COMMODITY FUTURES TRADING COMMISSION
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93-89

DIVISION OF
TRADING AND MARKETS

August 30, 1993

Re: Request for Relief from Certain Regulations Applicable to Commodity Pool Operators and Commodity Trading Advisors

Dear :

This is in response to your letter dated May 12, 1993, as supplemented by your letter dated June 10, 1993 as well as telephone conversations with Division staff, wherein you request relief from certain requirements applicable to commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") on behalf of (the "General Partner"), a registered CPO and CTA, with respect to its operation of (the "Partnership").[1/]

Based upon the foregoing, we understand the pertinent facts to be as follows. The Partnership commenced operations in July of 1992. It was formed to seek capital appreciation through "risk arbitrage" investments in the equity and debt securities markets. The Partnership is designed for pension plans and other tax exempt investors and is structured such that its investments will not generate unrelated business taxable income. 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 under the Securities Act of 1933, as amended, to "accredited investors" as that term is defined in Regulation D. The minimum investment in the Partnership is $500,000.

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 the Original Partnership.

1/ Your May 12, 1993 letter refers to an August 28, 1992 letter submitted in connection with a request for relief with respect to (the "Original Partnership"). That relief was granted by our letter dated June 3, 1993. By your May 23, 1993 letter you represent that the description of the Partnership, its trading methodology and, with one exception the information concerning the principals of the General Partner, remain as set forth in the August 1992 letter. This exception concerns the addition of "A" as a principal of the General Partner. In this connection, we note that "A" is listed as a principal of the General Partner.

The Partnership's limited partners (the "Limited Partners") consist of the following: (1) two individual retirement accounts of one individual who is also a limited partner in the Original Partnership and has a net worth in excess of $1,000,000; (2) a limited partnership which has been in existence since April of 1987, was not formed for the purpose of trading in the Partnership, engages in securities trading exclusively, has a stated minimum investment of $250,000 and is comprised of eighty tax-exempt institutions which are not necessarily accredited investors, ninety-five percent of which are pension and profit-sharing plans and five percent of which are private charitable institutions; and (3) the pension plan of a corporation with assets in excess of $5,000,000 whose financial advisor is one of the individual partners in the Original Partnership. The individual who owns the individual retirement accounts has had a personal relationship with "B" and "C" for over fifteen years. The individual who makes the trading decisions for the limited partnership has known "B" and "C" for two years. The corporation's financial advisor is one of the individual limited partners of the Original Partnership and has been a limited partner in it for two years.

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 will not recommend that the Commission take any 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.[2/] With respect to your request on behalf of the General Partner for relief from certain of the disclosure and recordkeeping requirements applicable to registered CTAs, based upon the foregoing representations and the fact that the General Partner is serving as both the CPO and CTA of the Partnership, the Division will not recommend that the Commission take any enforcement action against the General Partner if it fails to comply with Rules 4.31 and 4.32 in connection

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2/ Commission Rules referred to herein are found at 17 C.F.R. Ch. I (1992).

with providing commodity interest trading advice to the Partnership.

This letter does not excuse the General Partner from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, it remains subject to Section 4o of the Commodity Exchange Act, 7 U.S.C. §6o (1988 & Supp. 1992), 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 solely in connection with the operation 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.[3/] 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

3/ 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.