



COMMODITY FUTURES TRADING COMMISSION

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93-34

**DIVISION OF
TRADING AND MARKETS**

April 12, 1993

COMMODITY FUTURES
TRADING COMMISSION
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Re: Request for Relief from Listing Principals

Dear :

This is in response to your letter dated March 17, 1993, in which you request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief to "A" (the "Partnership"), a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), regarding the listing of "B" and "C" as principals of the Partnership.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnership is a Delaware limited partnership. "B" and "C", a New York corporation which is wholly owned by "D", are two of the Partnership's limited partners. "D" is listed as a principal on the Partnership's Form 7-R.

"B" and "C" each have contributed less than ten percent of the Partnership's total capital contributions but currently own 16.07% and 31.67% respectively, of the Partnership's capital. You represent that this discrepancy was brought about as a result of distributions which have been made to partners other than "B" and profits which have been allocated to both "B" and "C" which have yet to be distributed to them. You further represent that the Partnership expects to distribute most of "B"'s capital to him during 1993 and that his share of partnership capital and profits will remain at approximately two percent thereafter.

^{1/} The Commission defines a principal in the registration context in Rule 3.1, 17 C.F.R. §3.1, as amended by 57 Fed. Reg. 23136, 23144 (June 2, 1992). The definition includes, among others, "any person who has contributed ten percent or more of the capital" of a registrant.

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Moreover, you state that "B" is a passive investor and has no control over or role in the management of the Partnership.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against the Partnership under Commission Rule 3.10(a)(2)^{2/} if the Company fails to list "B" and "C" as principals on the Partnership's Form 7-R, and file a Form 8-R and fingerprint card on "B"'s behalf. This position is based, among other things, upon your representations that (1) "B" has no control over the management of the Partnership; (2) the Partnership intends to distribute most of "B"'s capital to him during 1993, thereby reducing his percentage of Partnership capital to approximately two percent; and (3) "D", the sole owner of "C", is listed as a principal of the Partnership. Moreover, this position is subject to the conditions that: (1) prior to December 31, 1993, "B"'s percentage of Partnership capital is reduced, so as not to exceed ten percent; (2) "B"'s percentage of Partnership capital does not exceed ten percent at any time following such reduction; and (3) "D" remains listed as a principal of the Partnership.

This letter is based on the representations you have made to us and is limited to the facts stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event these facts change in any way from those represented to us. Finally, this letter represents the position 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 regarding this letter, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{2/} 57 Fed. Reg. 23136, 23144 (June 2, 1992).