



COMMODITY FUTURES TRADING COMMISSION

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94-30

DIVISION OF
TRADING AND MARKETS

March 16, 1994

Re: Request for Relief from Commodity Pool Operator
Registration

Dear :

This is in response to your letter dated September 27, 1993, as supplemented by telephone conversations with staff of the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission "Commission", in which you request that the Division not recommend that the Commission take any enforcement action against the "Administrative GP" if it fails to register as a commodity pool operator ("CPO") in connection with its serving as a co-general partner of the "Fund".

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Fund is a Bermuda limited partnership formed for the principal purpose of engaging in securities trading. The Fund, however, would like to enter into stock index futures contracts as part of its portfolio strategy. In this regard, you represent that the Fund will not deposit more than ten percent of its assets as initial margin or premiums for the purchase of commodity futures or options thereon. Further, you represent that all of the Fund's investors will be qualified eligible participants as defined in Commission Rule 4.7.^{1/}

The Fund has two general partners, the Administrative GP and "X", a registered CPO and commodity trading advisor (the "Investment GP"). The Administrative GP does not maintain any office nor does it transact any business within the United States. The Administrative GP is wholly-owned by "A", who also is the President, largest shareholder and a principal and registered associated person ("AP") of the Investment GP. The Administrative GP

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

has four directors and officers, none of whom is a United States person.^{2/} You represent that none of these four individuals is subject to any grounds for statutory disqualification pursuant to section 8a(2) or 8a(3) of the Commodity Exchange Act, as amended (the "Act").^{3/}

Pursuant to the Fund's Agreement of Limited Partnership, the Investment GP is responsible for the trading and investment of the Fund's assets, and for the general supervision of all solicitation activities with respect to United States persons on behalf of the Fund. The Administrative GP maintains the Fund's principal office and is responsible for all matters concerning the administration of the Fund, including: (1) preparing and maintaining the Fund's business and financial records; (2) providing registrar and transfer agent services in connection with the receipt or withdrawal of capital by limited partners; (3) maintaining the Fund's bank accounts; and (4) soliciting, receiving and accepting subscriptions for limited partnership interests in the Fund. The Administrative GP has delegated its administrative duties to "Y", a Bermuda corporation and international affiliate of "Z", a public accounting firm (the "Administrator"). As noted above, you have represented that all solicitation activities engaged in by the Administrative GP and the Administrator on behalf of the Fund will be under the supervision of the Investment GP. Specifically, such solicitation activities will include mailing offering memoranda to potential investors, answering telephone inquiries regarding the mechanical aspects of making an investment (e.g., where investment money should be sent) and responding to telephone inquiries regarding the nature of the investment to the extent that they are capable of doing so. Specific inquiries regarding the investment that the Administrative GP or the Administrator are unable to answer, and all inquiries regarding the commodity interest trading activities of the Fund will be referred to registered APs of the Investment GP located in the Investment GP's principal office in New York. Nonetheless, you represent that any individuals engaged in the

^{2/} We note that by telephone conversation with Division staff you confirmed that the definition of "United States person" as that term is used in your letter is the same as the definition we employed in Division of Trading and Markets Interpretative Letter No. 92-3, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

^{3/} 7 U.S.C. § 12a(2) or 12a(3) (1988 and Supp IV 1992).

solicitation activities discussed above will register as APs of the Investment GP.^{4/}

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against the Administrative GP if it fails to register as a CPO in connection with its activities as a co-general partner of the Fund. This position is, however, subject to the conditions that: (1) the Investment GP remains registered with the Commission as a CPO; (2) except for the Investment GP and each person who acts and is registered as an AP thereof, the Administrative GP, the Fund and any person affiliated therewith will not undertake any marketing activity for the purpose, or that reasonably could be expected to have the effect of soliciting participations in the Fund from United States persons; and (3) any person engaged in the solicitation of United States persons on behalf of the Fund will be registered as an AP of the Investment GP. This position is further conditioned on the Administrative GP and the Investment GP providing the Division with written acknowledgments whereby: (1) the Administrative GP acknowledges that it is responsible for compliance with all statutory and regulatory requirements under the Act and the Commission's regulations thereunder applicable to CPOs, and that it shall be jointly and severally liable with the Investment GP for any violation of the Act or the Commission's regulations thereunder applicable to CPOs committed by the Investment GP in connection with its serving as a co-CPO of the Fund; and (2) the Investment GP acknowledges that it shall be jointly and severally liable with the Administrative GP for any violation of the Act or the Commission's regulations thereunder applicable to CPOs committed by the Administrative GP in connection with its serving as a co-CPO of the Fund.

You also have requested that the Division grant relief to the Investment GP from certain requirements of Rule 4.23(a) to the extent that such rule requires a registered CPO to keep its books and records at its main business office. The Division has determined that, based upon the representations made to us, it is appropriate to grant an exemption from the requirement of Rule 4.23(a) regarding the location where original books and records must be kept. This determination is based primarily upon your representations that: (1) duplicates of the Fund's books and records regarding the trading activities of the Fund will be kept by the Investment GP at its New York office; and (2) the Fund must maintain its original books and records offshore to comply with Internal Revenue Service requirements for relief from United

^{4/} You note, however, that you are pursuing with the National Futures Association the possibility of obtaining an exemption from the Series 3 testing requirement for each of the APs located offshore.

States taxation. Based upon the foregoing and pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts the Investment GP from the requirement of Rule 4.23(a) to the extent it requires that the Fund's original books and records be kept at the Investment GP's main business office, provided that, within 72 hours after a request of a Commission representative is made, the Investment GP will obtain the original books and records from the Fund's main office in Bermuda and provide them for inspection at a place located in the United States and specified by the Commission representative.

The relief issued by this letter does not excuse the Administrative GP or the Investment GP from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, each remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. §60, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.^{5/} Further, the relief issued by this letter is applicable to the Administrative GP solely in connection with its serving as the co-CPO of the Fund.

This letter is based upon the representations that have been made to us and is subject to compliance with the conditions stated 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 of the Fund change in any way from those represented to us.

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

^{5/} For example, the Administrative GP and the Investment GP remain subject to the prohibition against commingling of funds found in Rule 4.20(c), which applies to each person who comes within the CPO definition regardless of registration status.