



**COMMODITY FUTURES TRADING COMMISSION**  
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**DIVISION OF  
TRADING AND MARKETS**

COMMODITY FUTURES  
TRADING COMMISSION  
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April 6, 1993

Re: Request for Relief from  
Associated Person Registration Requirement

Dear :

This is in response to your letter dated February 19, 1993, as supplemented by telephone conversations with Division staff, in which you request that the Division provide relief from the requirement to register as an associated person ("AP") of a commodity pool operator ("CPO") in connection with the sale of commodity pool participations by certain employees of "A" ("Bank") and of two affiliated trust companies (the "Trust Companies").<sup>1/</sup>

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "B" and "C", each a registered CPO, will be the managing general partner and non-managing general partner, respectively, of commodity pools (the "Pools")<sup>2/</sup> offered and sold only to "qualified eligible participants" as that term is defined in Rule 4.7 and they will file a Rule 4.7 claim for exemption with respect to each such Pool.<sup>3/</sup> Neither "B" nor "C" is affiliated with the Bank or the Trust Companies. "D", a wholly-owned subsidiary of

<sup>1/</sup> These two trust companies are "E" and "F".

<sup>2/</sup> You represent that "Pool I" is the only such pool contemplated at the present time.

<sup>3/</sup> Upon the filing of a notice of claim for exemption, Rule 4.7(a), recently adopted by the Commission, 57 Fed. Reg. 34853 (August 7, 1992), provides relief from certain Part 4 requirements to, among others, registered CPOs in connection with specified pools sold only to "qualified eligible participants" as defined in the rule. "B" and "C" have already filed a Rule 4.7 claim for exemption with respect to "Pool I".

the Bank and a registered CPO and commodity trading advisor ("CTA"), will serve as the trading manager for the Pools.<sup>4/</sup>

Pool participations will be sold through certain employees of the Bank and the Trust Companies ("Employees"). The Bank, a national banking association, and the Trust Companies are subject to regulation by the Comptroller of the Currency and each will be responsible for the actions of its employees. All three are wholly-owned subsidiaries of "E". You note that pursuant to Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, banks and their employees are not subject to broker-dealer registration under that Act. The Employees will be registered representatives of F, a registered broker-dealer and wholly owned subsidiary of the Bank ("Bank BD"). You represent, however, that because of internal procedures and restrictions at the Bank and the Trust Companies, solicitation of interests in the Pools will be undertaken by an Employee in its capacity as a Bank or Trust Company employee, and not as a registered representative of the Bank BD. Naturally, the Bank and the Trust Companies are liable for the actions of their employees. The Employees will be registered with the National Association of Securities Dealers, Inc. ("NASD"), will have passed the Series 7 examination and at least one of them in a supervisory role will have passed the Series 24 examination and will be registered with the NASD as a registered principal. The Employees will have been subject to fitness examinations in connection with their NASD registration and their employment by the Bank or a Trust Company. This includes fingerprint, drug, crime, employment and education checks. The Employees, however, will not be registered with the Commission as associated persons ("APs") of "B", "C" or of any other entity. In addition, you represent, that: (1) "D" and either the Bank or a Trust Company will assume liability for any violation of Section 40 of the Commodity Exchange Act ("Act"), 7 U.S.C. § 60 (1988), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (October 28, 1992), by Employees of the Bank or that Trust Company, as applicable, in connection with the solicitation of Pool participations, and the Bank and the Trust Companies will acknowledge this liability to investors in the offering documents for the Pools; and (2) all books and records of the Bank and the Trust Companies relating to such solicitations will be available for inspection by Commission representatives.<sup>5/</sup>

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<sup>4/</sup> "D" was formed by the Bank for this purpose.

<sup>5/</sup> For the purpose of the position we are taking herein, we understand the books and records will be made available in accordance with Rule 1.31.

Rule 1.3(aa) defines an "associated person" of a CPO as a person associated with a CPO in any capacity which involves the solicitation of funds, securities or property for participation in a commodity pool or the supervision of persons so engaged. Rule 3.12(a) requires the registration of APs. Rule 3.12(h) provides an exemption from AP registration for, among others, persons soliciting funds, securities or property for participation in a commodity pool or supervising persons so engaged, pursuant to registration with the NASD as a registered representative or registered principal where the persons do not engage in any other activities subject to regulation by the Commission. The Employees would qualify for this exemption but for the fact that they will solicit as employees of the Bank or of a Trust Company rather than as employees of the Bank BD, the entity that sponsored their registration with the NASD, so that their solicitation on behalf of the Pools could not be characterized as being "pursuant to their registration" with the NASD.

Based on the representations made in your letter, as supplemented, the Division will not recommend that the Commission take any enforcement action against the Pools' CEOs if the Employees solicit participants for the Pools as set forth above without registering as APs. This letter is, however, subject to the condition that the cover page of the Rule 4.7 claim for relief filed for each Pool notes therein the relief granted by this letter.

This letter is based on the representations provided to us and is subject to compliance with the condition set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations or activities of the Bank, the Trust Companies or any of the other entities or individuals referred to above change in any way from those represented to us.

We note that this letter does not excuse "B" or "C" from any applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. § 60 (1988), to the supervising duties of Rule 166.3 to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.<sup>6/</sup>

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<sup>6/</sup> Other than Rule 4.7, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992).

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Further, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or France M.T. Maca, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran  
Director