with the Commission as CPOs; (2) the general partner of "X" ("A") is registered as a CPO; (3) not more than ten percent of each Partnership's assets will be deposited as initial margin and option premiums; (4) the Partnerships are not marketed as commodity pools; and (5) neither "X" nor any partner thereof is subject to any statutory disqualification under Section 8a of the Act. This relief, however, is subject to the conditions that, within thirty days of the date of this letter: (1) "X" must provide the Division with a written and dated acknowledgment whereby it accepts joint and several liability for any violation of the Act or Commission regulations committed thereunder in connection with the other General Partners' activities as general partners and CPOs of the Partnership; and (2) the General Partners, other than "X", must provide the Division with a written acknowledgment whereby each of the General Partners other than "X" accepts joint and several liability for any violation of the Act or Commission regulations committed thereunder in connection with "X"'s activities as a general partner and CPO of each Partnership.

The relief issued by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. §60 (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to take action with respect to any past violation of the Act, 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992), or the Commission's regulations thereunder. The no-action relief provided herein is prospective only.

^{2/} 7 U.S.C. §§ 12a(2) or 12a(3) (1988 & Supp. IV 1992).

This letter is based upon the representations you have made to us and is subject to the conditions stated 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 in the event that the Partnerships' operations, including the nature of the Partnerships' commodity interest trading and "X"'s responsibilities with respect to the Partnerships, change in any way from those as represented to us.

Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel