



**COMMODITY FUTURES TRADING COMMISSION**

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**DIVISION OF  
TRADING AND MARKETS**

September 22, 1993

Re: Request for CPO Registration Relief

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated August 18, 1993, as supplemented by telephone conversations between your colleague "D" and Division staff, wherein you request that the Division not recommend that the Commission take enforcement action against "A" and "B" for failure to register as commodity pool operators ("CPOs") in connection with their serving as general partners of the "Fund".

Based upon your letter, as supplemented, we understand the pertinent facts to be as follows. "A" and "B" and "X", a Delaware corporation, act as co-general partners of the Fund. "X" is a registered CPO. "A" and "B" are the principal executive officers of "X" and are registered associated persons ("APs") thereof.<sup>1/</sup> Additionally, "A" and "B" are the sole stockholders of "X", each owning 50% of "X"'s stock.

As "A" and "B" are general partners of the Fund, they also will be serving as CPOs of the Fund. Accordingly, absent relief, each must register as a CPO. Based on the foregoing, however, and subject to the conditions specified below, the Division will not recommend that the Commission take any enforcement action against "A" and "B" for their failure to register as CPOs in connection with their serving as a general partners of the Fund. This position is subject to the conditions that: (1) "A" and "B" provide the Division with a written acknowledgment stating that they accept joint and several liability for any violation of the Commodity Exchange Act (the "Act")<sup>2/</sup> or Commission regulations thereunder committed by themselves or by the other general partners of the Fund in connection with the Fund; and (2) "A" and "B" will not, except in their capacity as APs of "X", exercise

<sup>1/</sup> "C", a Vice President of "X", also is registered as an AP of "X".

<sup>2/</sup> 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992)

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discretion, supervision or control over or take part in: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Fund, or (ii) the investment, use or other disposition of funds or property of the Fund.

We note that "A" and "B" remain subject to the anti-fraud provisions of Section 40 of the Act, 7 U.S.C. §60 (1988), and to all otherwise applicable provisions of the Act and the Commission's regulations thereunder. For example, they remain subject to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations as well as Rules 4.20 and 4.41,<sup>2/</sup> 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 "A" and "B" in connection with their serving as CPOs 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 "A" and "B" 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 Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin  
Chief Counsel

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<sup>2/</sup> Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1993).