

REDACTION NOT NECESSARY PER TOM (T. JOSEPH)
COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

95-67

July 26, 1995

Eileen T. Flaherty, Esq.
Vice President and Associate General Counsel
Chicago Mercantile Exchange
30 South Wacker Drive
Chicago, IL 60606

Re: Section 4m(1) -- Request for Relief from Commodity Pool Operator and Commodity Trading Advisor Registration Requirements by Registered Investment Advisers Involved in Certain Foreign Currency Futures and Options Transactions on the Chicago Mercantile Exchange.

Dear Ms. Flaherty:

This is in response to your letter dated March 28, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") as supplemented by telephone conversations with the Division, by which you request "no-action" relief from registration requirements under the Commodity Exchange Act ("Act").^{1/} Specifically, you request relief on behalf of investment advisers ("IAs") registered as such under the Investment Advisers Act of 1940 ("IAA")^{2/} from the requirement to register as commodity trading advisors ("CTAs") or commodity pool operators ("CPOs") by reason of providing investment advice to, or exercising trading discretion on behalf of, customers with respect to foreign currency futures and options on foreign currency futures traded on the Chicago Mercantile Exchange ("CME foreign currency interests"). You also request relief from the requirement to register as a CPO under Section 4m(1) of the Act on behalf of investment companies ("ICs") registered as such under the Investment Company Act of 1940 ("ICA")^{3/} or any director or general partner thereof, when the requirement to register as a CPO is based solely upon such person's operating a collective investment vehicle that trades in CME foreign currency interests.^{4/}

^{1/} 7 U.S.C. § 1 et seq. (1994).

^{2/} 15 U.S.C. § 80b-1 et seq. (1988 & Supp. V 1993).

^{3/} 15 U.S.C. 80a-1 et seq. (1988 & Supp. V 1993).

^{4/} We note that while your letter did not request relief from CPO registration requirements on behalf of ICs registered as such under the ICA, you made such a request during an April 27, 1995 telephone conversation with Division staff.

Based upon your letter, as supplemented, we understand the pertinent facts to be as follows. By letter dated October 18, 1994, and in response to a request by the Philadelphia Stock Exchange ("PHLX"), the staff of the Division of Investment Management of the Securities Exchange Commission ("SEC") stated that it would not recommend that the SEC take enforcement action against: (1) any CTA registered as such under the Act for failure to register as an IA under the IAA based solely upon such CTA's providing advice to or exercising trading discretion with respect to PHLX foreign currency options; and (2) any commodity pool operated by a CPO registered as such under the Act, or the principals of such pool, for failure to register the pool as an IC under the ICA based solely upon the pool's owning, holding, trading, reinvesting, or investing in PHLX foreign currency options.^{5/} The SEC staff's position was based upon PHLX's representations, among others, that the PHLX foreign currency options and CME options on foreign currency futures contracts were "functionally and economically equivalent instruments" and that "with the exception of the European Currency Unit, the currencies traded on the Philadelphia Stock Exchange are the same as those traded on the Chicago Mercantile Exchange."^{6/}

By your letter as supplemented, the CME is requesting parallel relief from the staff of the Division, as stated more fully above, from registration as a CTA or CPO on behalf of registered IAs and ICs whose only activity related to futures or commodity options involves providing investment advice or engaging in transactions on behalf of customers with respect to CME foreign currency futures and options. In support of your request you claim that subjecting registered IAs and ICs to further registration and reporting requirements under the Act would impose unnecessary burdens, hampering legitimate hedging, trading and investment activities. You further claim that since IAs and ICs can use domestic securities exchanges and foreign exchanges to trade foreign currency contracts, the additional regulatory burdens entailed in complying with the futures regulatory framework negatively affect the competitiveness of the CME as it attempts to attract potential users to its foreign currency markets. Specifically, you claim that registered IAs are subject to comprehensive regulation under the IAA and that registered ICs are subject to comprehensive regulation under the ICA.

To the extent that the activities of a person come within the statutory definition of the term "commodity trading advisor" or "commodity pool operator," such person would be a CTA or CPO,

^{5/} Philadelphia Stock Exchange Inc., SEC No-Action Letter, LEXIS 888 (October 18, 1994).

^{6/} Id.

respectively, and would be required to register as such under Section 4m(1) of the Act.^{7/} Such activities, respectively, would involve providing advice with respect to, or operating a collective investment vehicle that trades in, CME foreign currency interests. However, given the economic similarities of the foreign currency option contracts traded on the PHLX and CME, the registration and disclosure requirements imposed by the IAA and ICA,^{8/} and the relief granted to registered CTAs and CPOs with respect to PHLX foreign currency options by the SEC staff, we do not believe that it would be contrary to the public interest and the purposes of the registration requirements under the Act to grant the relief you are requesting.

Accordingly, the Division will not recommend that the Commission take enforcement action under Section 4m(1) of the Act (1) against any person registered as an IA under the IAA if such person fails to register as a CTA or CPO^{9/} based solely upon providing investment advice to or exercising trading discretion on behalf of customers with respect to CME foreign currency futures and options; or (2) against any person registered as an IC under the ICA or any director or general partner thereof, if such person fails to register as a CPO based solely upon such person's operating an IC whose sole futures or commodity options activity consists of transactions in CME foreign currency futures and options.^{10/} The foregoing is, however, subject to the conditions that: (1) no person claiming relief under this letter will hold himself out generally to the public as a CTA or CPO; and (2) all CME requirements applicable to trading and transactions in foreign currency futures and options apply to persons claiming relief under this letter. Moreover, our position does not alter the fact that foreign currency futures contracts or foreign currency options traded on a contract market as defined in Commission Rule 1.3(h) are subject to the

^{7/} Sections 1a(4) and (5) of the Act, 7 U.S.C. § 1a(4) and (5) (1994), respectively, define the terms "commodity pool operator" and "commodity trading advisor."

^{8/} However, by this letter, we are not making any finding, nor should this letter be deemed to imply any finding, that the registration, disclosure and other operative requirements of the ICA and the ICC are equivalent to the obligations of CPOs and CTAs under the Act and the Commission's regulations issued thereunder.

^{9/} This relief does not relieve registered IAs from registration as CPOs if they engage in operating, or soliciting participations in, a commodity pool.

^{10/} We note that Commission Rules 4.5 and 4.14(a)(8) provide extensive relief with respect to registered ICs and registered IAs providing commodity advice thereto.

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Commission's jurisdiction and regulations.^{11/}

This letter does not excuse any persons subject hereto from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of Section 40 of the Act,^{12/} to the reporting requirements for traders set forth in Parts 15, 18, and 19 and to all other applicable requirements of Part 4. This letter is based upon the representations that you have made to us and is subject to compliance with the conditions stated above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. This letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Susan C. Ervin, the Division's Chief Counsel, at (202)254-8955.

Very truly yours,

Andrea M. Corcoran
Director

cc: Daniel A. Driscoll, Vice President-Compliance
National Futures Association

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^{11/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

^{12/} 7 U.S.C. § 60 (1994).