COMMODITY FUTURES TRADING COMMISSION
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94-17

DIVISION OF
TRADING AND MARKETS

December 17, 1993

Re: Request for Relief from
Commodity Pool Operator Regulation

Dear :

This is in response to the letter of "A", dated September 22, 1993, as supplemented by telephone conversations with Division staff in which, on behalf of the "General Partner", a registered commodity pool operator ("CPO"), you request relief from certain regulatory requirements applicable to CPOs in connection with the 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 was formed to trade commodity interests, among other things, and to buy and lease memberships on United States and foreign futures exchanges.[1/] The Fund has two classes of participants. Class A participants, who each must contribute $500,000 or more to the Fund, will be qualified eligible participants ("QEPs") pursuant to Rule 4.7 and passive investors in the Fund.[2/] Class B participants, who will contribute between $25,000 and $50,000 to the Fund, are not expected to be QEPs.[3/] They will be registered floor brokers who have been active as such for at least two years. They will own or lease a membership

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1/ In this connection, we understand that the Fund intends to become a clearing member of the Chicago Mercantile Exchange but will not clear its own accounts or handle customer accounts or customer funds.

2/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993). Rule 4.7 makes available an exemption from the specific disclosure requirements of Rule 4.21, the specific recordkeeping requirements of Rule 4.23 and certain reporting requirements of Rule 4.22 to the CPOs of pools sold only to "qualified eligible participants" as defined in the rule.

3/ The Fund initially will have ten to fifteen Class B participants. If successful, it will increase the number of Class B participants.

on a futures exchange. The General Partner will allocate the Fund's capital among Class B participants to be traded by them. The General Partner will establish risk guidelines, trading limitations and other restrictions for such trading and will have ultimate authority with respect to such trading. Class B participants will be selected by the General Partner based on its evaluation of their trading experience and knowledge, personal character and integrity and overall trading record. The General Partner is authorized by the Fund's limited partnership agreement to select and remove Class B participants. Class B participants will be compensated based on trading profits they generate for the Fund. In addition, each Fund participant, whether Class A or Class B, will share in the Fund's overall profits on a percentage of Fund ownership basis.

Because of your concern that some of the Class B participants might not be QEPs, and thus that the Fund might not be eligible to take advantage of Rule 4.7 (which is available only with respect to pools in which all participants are QEPs), you request relief from Rule 4.7 such that the General Partner may claim Rule 4.7 relief for the Fund despite the fact that Class B participants may not be QEPs.

Based upon the representations made in your letter, as supplemented, the Division will not recommend that the Commission take any enforcement action against the General Partner if the General Partner files a Rule 4.7 notice of claim for exemption for the Fund and treats Class B participants as QEPs provided that each Class B participant gives due consent to its being treated as a QEP.

This letter is based on the representations provided to us. 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 General Partner or the Fund change in any way from those as represented to us.

We note that this letter relieves the General Partner solely from certain requirements of Rule 4.7 and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1988 & Supp. 1992) ("Act"), or in the Commission's regulations thereunder. For example, the General Partner remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. 1992), to the reporting requirements for traders set forth in

Parts 15, 18 and 19, 17 C.F.R. Parts 15, 18 and 19 (1993), and to all other provisions of Part 4.[4/]

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

[4/] In particular, we note that the Fund intends to become a clearing member of the Chicago Mercantile Exchange and that this circumstance may give rise to material risks that must be disclosed pursuant to Rule 4.7(a)(4) and Section 4o of the Act.