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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

May 3, 1993

COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD
MAY 7 2 47 PM '93

Re: Request for Relief from Regulation as Commodity
Pool Operators and Commodity Trading Advisors

Dear :

This is in response to your letter dated January 28, 1993, as supplemented by telephone conversations with Division staff, in which you requested in connection with the operation of the Partnership relief from regulation as a commodity pool operator ("CPO") on behalf of A and B, the general partners of the Partnership. In connection with our evaluation of your request we have determined that relief from regulation as commodity trading advisors ("CTAs") on behalf of A and B is also necessary.

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows. The Partnership was formed as a private investment partnership and commenced operations in 1989. Although its predominant objective is to invest in securities, the Partnership desires the flexibility to trade commodity interests in a manner incidental to its securities trading. In this regard, you have represented that at no time will the Partnership commit more than five percent of the fair market value of its assets for initial margin deposits and premiums for commodity futures contracts and options thereon.

Prior to the formation of the Partnership, A was a general partner of C a registered broker/dealer and investment adviser ("IA") and member firm of the New York Stock Exchange ("NYSE") and other exchanges. For seventeen years A was the C partner responsible for management and direction of the operations of C's arbitrage department. Prior to the formation of the Partnership, for eleven years B was also a general partner of C where he had administrative and trading duties. A and B have invested \$10 million and \$1 million, respectively, in the Partnership. In support of your request you have represented that A and B: (1) are not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §12a(2) or 12a(3) (1988), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (October 28, 1992);

and (2) will not act as a CPO or CTA other than to the Partnership without first registering with the Commission as may be required.

The Partnership is currently comprised of fourteen limited partners (the "limited partners"), each of which qualifies as an "accredited investor" under Regulation D of the Securities Act of 1933. Based upon the representations made to us, we understand that the Partnership's limited partners consist of the following: (1) five individuals, all of whom are former employees of C and who worked with A or B (or both) at C for a minimum of six years; (2) two general partnerships having a total of seven partners, four of whom are general partners of C, one of whom is a retired general partner of C, one of whom is A's cousin and one of whom is a partner in a New York accounting firm specializing in investment partnership accounting; (3) an investment partnership which is wholly-owned by two individuals, each of whom is a general partner of a NYSE member firm and is registered as an IA; (4) A's wife; (5) four individuals, one of whom is an oil producer in Texas with whom A has participated in several oil ventures, one of whom is a principal in a venture capital firm and formerly was a partner of a major securities underwriter and NYSE member firm, one of whom is the general partner of a National Association of Securities Dealers broker/dealer and formerly was a member of a NYSE firm for thirty years, and one of whom is a retired investor who qualifies as a "qualified eligible participant" under Rule 4.7;^{1/} and (6) a \$170 million endowment fund of a college located in New York State which has contributed \$2 million to the Partnership and is managed by one of the general partners of the investment partnership referred to in (3) above who is chairman of the college's investment committee. In addition, each of the limited partners or the individual making investment decisions on behalf of any entity that is a limited partner (i.e., a general partnership, an investment partnership or college endowment fund) has known either A or B for a minimum of five years.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against A and B if they fail to register as a CPO or CTA in connection with their activities with respect to the Partnership. This position is based upon our understanding of, among others, your representations as stated above that: (1) the Partnership's trading in commodity interests will be incidental to its securities trading; (2) not more than five percent of the Partnership's assets may be committed to establish the Partnership's commodity interest trading positions; (3) each limited partner qualifies as an accredited investor under Regulation D of the 1933 Securities Act; (4) each limited partner either directly, through a spouse, or through the individual that makes investment decisions with respect to the limited partners which are general partnerships, investment

^{1/} 57 Fed. Reg. 34853 (August 7, 1992).

partnerships or the college endowment fund, has had significant experience with securities trading; and (5) each of the limited partners or the individual making investment decisions on behalf of any entity that is a limited partner (i.e., a general partnership, an investment partnership or college endowment fund) has known either A or B for at least five years.

You should be aware that this letter does not excuse A or B from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, each remains subject to Section 4^o of the Act, 7 U.S.C. §6^o (1988), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, this letter is applicable to A and B solely in connection with the operation of the Partnership.

This letter is based on the representations that have been made to us and is strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion.^{2/} In this connection, we request that you notify us immediately in the event the Partnership's operations, including its commodity interest trading restrictions and its membership composition, change in any way from those as represented in your letter, as supplemented. Further, this letter represents the views 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 Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

cc: Daniel A. Driscoll, Vice President-Compliance
National Futures Association

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^{2/} For example, in the event the Partnership accepted additional limited partners, the position taken herein may no longer obtain.