

COMMODITY FUTURES  
TRADING COMMISSION  
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March 4, 1993

Andrea Corcoran, Director  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 "K" Street, Northwest  
Washington, D.C. 20581

Dear Ms. Corcoran:

We represent eight individuals who intend to form a corporation for the primary purpose of trading the Standard & Poor's 100 Option contract ("OEX") from the floor of the Chicago Board Options Exchange ("CBOE"), which positions shall be hedged through the purchase and sale of the Standard & Poor's 500 Index Futures ("S&P") traded on the Chicago Mercantile Exchange ("CME"). The corporation will be a registered Broker-Dealer and a Market Maker member organization of the CBOE. The fundamental business of this new CBOE organization will be to trade OEX options. Incidental to such activities, where on occasion adequate or appropriate hedges are unavailable at the securities exchange, a hedge will be obtained by entering customer orders by phone through an unaffiliated futures commission merchant to execute S&Ps at the CME. We hereby request an opinion from the Division of Trading and Markets ("Division") that this corporation will not be considered a commodity pool as defined in Section 4.10(d) of the Rules and Regulations promulgated under the Commodity Exchange Act, as amended ("Act"). In the alternative, if the Division concludes it is a commodity pool, we further request that the Division issue a "no action" letter based upon the facts set forth herein.

All eight shareholders of the proposed corporation are members of the Chicago Board of Trade ("CBOT"). Five of such persons are also individual members of the CBOE, and individually registered as Broker-Dealers. Additionally, one shareholder is also a member of the New York Stock Exchange. All eight persons reside in the area.

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Seven of the eight persons to be involved in this new business venture comprise all of the officers, directors and shareholders of a present member firm organization of the CBOT which trades a proprietary account. That present CBOT member firm owns three memberships in its own name in addition to the memberships held by each of the seven persons. Moreover, there are friendships and other business relationships throughout the group, which range in duration anywhere from four to twenty years.

All eight persons to be involved in this proposed enterprise are "accredited investors" under Rule 501(a) of Regulation D of the Securities Act of 1933, as amended. The eighth person, (the one person not connected to the CBOT organization) is the person selected to be the firm's nominee and trader on the floor of the CBOE. He was solicited by the group. He has been a CBOT and CBOE member for more than seven years and has a long standing relationship, both business and personal, with several members of the group.

The CBOT member firm, which was capitalized initially with two million dollars, trades bond and note options and hedges in the bond and note futures. These same individual shareholders desire to utilize similar hedge strategies in trading the OEX; that is, the new firm will trade the OEX as a CBOE market maker and will primarily look to hedge with appropriate CBOE contracts. However, this new entity will utilize the CME S&P contract when appropriate hedge opportunities are not available at the CBOE.

Solely for prudent risk management, the individuals have proposed to establish the new enterprise as a separate entity from the present CBOT operation. They will capitalize the new CBOE member organization with five hundred thousand dollars. Each individual is experienced in commodities and options trading. Three of the individuals will manage the new company, and all eight will be involved in any major business decision. The nominee did not conceive of nor will he form the new entity. He will, however, contribute capital of \$100,000. All trades effected by the nominee/trader will be for the proprietary account of the newly created CBOE Market Maker member organization.

The Board of Directors and the officers of this CBOE member organization will be comprised of three of its eight shareholders. These three individuals collectively will hold 60% of the outstanding stock and will contribute 60% of the capital (\$300,000). Each person on the Board will discuss long-term strategy and trading techniques and will be involved in the general overview of the trading. The Board of Directors shall meet on a quarterly basis.

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One of these three officers is the firm's initial nominee; one will manage the assets of the corporation, monitor trading activity and have the authority to add CBOE traders. The third officer shall be responsible for administration including preparation of periodic reports to shareholders, among other things. As with the operations at the CBOT, reports shall be issued monthly, including an end of month balance sheet and profit and loss statement. Two of the officers and directors will receive annual salaries of \$25,000 per year. The nominee/officer shall receive \$100,000 per year. Incentive fees will be paid to the nominee/officer and to the asset manager/officer based upon a formula which mirrors the CBOT member organization compensation arrangements.

In summary, this not a passive investment similar to a commodity pool in which persons unknown to one another have been solicited. Rather, as the facts indicate, the CBOE member organization is being formed to complement the existing CBOT member firm while at the same time creating a separate corporation for risk management purposes. It would not be possible to identify the commodity pool operator because there is none.

Further, we represent that the corporation will be a closed corporation. No additional shareholders will be admitted.

For all of the foregoing reasons, it is our opinion that this is not a commodity pool. If the Division believes that it fits the technical definition of a commodity pool, we submit that an organization of this type (i.e. one consisting exclusively of professional traders) is not the type of organization intended to be covered under the Act and no public purpose would be served by its being so regulated. This CBOE member organization will be a securities trading organization with a physical presence on the CBOE floor hedging its risk as a customer in the commodities market only when appropriate hedges are not available in its primary market. Therefore, we respectfully request, based upon the information presented, that the Division of Trading and Markets confirm that this company will not be considered a pool, or in the alternative, that it shall take no action to require registration of the new Chicago Board Options Exchange Market Maker organization or of any of its principals.