COMMODITY FUTURES TRADING COMMISSION
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93-93

DIVISION OF
TRADING AND MARKETS

August 16, 1993

Re: Request for Relief from Commodity Pool Operator Registration

Dear :

This is in response to your letter dated April 2, 1993, as supplemented by telephone conversations with Division staff in which, on behalf of "T", you request relief from the requirement to register as a commodity pool operator ("CPO") in connection with "T"'s operation of the Fund.

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund began trading in 1990. "T" has two general partners, "A" and "B", who are also the only principals of "T". "A" will be registered as an associated person ("AP") of other companies in "the Group", which consists of affiliated companies engaged in the investment management business.[1/] You represent that neither "B" nor "A" is subject to a statutory disqualification pursuant to Sections 8a(2) or 8a(3) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 8a(2) or 8a(3) (1988 & Supp. 1992). The limited partners of the Fund have consented to "T" allocating up to 10% of the fair market value of the Fund's assets to "V" provided that "T" waives its fees on the assets so allocated so that there is no layering of charges. "V" is a newly formed partnership that will trade predominantly in the securities markets, attempting to achieve "yield enhanced" returns with low volatility. Although "V" will trade almost exclusively in the securities markets, its general partner, "General Partner", wishes to have the flexibility from to time to commit up to 10%

1/ "A"'s registration as an AP of "W", "X", "Y" and "Z", each of which has applied for registration as a CPO and CTA, is pending. "A" will be responsible for the overall commodity interest-related activities of "T" and in particular for the allocation of the Fund's assets to "V". "B" will solicit participants for the Fund but will not otherwise be involved in any commodity interest-related activities and will not register as an AP.

of the fair market value of its assets to establish positions in the commodity interest markets that are solely incidental to its securities portfolio. The General Partner's registration as a CPO and CTA is pending. The Fund will not engage in any commodity interest trading except through "V".

"T" and the General Partner are part of "the Group". The Fund and "V" (collectively the "Pools") are offered exclusively to persons whose financial resources substantially exceed the "qualified eligible participant" ("QEP") criteria of Rule 4.7.[2/] You represent that the Pools' investors must each have at least a $5 million net worth, that the minimum investment in each Pool is $1,000,000[3/] and that the private placement memorandum of "V" will be available upon request to the Fund's investors.

In support of your request, you note that: (1) using the formula set forth in Division of Trading and Markets Interpretative Letter No. 91-6[4/] for computing initial margin for a fund of funds which invests in a Rule 4.12(b) pool, not more than one percent of the Fund's assets will be deposited as initial margin or option premiums for commodity futures or option contracts; (2) if "T" were registered as a CPO, it would be eligible to claim relief under Rule 4.7 with respect to the Fund; (3) each Fund participant will receive an offering memorandum for the Fund stating that the "V" private placement memorandum will be available upon request to Fund participants; and (4) the Fund's participants will receive quarterly unaudited reports and annual audited reports containing the information required to be given to QEPs by Rule 4.7. Thus you represent that the Fund's investors will receive substantially all the reports and disclosures "T" would be required to give them under Rule 4.7.

2/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993). Subject to specified conditions, Rule 4.7 provides relief from the specific disclosure requirements of Rule 4.21, certain reporting requirements of Rule 4.22 and the specific recordkeeping requirements of Rule 4.23 with respect to pools sold only to QEPs.

3/ However, this minimum investment amount may be waived by each Pool's operator.

4/ [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,069 (June 13, 1991). "V" will be claiming exemption under Rule 4.7 and will not be a Rule 4.12(b) pool, although it will limit the amount of assets committed to commodity interests to 10% of its total assets.

Based on the foregoing and in particular on your representations set forth above concerning: (1) the financial qualifications of the Fund's investors, which exceed the qualifications required of QEPs under Rule 4.7; (2) the limited amount of the Fund's assets that will be invested in "V"; (3) the limited amount of "V"'s assets that will be used to establish commodity interest positions; and (4) the fact that "A", a general partner of "T" in charge of the futures-related activities of the Fund, will be registered as an AP of other "Group" companies, the Division has determined that it will not recommend that the Commission take any enforcement action against "T" if "T" does not register as a CPO in connection with its operation of the Fund. This position is, however, subject to the conditions that: (1) prior to the Fund investing in "V", "A" becomes registered as an AP; and (2) the General Partner becomes registered as a CPO.

We note that this letter relieves "T" solely from the requirement to register as a CPO in connection with its operation of the Fund and does not excuse it from compliance with any other applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, "T" remains subject to the antifraud provisions of Section 4o of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to Rules 4.20 and 4.41. In this connection, we note that even were "T" able to avail itself of Rule 4.7 with respect to the Fund, it would be exempt only from the specific disclosure requirements of Rule 4.21 and not from its statutory disclosure obligations under Section 4o.

This letter is based on the representations provided to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations or activities of the Fund, "V", "T", "A" or "B" change in any way from those represented to us. Further, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

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

Very truly yours,

Susan C. Ervin
Chief Counsel