



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF  
TRADING AND MARKETS

April 25, 1991

Re: Request for No-Action Relief from Commodity Pool Operator Registration; and  
Request for No-Action Relief from Commodity Trading Advisor Registration.

Dear :

This is in response to your letter dated September 7, 1990, as supplemented by your letters dated September 26, 1990 and November 9, 1990, and telephone conversations with Division staff, wherein you request in connection with the operation of "The Guarantee Fund, Limited" and "The Trading Fund, Limited" (collectively, the "Funds") that the Division not recommend enforcement action to the Commission if:

(1) and , the directors of each of the Funds (the "Directors"); do not register as commodity pool operators ("CPOs"); and (2) , who will select commodity trading advisors ("CTAs") for the Funds, does not itself register as a CTA.

Preliminarily, we note your explanation that the Funds' names were used merely to differentiate the two Funds, because actual names that will be used cannot be determined until the Funds are formed. Accordingly, the relief issued below is subject to receipt by the Division of the Funds' names when those names are selected.

Based upon the representations made in your September 7, 1990 letter, as supplemented, we understand the facts to be as follows:

1. Both Funds will be incorporated under the International Business Companies Act of 1989 in accordance with the laws of the Commonwealth of the Bahamas. The Funds' principal place of business will be in Nassau, Bahamas. The Trading Fund, Limited will engage in trading futures contracts, options on futures contracts, commodities, spot contracts and forward contracts. The Guarantee Fund, Limited will

guarantee return of the initial investment of each person in the Trading Fund throughout the purchase of zero coupon bonds.

2. Messrs. , and are all United States citizens and are all registered in some capacity with the Commodity Futures Trading Commission. Specifically, is registered as an associated person ("AP") of registered CTA; is registered as an AP of , a registered CPO and CTA, as an AP of , a registered futures commission merchant, and also registered individually as a CPO and CTA; and is registered as an AP of
  
3. will be organized and established as an "International Business Company" in accordance with the laws of The Commonwealth of the Bahamas, with its principal place of business in Nassau, the Bahamas. and will each own one-third of . will be President, and will be Secretary and Treasurer of . will monitor and select the CTAs for the Funds. All CTAs will be registered with the Commission as such, or be exempt from such registration. All futures commission merchants and all introducing brokers (if any) that the Funds use will be registered with the Commission. 's sole clients will be the Funds.
  
4. The interests in the Funds will not be held directly or indirectly by residents or citizens of the United States, and the Funds will not contain any capital directly or indirectly contributed from sources within the United States. <sup>1/</sup>

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<sup>1/</sup> For the purpose of the positions we are taking herein, we are presuming the term "residents or citizens of the United States" to include a resident or citizen of the United States or any of its territories or possessions or areas subject to its jurisdiction, a partnership organized under the laws of any state, territory or possession of the United States, a corporation organized under the laws of the United States or any state, territory or possession thereof, or any estate or trust, the income of which is subject to United States income tax regardless of source. Entities organized under the laws of a foreign jurisdiction which have any United States residents or citizens holding beneficial interests would also be included.

5. No meetings of holders of interests in the Funds will be held in the United States.

In light of the foregoing, you request that the Division take a "no-action" position such that the Division will not recommend enforcement action based upon the Directors' failure to register as CPOs.

Based upon our review of the representations set forth in your letter and the Division's prior positions, we note that this situation presents many of the same facts that have supported prior "no-action" positions regarding CPO registration.<sup>2/</sup> Specifically, your request presents the following facts: (1) the CPO will confine all pool activities to areas outside the United States; (2) none of the participants in the pool will be a resident or citizen of the United States; (3) no funds or other capital will be contributed to the pool from United States sources; and (4) all shareholder meetings will be conducted outside the United States.

However, the instant case presents the further facts that the applicants for CPO registration "no-action" relief are all United States citizens. Where a CPO is located in and is a citizen of the United States but all of its pool activities are offshore, the CPO must register as such. Upon request, the Division generally has granted the CPO relief from Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11).<sup>3/</sup> As registered APs, and have undergone fitness and qualifications examinations. Thus, the only additional requirements which they would have to meet if they registered as CPOs and then requested and received exemptions from Part 4 would be the recordkeeping requirements of Rules 4.23(a)(1)-(a)(9) and (b)(1)-(b)(3). In this regard, you have represented that the Directors will make and keep at their main business office in the United States books and records equivalent to those required under these recordkeeping rules with respect to the operation of the Funds, and that the Directors will make these books and records available for inspection by representatives of the Commission and the National Futures Association. Accordingly, based upon the representations you have made to us, the Division will not recommend that the Commission take any enforcement action against and as a result of

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<sup>2/</sup> See, e.g., CFTC Interpretative Letter No. 76-21 [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,222 (August 15, 1976).

<sup>3/</sup> See, e.g., Division of Trading and Markets Interpretative Letter No. 90-6, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,825 (April 25, 1990). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1990).

their engaging in the activities described above without registering as CPOs. This position is subject to the condition that \_\_\_\_\_ and \_\_\_\_\_ remain registered as APs.

In light of the foregoing representations, you also request that the Division take a registration "no-action" position with respect to the failure of \_\_\_\_\_ to register as a CTA.

Rule 4.31 requires each registered CTA who seeks to direct or to guide a prospective client's account to first deliver a Disclosure Document to the prospective client. In the case of \_\_\_\_\_, we agree with your conclusion that \_\_\_\_\_ should not be required to deliver a Disclosure Document to the Directors. This is because \_\_\_\_\_ and \_\_\_\_\_ each owns one-third of \_\_\_\_\_, and \_\_\_\_\_ will be President, and \_\_\_\_\_ will be Secretary and Treasurer of \_\_\_\_\_. Therefore, they would already be aware of the information that the Disclosure Document would contain. In this regard, we again note that as APs of other duly registered entities, \_\_\_\_\_ and \_\_\_\_\_ have undergone fitness and qualifications examinations. Thus, the only additional requirements which \_\_\_\_\_ would have to meet if it were required to register as a CTA would be the recordkeeping requirements of Rule 4.32. You have represented that the Directors will: (1) make and keep at their main business office in the United States books and records equivalent to those required under Rule 4.32; (2) make these books and records available for inspection by representatives of the Commission and the National Futures Association; and (3) as the sole officers, directors and shareholders of \_\_\_\_\_, be liable for \_\_\_\_\_'s activities to the extent they would be liable under the Commodity Exchange Act (the "Act") as if \_\_\_\_\_ were registered as a CTA. Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action for failure to register as a CTA against \_\_\_\_\_ if it engages in the activities described above.

The relief issued by this letter does not excuse the Directors and \_\_\_\_\_ from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, they each remain subject to the anti-fraud provisions of Section 4o of the Act, 7 U.S.C. §6o (1988), <sup>4/</sup> to

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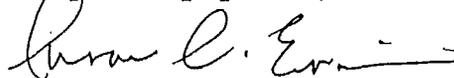
<sup>4/</sup> In this regard, we note that in furtherance of the anti-fraud provisions of Section 4o of the Act, the Division has issued an Advisory concerning material information that must be displayed with respect to so-called "guaranteed" commodity pools, such as the Funds appear to be. See Division of Trading and Markets Advisory No. 86-1, [1986-87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,035 (April 25, 1986). In particular, the Division stated that:

(continued...)

the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions under Part 4. <sup>5/</sup> Finally, this letter is applicable to the Directors and solely in connection with the operation of the Funds.

This letter is based upon the representations that have been made to us and is subject to compliance with the conditions stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations of the Funds, including their shareholder and Board of Directors compositions or the AP registrations of and (including loss of sponsorship), change in any way from those as represented to us. This letter represents the positions of this Division only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission.

Very truly yours,



Susan C. Ervin  
Chief Counsel

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<sup>4/</sup> (...continued)

[A]ny statements that suggest that the risks of futures trading are decreased by reason of [a guarantee] structure have a high potential to mislead or deceive and could result in serious violations of the ... anti-fraud provisions. Id. at pp. 32,058-59.

Accordingly, this letter should in no way be construed as approving or passing upon the Directors' disclosure materials for the Funds or any other aspect of their business as the CPOs of the Funds.

<sup>5/</sup> For example, the Directors remain subject to the prohibition against commingling of funds found in Rule 4.20(c), which applies to each person who comes within the CPO definition, regardless of whether that person must register as a CPO.