COMMODITY FUTURES TRADING COMMISSION
2033 K STREET, N.W., WASHINGTON, D.C. 20581
(202) 254-8955
(202) 254-3534 FACSIMILE

DIVISION OF
TRADING AND MARKETS

92-9

June 1, 1992

Re: -- Use of a Two-Part Disclosure Document

Dear :

This is in response to your February 19, 1992 letter wherein you request that , the general partner and registered commodity pool operator of (the "Fund"), be allowed to use a two-part Disclosure Document for the Fund, as described more fully below.

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. Units of participation in the Fund will be offered in a private offering exempt from registration under the Securities Act of 1933 ("Securities Act") pursuant to Section 4(2) of that Act to "accredited investors" as that term is defined in Regulation D of the Securities Act. The minimum initial subscription in the Fund will be $500,000 and incremental subscriptions will be $100,000. is contemplating using a two-part Disclosure Document for the Fund. The first part of the Disclosure Document would contain all of the disclosures required by Rule 4.21[1/] except for the disclosure required by Rule 4.21(a)(5) with regard to the performance record of the Fund's commodity trading advisors ("CTAs"), which would be included in a second, separate part of the Disclosure Document that would be provided upon request to prospective investors.

In support of your request you represent that will play a very active role "in selecting and modifying the initial mix of advisors to the Fund, monitoring their performance, reallocating assets and adjusting risk parameters" and that anticipates that within a 6-12 months timeframe there are likely to be significant changes in the mix of CTAs for the Fund. You contend that "there will be a greater dependence on the management skill role of as general partner than is the

---

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. 4 (1990).

case in the typical pool/general partner" and that 's role, rather than that of the CTAs, will be of greatest interest to investors in the Fund. You also note that the Commission recently published for comment proposed Rule 4.7, which would, among other things, exempt CPOs from the specific disclosure requirements of Rule 4.21, with respect to pools offered in a private offering exempt from registration under the Securities Act pursuant to Section 4(2) of that Act solely to certain highly qualified participants that meet the requirements set forth in the rule for "qualified eligible participants."[2/]

As noted above, you contend that the relief requested is appropriate in view of the publication of proposed Rule 4.7. In the Federal Register release proposing Rule 4.7, the Commission stated that proposed Rule 4.7 constitutes the first phase of a broader review of Part 4 which will also include consideration of the appropriateness of permitting the use of a two-part Disclosure Document.[3/] The first part of the Disclosure Document, provided to all prospective participants, would contain the information necessary for prospective participants to decide whether to invest in the pool, and the second part, which would be made available upon request, would contain additional and more detailed information of interest to some investors. The Commission is in the process of developing this proposed rule and has not established the criteria that would be required to obtain relief under the rule contemplated. Accordingly, the Division is not prepared at this point to permit the use of a two-part Disclosure Document as described in your letter based on the level of sophistication of participants in a pool.

However, based upon the representations you have made to us, the Division has determined that it will not recommend any enforcement action to the Commission for failure to comply with Rule 4.21 if uses a two-part Disclosure Document for the Fund, provided that: (1) both parts of the Disclosure Document are delivered at the same time; (2) each part of such Disclosure Document indicates in bold face on the front cover that it is one of two parts; (3) the first part of the Disclosure Document will contain all of the disclosures required by Rule 4.21 except for the disclosure required by Rule 4.21(a)(5) with respect to the performance record of the Fund's commodity trading advisors, which will be included in the second part; and (4) each prospective participant in the Fund receives and acknowledges in writing that he has received both parts of the Disclosure Document.

2/ See 57 FR 3148 at 3156 (January 28, 1992).

3/ See 57 FR 3148 at 3150 (January 28, 1992).

This letter does not excuse from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act") or in the Commission's regulations thereunder. For example, remains subject to the anti-fraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other Part 4 rules.

This letter is based upon the representations that have been made to us. 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 operation of or the Fund change in any way from those as represented to us. Finally, the views expressed in this letter represent those of the Division only and do not necessarily represent the views of the Commission or of any other division or office of the Commission.

If you have any questions concerning this correspondence, contact me or Susan C. Ervin, the Division's Chief Counsel, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran
Director