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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

February 14, 1996

Re: Section 4m(1) -- Request for Relief from CPO Registration Requirements and for Relief from CTA Registration Requirements

Dear :

This is in response to your letter dated December 19, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by letter dated January 17, 1996 and telephone conversations with Division staff. By your letter you request, on behalf of "X", relief from commodity pool operator ("CPO") registration requirements in connection with certain commodity interest trading activities in which "X" intends to engage. You also request, on behalf of "Y" relief from commodity trading advisor ("CTA") registration requirements, as explained more fully below.

Based upon the representations made in your letter, as supplemented, we understand that the facts are as follows. "X" is a corporation owned 100% by you and serves as the general partner of the "Fund", an investment limited partnership. "Y" also is a corporation owned 100% by you, is registered with the Securities and Exchange Commission as an investment adviser and serves as the investment manager to the Fund.

The Fund was organized in July of 1995. Interests in the Fund are exempt from registration under the Securities Act of 1933 ("1933 Act"), pursuant to Section 4(2) of the 1933 Act and Regulation D promulgated thereunder. Interests in the Fund are held by three persons (the "Investors"), all of whom are close personal and business friends of yours. In addition, each Investor is a "qualified eligible participant" ("QEP") as that term is defined in Commission Rule 4.7.^{1/} You do not solicit or adver-

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

tise on behalf of the Fund, or otherwise market interests in the Fund to the public.^{2/}

The purpose of the Fund is to invest in a diversified portfolio of mutual funds, bonds, equities and cash. As a consequence of the types of investments in which the Fund invests, you state that the profits and losses of the Fund are sensitive to fluctuations in interest rates and to fluctuations in the value of foreign currencies relative to the U.S. dollar. Thus, for example, you represent that since July of 1995, the Fund has held approximately \$1 million worth of Japanese securities through its mutual fund holdings and that although these Japanese securities have appreciated in their local currency, fluctuations in the value of the dollar relative to the yen have reduced the gain in U.S. dollars.

In order to reduce the Fund's exposure to unfavorable fluctuations in currency values and interest rates, "X" seeks to open commodity interest trading accounts for the purpose of hedging the Fund's currency and interest rate exposure. To this end, you represent that all commodity interest transactions in which the Fund will engage will be bona fide hedging transactions only, as such term is defined in Rule 1.3(z)(1). You also represent that the Fund will not deposit as initial margin or premiums for its commodity interest transactions an aggregate amount of funds greater than five percent of its net asset value (as defined in Rule 4.10(b)) at any given time, after taking into account unrealized profits and unrealized losses on such transactions, computed in accordance with generally accepted accounting principles. You state that the Fund's intended use of commodity interests as a hedging tool is fully disclosed in its private placement memorandum.

In support of the requested relief, you also state that neither "X" nor "Y", nor you as the sole principal and shareholder of both entities, is subject to a statutory disqualification under

^{2/} You do not at this time anticipate additional investors in the Fund, but seek to retain the option to have additional investors. You have agreed to notify the Division in writing and obtain prior Division approval before adding any additional investors, each of whom will be a close personal friend or business associate of yours and will meet the QEP standards of Rule 4.7. You explain the term "close business associate" to mean persons with whom you are friends and whom you met through various business activities. For example, you state that you currently sit on the board of directors of four technology companies located in the Boston area. Through these positions, you have developed friendships with other board members.

Section 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").^{3/} You ask the Division to grant, among other things, no-action relief from CPO registration requirements such that "X" need not register as a CPO of the Fund, notwithstanding the anticipated commodity interest transactions as described herein.

The Division believes that your request for CPO registration relief has merit in light of your representations, among others, that: (1) the Fund is an investment vehicle whose primary business is other than the trading of commodity interests; (2) each investor is a close personal friend or close business associate of yours and meets the QEP standards of Rule 4.7; (3) the Fund will trade commodity interests solely for bona fide hedging purposes, as defined in Rule 1.3(z)(1); and (4) the Fund will not commit more than five percent of its net assets to establish commodity interest positions. Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" for failure to register as a CPO in connection with the operation of the Fund.

You also ask the Division to grant "Y" relief from CTA registration in connection with its providing commodity interest trading advice to the Fund. In support of this request, you restate the representations made in support of your request for CPO registration relief for "X" and you further represent that neither "Y" nor you, as its sole principal and shareholder, provides commodity interest trading advice to any other persons or holds itself out generally to the public as a CTA. Based upon the representations you have made to us, the Division will not recommend that the Commission take any enforcement action against "Y" for failure to register as a CTA in connection with providing commodity interest trading advice to the Fund as described herein.

You should be aware that the positions taken in this letter do not excuse "X" or "Y" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each remains subject to the antifraud provisions of Section 40 of the Act^{4/} and to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations. Moreover, "X" and "Y" remain subject to the operational provisions of Rules 4.20 for CPOs and 4.30 for CTAs, respectively, and the advertising restrictions of Rule 4.41 applicable to both CPOs and CTAs.

This letter is based upon the representations provided to us and is strictly limited to those representations. Any different, changed or omitted facts or circumstances might require us to reach

^{3/} 7 U.S.C. §§ 12a(2) or 12a(3) (1994).

^{4/} 7 U.S.C. § 60 (1994).

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a different conclusion. In this connection, we request that you notify us immediately in the event the operations of "X", "Y", or the Fund, including the restrictions on the use of commodity interest contracts as described herein, change in any way from those as represented.

The views expressed herein are those of the Division only and do 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 Tina Paraskevas Shea, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel