

CFTC Letter No. 99-56**December 6, 1999****No-Action****Division of Trading & Markets**

Re: Section 4m(1) - - Request for CTA Registration No-Action Position

Dear :

This letter is in response to your letter dated May 3, 1999 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your letter dated July 22, 1999. By your correspondence, you request relief from registration as a commodity trading advisor (CTA) under Section 4m(1) of the Commodity Exchange Act (CEA¹) for X in connection with its providing investment advisory services to The Sub-Funds).²

Based upon the representations made in your letter, we understand the facts to be as follows. X is a Colorado Corporation registered as an investment adviser under the Investment Advisers Act of 1940, as amended (Advisers Act). X will provide commodity interest trading advice to the Sub-Funds solely incidental to its business of providing securities advice to them, and X will employ only such strategies as are consistent with eligibility status under Commission Rule 4.5.³ Further, X will not hold itself out as a CTA.⁴

The Sub-Funds are sub-funds of Y , a Société d Investissement a Capital Variable under the laws of Luxembourg.⁵ The Sub-Funds invest primarily in securities, and they will not permit investment by United States persons, as that term is defined in Rule 4.7. Further, the Sub-Funds will be operated consistent with the requirements of Rule 4.5(c)(2).

Commission Rule 4.14(a)(8) exempts from registration CTAs who, among other things, advise only entities that are excluded from the CPO definition under Rule 4.5. Commission Rule 4.5 excludes from the CPO definition entities that, among other things, are investment companies registered under the Investment Company Act of 1940 (the 40 Act). Because the Sub-Funds are organized in a foreign jurisdiction, they cannot, absent an exemption from the Securities and Exchange Commission, register under the 40 Act.

Because they are not registered as investment companies under the 40 Act, they do not qualify for the Rule 4.5 exclusion. Thus, X does not qualify for the Rule 4.14(a)(8) exemption. Accordingly, X has requested that the Division issue a no-action position with respect to its acting as a CTA to the Sub-Funds without registering as such.

Based upon the representations you have made to us, it appears that granting the requested relief would not be contrary to the public interest and purposes of the CEA. Accordingly, the Division will not recommend that the Commission commence any enforcement action against X based solely upon its failure to register as a CTA under Section 4m(1) of the CEA in connection with its providing incidental commodity interest trading advice to the Sub-Funds.

The Division's position is based on your representations that, among other things: (1) the Sub-Funds are organized outside of the United States; (2) shares in the Sub-Funds will not be owned by or transferred to any United States person; (3) the Sub-Funds' stated investment strategies are to invest primarily in equity securities; (4) X is already regulated by the SEC as an investment adviser registered under the Advisers Act; (5) the Sub-Funds will be operated in a manner consistent with the requirements of Rule 4.5(c)(2), and X will comply with the requirements of Rule 4.14(a)(8) with respect to the manner in which commodity interest trading advice is provided to the Sub-Funds; and (6) at the Division's request, X will provide the Division with information demonstrating X's compliance with the terms and conditions of the Division's no-action position.

This letter does not excuse X from compliance with any other applicable requirements contained in the CEA or in the Commission's regulations issued thereunder. For example, X remains subject to all antifraud provisions of the CEA and the Commission's regulations, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the regulations and to all other provisions of Part 4.

This letter, and the no-action position issued herein, are based upon the representations that you have made to us. Any different, changed, or omitted material facts or circumstances might render this position void. You must notify us immediately in the event that X's operations or activities change in any material way from those represented to us. Further, this letter represents the position of the Division only. It does not necessarily reflect the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Gregory S. Collett, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

¹ 7 U.S.C. § 1 *et seq.* (1994).

² The Division previously granted X no-action relief under similar circumstances in connection with its provision of investment advice to The Fund, a sister fund to The Sub-Funds. See Division of Trading and Markets No-Action Letter 97-05, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26, 972 (Feb. 12, 1997).

³ Commission rules referred to herein are found at 17 C.F.R. Ch. I. (1999).

⁴ Additionally, X is responsible only for portfolio management with respect to the Sub-Funds. X does not engage in the distribution of shares or any other marketing activities for the Sub-Funds.

⁵ The Sub-Funds also are organized under the laws of Luxembourg. Z, a U.S. person, is the Chairman and President of X and a director of Y. However, you represent that he will not be involved in any aspect of portfolio management for the Sub-Funds. All other Y directors are non-U.S. persons.