



COMMODITY FUTURES TRADING COMMISSION

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94-21

DIVISION OF
TRADING AND MARKETS

April 28, 1994

Re: Relief from Regulation as a CPO

Dear :

This is in response to your letter dated March 8, 1994 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by the Disclosure Document dated March 29, 1994 enclosed therewith, your letters dated March 16, March 21 and March 23, 1994 and telephone conversations with Division staff, where you requested on behalf of "X" relief from regulation as a commodity pool operator ("CPO") in connection with its operation of (the "U.S. Operating Partnership") and (the "Cayman Operating Partnership") (collectively, the "Operating Partnerships").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. "Y" is the general partner and registered CPO^{1/} of "X", a limited partnership organized under Delaware law in July 1991 to trade securities and, to a lesser extent and incidental thereto, commodity interests based on United States and European government securities, financial indices, oil and metals.^{2/} In this regard, by letter dated November 5, 1991, "Y" claimed the relief available under Rule 4.12(b) in connection with its operation of "X". "X" currently has forty-nine limited partners, each of whom is an "accredited investor" under Regulation D of the Securities Act of 1933, except for six employees of "X" who received their relatively small participations under "X"'s non-contributory deferred compensation plan."

Prior to January 6, 1994, "X" operated in such a way that it was registered as an introducing broker ("IB") with the Commission and registered as a broker-dealer with the Securities and

^{1/} The managing general partner of "Y" is "A", of which the general partner is "B", the sole shareholder of which is "C".

^{2/} As of December 31, 1993, initial margin and premiums paid for commodity interests represented less than 0.5% of the fair market value of "X"'s assets.

Exchange Commission ("SEC"). It also was the managing general partner and sole shareholder of the Cayman Operating Partnership, whose other (non-managing) general partner is "Z" of which the sole shareholder is "C".

Effective January 6, 1994, "X" transferred substantially all of its assets related to its investments and trading activities within the United States to the U.S. Operating Partnership, a Delaware limited partnership organized in October 1993, in exchange for the sole general partnership interest in the U.S. Operating Partnership and a 99.99% economic interest in the U.S. Operating Partnership. The sole limited partner is "Z".

This change was made for administrative convenience, as your letter explains:

As a registered IB and broker-dealer, ["X"] was required to file financial statements with the NFA and the SEC on a consolidated basis including the activities of the Cayman Operating Partnership.

In January 1994 ["X"] created the U.S. Operating Partnership and contributed to it all of its assets except its interest in the Cayman Operating Partnership. The U.S. Operating Partnership became a registered IB and broker-dealer and the status of ["X"] as an IB and broker-dealer was terminated.

Under this new arrangement the U.S. Operating Partnership files its financial statements with the NFA and the SEC. It will not be required to file on a consolidated basis because the Cayman Operating Partnership is its sister company, not its subsidiary or parent. This has resulted in administrative convenience in complying with the IB and SEC broker-dealer reporting requirements. We understand that other organizations engaged in similar operations are structured in a manner comparable to the current configuration of the companies for the same reason.

In support of your request you note that "for practical purposes" "X" is the sole economic owner of both Operating Partnerships, a single staff of "X" employees continues to conduct "X"'s operations through the Operating Partnerships, and that on a functional basis the Operating Partnerships are, in effect, operating divisions of "X".

Further in support of your request you represent that:

Neither of the Operating Partnerships is soliciting or will accept contributions from any investors other than ["X"]; all of the assets of ["X"] are managed through the Operating Partnerships. Participants are direct investors only in ["X"]. They do not have the choice of investing in ["X"] without having their contributions deployed through both Operating Partnerships. Rather, they invest in the combined activity of "X" as conducted exclusively through the Operating Partnerships.

Moreover, you represent that the books and records required by Rule 4.23(a)(1)-(2) and (4)-(9) to be maintained by a registered CPO for each pool it operates will be kept by "Y" at its Fort Worth, Texas office for each of the Operating Partnerships, and that these books and records will be maintained and made available as specified in Rule 4.23.^{3/}

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" if it fails to register as a CPO in connection with its serving as the general partner of the U.S. Operating Partnership and the managing general partner of the Cayman Operating Partnership.

This position is based upon the representations that have been 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 and activities of "Y", "X" or either Operating Partnership, including their ownership and management, change in any way from those as represented to us.

This position does not excuse "X" from compliance with any applicable provisions of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992), or the Commission's regulations promulgated thereunder. For example, "X" remains subject to the antifraud provisions of Section 40 of the Act and to the reporting requirements for traders set forth in Parts 15,

^{3/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

18 and 19 of the Commission's regulations.^{4/} Moreover, this position is applicable to "X" solely in connection with its operation of the Operating Partnerships.

This letter represents the position of this Division 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{4/} Moreover, this opinion does not affect "Y"'s obligation under Section 4o of the Act and Rule 4.21 to disclose all material information concerning the Operating Partnerships to participants in "X", including the potential liability of "X" as a general partner of each Partnership.