



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

June 3, 1993

COMMODITY FUTURES
TRADING COMMISSION
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Re: Request for Relief from Certain Requirements
Applicable to Commodity Pool Operators and
from Registration as a Commodity Trading Advisor

Dear :

This is in response to your letter dated August 28, 1992, as supplemented by telephone conversations with Division staff, wherein you request relief from certain requirements applicable to commodity pool operators ("CPOs") and from registration as a commodity trading advisor ("CTA") on behalf of the General Partner and its principals with respect to their operation of the Partnership, under the facts set forth below. The General Partner's application for registration as a CPO is currently pending with the National Futures Association.

Based upon the foregoing, we understand the facts to be as follows:

The Partnership is an investment vehicle which commenced operations in October 1991 and was formed to seek capital appreciation through "risk arbitrage" investments in the equity and debt securities markets. . . .

The units of limited partnership interest ("Units") in the Partnership were sold in a private placement pursuant to an exemption from registration set forth in Regulation D, promulgated under the Securities Act of 1933, as amended. The units were sold to a limited number of individuals and entities, each of which is an "accredited investor" as defined in Regulation D. The Units were not marketed or offered in any way to the public. The General Partner was organized to serve as the General Partner of the Partnership, and has no business or operations other than in connection with the Partnership, except that it serves as the sole general partner to

another private investment partnership (the "Institutional Partnership"). . . .

Neither the General Partner nor any of its three principals, (the "Principals"), is registered as investment advisers because the investment advice given by them is limited to advising the Partnership and the Institutional Partnership, which are deemed to be two entities under SEC rules, and they do not hold themselves out generally to the public as investment advisers or act as investment advisers to a registered investment company and are therefore exempt from registration as investment advisers under Section 203(b)(3) of the Investment Advisers Act of 1940 and SEC Rule 203(b)(3)-1(b). The Partnership, the General Partner, the Principals and any entity controlled by the Principals are not subject to any of the statutory disqualifications set forth in Sections 8a(2) and 8a(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §8a(2) and 8a(3) (1988), as amended by The Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3509. In addition, none of such persons or entities will invest in commodity interests other than through the Partnership.

Based upon the representations made to us, we understand that the Partnership's limited partners (the "Limited Partners") consist of the following: (1) eighteen individuals, each of whom has represented to the General Partner that he or she has a net worth of at least \$1,000,000; (2) three limited partnerships, one of which is comprised of two individuals (one of the individual Limited Partners ("X") and his ex-wife, who is also an accredited investor), one of which is a "fund of funds," the stated minimum investment in which is \$5,000,000, the general partner in which is a registered CPO, and the investors in which are one corporation and 17 individuals, each of whom has a net worth in excess of \$1,000,000, and the third of which is an investment partnership formed to make securities investments for a family, which is comprised of three limited partners, all of whom are members of one family and each of whom has a net worth in excess of \$1,000,000 and is known to the principals; (3) five trust accounts, three of which are for the benefit of family members of one of the individual Limited Partners ("Y"), one of which is a corporate trust account for a corporation owned by Y and one of which is for the benefit of a family member of another individual Limited Partner; (4) five IRA accounts, two of which are accounts of a principal of the General Partner, two of which are accounts of Y and one of which is the account of X; (5) proprietary funds of a privately held insurance company; (6) endowment funds of a college; and (7) one Keogh account of an individual who has a net worth of in excess of \$1,000,000 and has had a long-term relationship with the principals. Each of the Limited Partners that is a limited partnership is a bona fide entity that was not formed for the purpose of investing in the Partnership and that

is itself principally a securities investment vehicle. The two limited partnerships, the insurance company and the college all have one or more persons associated therewith who make investment decisions for that entity and made the decision with respect to the entity's purchase of an interest in the Partnership. Further, to the best of the General Partner's information and belief, each individual Limited Partner has had a personal and/or professional relationship with one or more principals of the General Partner prior to investing in the Partnership; nine of such relationships have spanned from seven to fifteen years. The minimum investment in the Partnership is \$500,000.

Pursuant to the Partnership agreement, the General Partner prepares and distributes to Limited Partners annual reports, which include financial statements audited by independent certified public accountants, and quarterly unaudited reports. With respect to the Partnership's trading activities, we understand that:

The General Partner would like to . . . trade, on behalf of the Partnership, futures contracts on the Standard & Poor's 500 Index. Such trading would be exclusively for hedging purposes, and the General Partner would limit to three percent the amount of the Partnership's assets which could be committed for initial margin deposits and premiums for commodity interest trading. . . .

Based upon the foregoing representations, the Division confirms that it will not recommend that the Commission take enforcement action against the General Partner, if it fails to comply with Commission Rules 4.21, 4.22 or 4.23(a)(3), (a)(10) and (a)(11) in connection with its operation of the Partnership.^{1/} With respect to your request on behalf of the General Partner for relief from regulation as a CTA, based upon the foregoing representations and the representation that "the Units were not marketed or offered in any way to the public" and thus that the General Partner did not hold itself out as a CTA in seeking to provide commodity interest trading advice to the Partnership and the Limited Partners, the Division will not recommend that the Commission take enforcement action against the General Partner if it fails to register as a CTA or comply with Rules 4.31 and 4.32 in connection with providing commodity interest trading advice to the Partnership.

This letter does not excuse the General Partner or the Principals from compliance with any otherwise applicable requirements contained in the Act or in the Commission's

^{1/} Commission Rules referred to herein are found at 17 C.F.R. Ch. I (1992).

regulations thereunder. For example, each remains subject to Section 40 of the Act, 7 U.S.C. §60 (1988), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, this letter is applicable to the General Partner and the Principals solely in connection with the operations of the Partnership.

This letter is based upon the representations that have been made to us and is strictly limited to those representations. 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 Partnership's operations, including its investment objectives and membership composition, change in any way from those as represented in your letter.^{2/} Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily represent the views of the Commission or any other office or division of the Commission.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{2/} For example, in the event the Partnership accepted additional limited partners, the conclusions reached herein may no longer obtain. We note that you anticipate that the Partnership may accept additional limited partners with qualifications comparable to those discussed above and request that you notify us of the addition of any limited partners that are limited partnerships or other collective investment vehicles.