



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

94-98

DIVISION OF
TRADING AND MARKETS

June 6, 1994

Re: Section 4m(1) -- Request for Relief from Registration
by Co-CPO

Dear :

This is in response to your letter dated May 6, 1994, in which you request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief from registration as a commodity pool operator ("CPO") to "X", a Delaware corporation ("X"), in connection with its serving as a general partner of "Z", a Delaware limited partnership (the "Partnership").

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the relevant facts to be as follows. The Partnership is a private investment company which has two general partners, "X" and "Y". "Y" is the managing general partner of the Partnership and is a registered CPO. "A" is the president, sole stockholder and a director of "Y", as well as the president, a director and 70% stockholder of "X". "B", a director and executive vice president of both "X" and "Y", owns the remaining 30% of "X". The other principal officers and/or directors of "Y" and "X" are "C" and "D". "C" is a senior vice president, the secretary and the general counsel of both "Y" and "X". "D" is a senior vice president and the treasurer of both "Y" and "X". "A", "B", "C" and "D" are all listed as principals of "Y", and "A" and "B" are registered as associated persons of "Y". Both "Y" and "X" are registered investment advisers under the Investment Advisers Act of 1940 and, together with their affiliates, manage over \$2 billion.

Under the Amended and Restated Agreement of Limited Partnership, "Y", as the managing general partner, is solely responsible for managing the investment activities and day-to-day operations of the Partnership. You represent that "X" serves as general partner for "certain internal organizational purposes and as such is not involved in the day-to-day operations of the Partnership." You further represent that the Partnership is not

marketed as a commodity pool, that the Partnership will be operated pursuant to the criteria set forth in Rule 4.12(b),^{1/} and that "X" is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act").^{2/}

In support of the instant request, "X" and "Y" provided the Division with a written acknowledgement whereby each accepts joint and several liability for any violation of the Act or Commission regulations thereunder committed by the other. Further, 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 Partnership, or (ii) the investment, use or disposition of funds or property of the Partnership.

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 serving as a general partner of the Partnership. This position is based upon, among others, your representations that: (1) "Y", the other general partner of the Partnership, is registered with the Commission as a CPO; (2) the Partnership will be operated pursuant to the criteria set forth in Rule 4.12(b); (3) the Partnership is not marketed as a commodity pool; and (4) "X" is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.

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, "X" remains subject to the antifraud provisions of Section 40 of the Act,^{3/} 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 or the Commission's regulations thereunder. The no-action relief provided herein is prospective only.

This letter is based upon the representations you have made to the Division and is subject to the conditions stated above.

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

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

^{3/} 7 U.S.C. § 60 (1988 & Supp. IV 1992).

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Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify the Division immediately in the event that the activities of the Partnership or of "X" in connection therewith 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