



COMMODITY FUTURES TRADING COMMISSION

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93-13

DIVISION OF
TRADING AND MARKETS

July 26, 1993

Re: Request for CPO Registration

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated April 26, 1993, as supplemented by letter dated July 19, 1993 from, and telephone conversations with, your counsel, 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. The general partners of the Fund are "B", "C", "Y" and you, each of whom is registered as a CPO, and "X", which is not so registered. You and "B" are the general partners of "X". You have further represented that the only limited partners with a ten percent or greater interest in "X" are four employees of "Y"^{1/}, none of whom is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §12a(2) and 12a(3) (1988 & Supp. 1992), and none of whom, apart from his investment in the Fund, trades in commodity interests or engages in any commodity interest-related activities for others, 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.^{2/}

^{1/} The employees are: "D", "E", "F" and "G". These employees perform research analysis or duties of a clerical and administrative nature. None of their duties bring them within the definition of the term "associated person" of a CPO as that term is defined in Section 4k(2) of the Commodity Exchange Act, 7 U.S.C. §6k(2) (1988 & Supp. 1992).

^{2/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

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, Messrs. "B" and "C", you and "Y" have provided the Division with a written acknowledgment whereby you each 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.

In light of the foregoing, the Division will not recommend that the Commission take any enforcement 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 40 of the Act, 7 U.S.C. §60 (1988 & Supp. 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 solely applicable to "X" 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 "X", the Fund, and any of their participants, general partners, or principals 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.

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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