



COMMODITY FUTURES TRADING COMMISSION

2033 K STREET, N.W., WASHINGTON, D.C. 20561  
(202) 254-8955  
(202) 254-3534 FACSIMILE

DIVISION OF  
TRADING AND MARKETS

May 20, 1992

Re: Death Benefit Fund of the

Dear :

This is in response to your letter dated August 1, 1991, to the Division of Trading and Markets (the "Division"), as supplemented by telephone conversations with Division staff, in which you requested on behalf of the Board of Trustees (the "Board") of the Death Benefit Fund (the "Fund") of the Union ( " ") relief from regulation as a commodity pool operator ("CPO").

Based upon your letter, as supplemented, we understand the facts to be as follows. The Fund is a death benefit plan administered by the Board, which is comprised of officials of the and various local unions. The Fund provides death benefits in fixed amounts to designated beneficiaries of active employees and retirees of the and its local unions. The Board, on behalf of the Fund, desires to invest assets of the Fund in the trading of commodity interests solely for bona fide hedging purposes within the meaning and intent of Rule 1.3(z)(1).<sup>1/</sup> At no time will the Board enter into futures and options contracts for which the aggregate initial margin and premiums will exceed five percent (5%) of the fair market value of the Fund's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. Future participation in the Fund will not be offered to the public, as a means of engaging in commodity futures trading or otherwise.

The Fund is currently fully funded and is accepting no additional contributions. Additional contributions could be made in the future, although none are currently anticipated. Existing Fund assets derive from the following sources: (i) contributions

<sup>1/</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1991).

by active employees; (ii) contributions by local unions on behalf of both active employees and retirees; and (iii) contributions by the regional and local multiemployer health and welfare plans affiliated with the .

The Fund may reinstate assessments in the future if necessary. The plan document for the Fund provides that the contributions (when not suspended by the Fund) by active employees come from their union dues, a portion of which is paid into the Fund. Participation in (and hence contributions to) the Fund are mandatory for all members of local unions. The amount payable to a participant's beneficiary as a death benefit from the Fund is fixed by the plan document (generally, a flat benefit of ten thousand dollars, plus additional benefits for accidental death and for children, plus funeral expenses). The death benefit is never contingent on the performance of the Fund. Before payments into the Fund were suspended the plan document permitted an optional additional contribution from participants, leading to a higher (also fixed) death benefit. Finally, the death benefit generally is vested once the participant completes two continuous years of dues-paying membership.

The Fund is not a pension plan, since its main purpose is not to provide pension-related benefits. Nonetheless, like a pension plan, the Fund is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001 et seq.<sup>2/</sup>

ERISA requires, with respect to the Fund, preparation of a "summary plan description" which must be provided to employees and retirees receiving benefits under the Fund and filed with the Department of Labor. A separate "plan description" and "annual report," and information regarding changes in or modifications to the Fund, must also be filed with the Labor Department (a summary of the "annual report" is provided to employees and retirees receiving benefits under the Fund). These reporting and disclosure requirements are subject to criminal enforcement penalties under the law. The fiduciaries of the Fund are likewise subject, in their capacities as fiduciaries, to the fiduciary responsibility provisions of ERISA, and are personally liable for any losses the Fund suffers as a result of breaching such responsibilities.

As you are aware, Rule 4.5(a) specifically excludes from the definition of a "pool" the following pension plans:

- (i) noncontributory plans covered under Title I of ERISA;

---

<sup>2/</sup> There are certain differences in the applicability of Title I to pension benefit plans and to welfare benefit plans.

- (ii) contributory defined benefit plans covered under Title IV of ERISA, with certain limitations; and
- (iii) governmental plans as defined in Section 3(32) of Title I of ERISA.

In addition, by Rules 4.5(a)(4) and 4.5(b)(4), the Commission has excluded from the definition of "commodity pool operator" set forth in Section 2(a)(1)(A) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 2(a)(1)(A) (1988), the trustee or named fiduciary of any pension plan subject to Title I of ERISA provided that such trustee or named fiduciary files a notice of eligibility with the Commission representing that it will conduct its trading in commodity interests in accordance with certain requirements specified in Rule 4.5(c)(2). Because the Fund is not among the trading vehicles specified in Rule 4.5, the relief available under the rule is not available to the Board and the Fund.

However, based upon your representations, the Division has determined that it will not recommend that the Commission take any enforcement action for failure to register as a CPO against the Board in connection with its operation of the Fund. This no-action position is based upon your representations that: (1) the death benefit is never contingent on the performance of the Fund; (2) although the Fund is not a pension fund eligible for relief under Rule 4.5, it is similar to such funds in that it is subject to Title I of ERISA; (3) the Fund intends to trade commodity interests solely for bona fide hedging purposes; (4) at no time will the Board enter into futures and options contracts for which the aggregate initial margin and premiums exceed five percent (5%) of the fair market value of the Fund's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and (5) the Board has not offered nor does it propose to offer participation in the Fund to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures and commodity options markets. This no-action position is conditioned upon the Fund's making the disclosure required by Rule 4.5(c)(2)(iv) in the annual report to be filed with the Department of Labor and the summary of annual report to be provided to employees. This disclosure should include representations numbered (3) and (4) above. This no-action position is also conditioned upon the Board's submitting to such special calls as the Commission may make to demonstrate that the Fund is operating according to the representations set forth in this paragraph.

We note that this letter does not excuse the Board from compliance with any otherwise applicable requirements contained in the Act, or in the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of

Page 4

Section 4o of the Act, 7 U.S.C. § 6o (1988), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations.

This letter is based upon the information that has been provided 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 in the event that the Fund's operations, including membership composition and the source of capital contributions, change in any way from those as represented to us.

Finally, this position is that of the Division of Trading and Markets only and does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning the foregoing, please call me or Carla Behnfeldt, an attorney on my staff, at (202) 254-8955.

Very truly yours,

A handwritten signature in cursive script that reads "Andrea M. Corcoran /scc".

Andrea M. Corcoran  
Director