

CFTC Letter No. 97-25**March 27, 1997****Division of Trading & Markets**

Re: Section 4m(1) of the Act -- Request for Co-CPO Registration Relief

Dear :

This is in response to your letter to the Division of Trading and Markets (Division) dated February 15, 1997, as supplemented by your letters dated March 5, 1997 and March 12, 1997 and telephone conversations with Division staff. By your correspondence, you request that the Division grant relief from registration as a commodity pool operator (CPO) under Section 4m(1) of the Commodity Exchange Act (the Act¹) to X in connection with its acting as a general partner of (the Fund).

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. X is currently the sole general partner of the Fund. The Fund is operated as a fund of funds and currently trades only securities. However, the Fund intends to trade commodity interests in the near future and, prior to the Fund engaging in such trading, a claim for exemption pursuant to Section 4.12(b) will be filed with the Commission.

A is the managing member of X and Y is a member. A is the general partner of Y and the limited partners are two trusts, one for each of his minor children. A is the trustee of both trusts.

It is proposed that Z , a registered commodity pool operator (CPO²), be added as a second general partner and Co-CPO of the Fund.³ A is registered as an associated person (AP) and listed as a principal of Z

Inasmuch as X is, and Z would be, a general partner of the Fund, each would be serving as a CPO of the Fund and, absent relief, each must register as such. Although Z is registered as a CPO, X is not. In support of the instant request that X not be required to register as a CPO, you represent that except in the course of A s activities in his capacity as an associated person of Z , X and A 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.

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action under Section 4m(1) against X solely on the basis of its failure to register

as a CPO in connection with its service as a general partner of the Fund. This position is, however, subject to the conditions that: (1) Z becomes a general partner of the Fund; and (2) within thirty days from the date of this letter, Z and X provide the Division with written and dated acknowledgments whereby X and Z agree to accept joint and several liability for any violation of the Act or the Commission's regulations thereunder⁴ committed by the other as a general partner and CPO of the Fund.

The relief issued by this letter does not excuse X, Z, or A 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 Act⁵, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition, regardless of registration status. Further, this relief is applicable to X solely in connection with its operation of the Fund.

This letter is based upon the representations you have made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities of X or Z change in any way from those as represented to us. Further, 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 concerning this correspondence, please contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan
C.
Ervin

Chief
Counsel

¹ 7 U.S.C. § 6m(1) (1994).

² You also serve as counsel to Z in this matter.

³ By your March 12, 1997 letter you explain that:

The reason for the continued status of X as a general partner is that it is an important and integral part of A's tax and estate planning affecting not only him, but his minor children. The inability of X to continue to be general

partner will have adverse consequences on A and his family.

⁴ Commission rules are found at 17 C.F.R. Ch. I (1996).

⁵ 7 U.S.C. § 60 (1994).