



OFFICE OF
THE GENERAL COUNSEL

COMMODITY FUTURES TRADING COMMISSION

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PUBLIC

May 30, 1991

David R. Sawyer, Esquire
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Dear Mr. Sawyer:

This is in response to your letter dated December 14, 1990 to Joanne T. Medero, Co-Chairman of the Commodity Futures Trading Commission's Off-Exchange Task Force, submitted on behalf of your client, GaiaCorp U.S. Limited ("GaiaCorp"), as supplemented by a meeting with Commission staff held on February 20, 1991. In your letter you state that GaiaCorp, which we understand is in the process of registering as a commodity trading advisor and commodity pool operator under the Commodity Exchange Act ("Act"), requests confirmation that the staff would not recommend that the Commission initiate enforcement action against it if it acted as the general partner and trading manager of a privately offered "institutional investors only" fund (the "Fund") which would trade in off-exchange transactions for the future delivery of foreign currencies¹/ as well as off-exchange foreign currency option transactions.

Based upon the representations set forth in your December 14, 1990 letter, we understand the facts to be as follows:

GaiaCorp would limit the prospective investors in the Fund to institutions which meet the criteria for being "qualified institutional buyers" under Securities and Exchange Commission ("SEC") Rule 144A²/. None of the institutions permitted to

¹/To the extent that transactions described in your December 14, 1990 letter and the subsequent meeting with the staff are cash forward contracts, such transactions have been and continue to be excluded from the coverage of the Commodity Exchange Act. See 7 U.S.C. §2.

²/Pursuant to SEC Rule 144A, qualified institutional buyers generally include: (1) certain entities, acting for their own account or the accounts of other qualified institutional buyers, that in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity; (2) registered dealers, acting for their own

invest in the Fund would itself be a pool, or would be an investment fund formed principally for the purpose of investing in the Fund or whose assets consist solely of interests in the Fund. Further, prior to accepting any subscriptions, GaiaCorp would satisfy itself that the prospective investor is sufficiently financially sophisticated in the specialized field of off-exchange foreign currency transactions to understand the risks of trading in such transactions.^{3/}

Based upon the representations in your letter, the staff will not recommend to the Commission any enforcement action under Sections 4(a) or 4c of the Act, 7 U.S.C. § 6(a) or § 6c, or Part 4 of the Commission's regulations, 17 C.F.R. Part 4, based upon GaiaCorp's offering of the Fund which will trade in off-exchange transactions for the future delivery of foreign currencies as well as off-exchange foreign currency option transactions, without compliance with Part 4 of the Commission's regulations, provided the Fund is made up solely of institutional investors as described above.^{4/} This position does not excuse GaiaCorp from complying with any otherwise applicable provisions of the Commodity Exchange Act or the Commission regulations; nor does it address any other proposed instrument. Any different, omitted or changed facts or conditions might require a different conclusion. It should also be

accounts or the accounts of other qualified, institutional buyers, provided that certain additional criteria are met; (3) any registered investment company acting for its own account or for the accounts of other qualified institutional buyers, provided that certain additional criteria are met; (4) any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the account of other qualified institutional buyers; and (5) certain banks and savings and loan associations, acting for their own accounts or the accounts of other qualified institutional buyers, that in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it, provided that certain additional criteria are met. See 17 C.F.R. §230.144A.

^{3/}You have also indicated that GaiaCorp, for its own purposes, has found it appropriate to limit institutional investment in the Fund to 10% or less of the subscribing institution's liquid net worth.

^{4/}In adopting this no-action position, the staff does not intend to suggest that only persons or entities which meet the definition of "qualified institutional investor" under SEC Rule 144A may engage in transactions of the type proposed to be entered into by the Fund.

David R. Sawyer, Esquire
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noted that this position is that of the staff and is not binding upon the Commission.

Sincerely,



Joanne T. Medero



Andrea M. Corcoran

Co-Chairmen
Off-Exchange Task Force