



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

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DIVISION OF
TRADING & MARKETS

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COMMODITY FUTURES
TRADING COMMISSION
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Re: Request for Relief from Rules 4.5 and 4.14(a)(8)
Subsequent to Registration as a CPO and CTA

Dear :

This is in response to your letter dated October 9, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request confirmation on behalf of "X" that "X" may continue to rely on Rules 4.5 and 4.14(a)(8)^{1/} in certain circumstances subsequent to its registration as a commodity pool operator ("CPO") and commodity trading advisor ("CTA").

Based upon your representations, we understand the relevant facts to be as follows. "X" is registered as an investment adviser under the Investment Advisers Act of 1940, as amended.^{2/} Its clients include qualified pension and profit sharing plans, other qualified and non-qualified retirement plans, insurance companies and insurance company separate accounts, corporations, banks, partnerships, charitable foundations and other charitable organizations, and high net worth individuals, families and trusts. "X" also acts as a sponsor and investment adviser to mutual funds that are registered as investment companies, or series thereof, under the Investment Company Act of 1940, as amended, and serves as an investment adviser and general partner to certain hedge funds that are continuously offered pursuant to an exemption from registration under the Securities Act of 1933, as amended.

"X" has relied upon Rule 4.5 for relief from CPO registration, given that certain of the mutual funds enter into transactions involving financial futures contracts or options thereon.

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

^{2/} As of September 30, 1996, "X" had approximately \$21 billion in assets under management.

In addition, because "X" may provide commodity trading advice to Rule 4.5-eligible companies, it has relied upon Rule 4.14(a)(8) for relief from CTA registration. You represent that each of the mutual funds that trades commodity interests has filed a Notice of Eligibility with the Commission and the National Futures Association ("NFA") pursuant to Rule 4.5(c), and "X" has filed a Notice of Eligibility with the Commission and NFA pursuant to Rule 4.14(a)(8) with respect to its furnishing of commodity interest trading advice.

"X" filed an application for CPO and CTA registration with NFA in order to engage in certain business activities that would go beyond the scope of the activities permitted by Rules 4.5 and 4.14(a)(8).^{3/} For instance, "X" may wish to furnish commodity trading advice to clients that are not Rule 4.5-eligible entities or to operate hedge funds that trade futures contracts and options thereon. You seek confirmation that: (1) "X" may continue to rely on Rules 4.5 and 4.14(a)(8), insofar as they provide relief from certain regulatory requirements of Part 4, other than antifraud prohibitions, with respect to its Rule 4.5-eligible clients subsequent to its registration as a CPO and CTA and (2) persons who exclusively solicit interests in Rule 4.5-eligible entities or discretionary accounts of Rule 4.5-eligible entities, and supervisors of any such activity, will not be subject to registration as associated persons under Rule 3.12(h)(3)(ii)(B) solely on the basis of such activities. In support of your request, you represent that "X's" registration as a CPO and CTA will not affect its obligations as an investment adviser. Further, with respect to "X's" hedge fund participants and other clients, such persons will be receiving the protections afforded by Part 4 of the Commission's rules, or if a qualified eligible participant or a qualified eligible client, treatment in accordance with Rule 4.7.

Based upon your representations, we do not believe that it would be contrary to the public interest to grant the relief requested. Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with the disclosure, reporting and recordkeeping requirements of Part 4 of the Commission's rules or the registration requirement of Rule 3.12(h)(3)(ii)(B) with respect to Rule 4.5-eligible entities.

We note that this letter relieves "X" solely from compliance with the aforementioned requirements and does not excuse it from compliance with any other applicable requirements contained in

^{3/} "X's" registration as a CPO and CTA became effective November 5, 1996.

the Commodity Exchange Act ("Act")^{4/} or the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act,^{5/} the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable requirements of Part 4. Further, this letter represents the position of this Division only. It does not necessarily represent the views of the Commission or any other division or office of the Commission.

This letter is based upon the representations you have made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of "X" change in any way from those as represented to us. If you have any questions concerning this correspondence, please contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{4/} 7 U.S.C. § 1 et seq. (1994).

^{5/} 7 U.S.C. § 60 (1994).