COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
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DIVISION OF
TRADING AND MARKETS

93-70

July 21, 1993

Re: Request for CPO Registration

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated April 23, 1993, as supplemented by telephone conversations with your counsel, "B", wherein you request that the Division not recommend that the Commission take any enforcement action against "X" for failure to register as a commodity pool operator ("CPO") in connection with its serving as a general partner of the "Fund".

Based upon your letter, as supplemented, we understand the facts to be as follows. "X" and you will act as co-general partners of the Fund. You are currently registered as a CPO and are the sole general partner and officer of "X". "A" is the only limited partner of "X" with a ten percent or greater interest in "X". You represent that "A" is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §8a(2) and 8a(3) (1988 & Supp. IV 1992) and, other than his investment in the Fund, does not trade in commodity interests or engage in any commodity interest-related activities, e.g., trading for or soliciting others to trade. You represent that there are no other principals of "X" as that term is defined in Rule 3.1.[1/]

With respect to "X", inasmuch as "X" will be a general partner of the Fund, it will be serving as a CPO of the Fund and, absent relief, must register as a CPO. In support of the instant request, you have provided the Division with a written acknowledgment whereby you accept joint and several liability for any violation of the Act or Commission regulations thereunder committed by "X" in connection with its serving as a CPO of the Fund. Accordingly, in light of this acknowledgment and your representations concerning "A", the only other principal of "X", the Division will not recommend that the Commission take any enforce-

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

ment action against "X" for its failure to register as a CPO in connection with its serving as a general partner of the Fund. This position is, however, subject to the condition that "X" will not exercise discretion, supervision or control over or take part in: (1) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Fund, or (2) the investment, use or other disposition of funds or property of the Fund.

We note that "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o (1988 & Supp. IV 1992), and to all otherwise applicable provisions of the Act and the Commission's regulations thereunder, e.g., the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations and Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition, regardless of registration status. Moreover, the position which we have taken herein is applicable to "X" solely in connection with its serving as a CPO of the Fund.

The position taken in this letter is based upon the representations that have been made to us and is subject to compliance with the conditions set forth 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 immediately in the event that the activities of the Fund or "X" change in any way from those as represented to us.

Further, 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.

If you have any questions concerning this correspondence please contact me or Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel