COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

9435

March 30, 1994

Re: Relief from CPO and CTA Regulation

Dear :

By letters dated January 17, 1984, April 9, 1991 and orally in response to your letter dated November 18, 1991, and subject to certain conditions, the Division granted relief, as modified by letter dated May 20, 1992, (the "Prior Relief"), from certain requirements of the Commodity Exchange Act (the "Act") and Commission regulations thereunder to "X" and "Y" (together, the "Entities") and their principals and associated persons in connection with the operation of certain offshore commodity pools (the "Funds" or the "Group of Funds").[1/] This relief is subject to certain conditions, including that shares of the Funds will not be owned or transferred to any United States person other than: (a) "A", who owns and operates "X"; (b) employees who are reasonably believed by "X" to possess such knowledge and experience that they are capable of evaluating the risks of an investment in the Foreign Funds ("qualified employees"); (c) all other employees ("non-qualified employees")[2/]; and (d) members of the families of "A", the managing director of "X", other investment professionals having substantial responsibilities in managing the Funds, and private personal or charitable trusts or foundations created by such persons.

By letter dated January 24, 1994, as supplemented by your letter dated February 28, 1994 and by telephone conversations with Division staff, you request confirmation that the Prior Relief will apply in connection with "Z", a new commodity pool

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1/ The Division's January 17, 1984, April 9, 1991 and May 20, 1992 letters and our oral response are incorporated herein by reference.

2/ In the event any non-qualified employee is permitted to invest in the Funds, additional terms and conditions specified in the Division's May 20, 1992 letter, including a requirement to provide all employees with a Disclosure Document and periodic reports containing substantially the information required by Rule 4.12(b), would become operative.

which is proposed to commence operation on March 31, 1994. "Z" is being formed to offer shareholders of each of the Funds the opportunity to reinvest a portion of their upcoming distribution in shares of "Z".[3/] Direct equity investments, i.e., investments in equity securities other than publicly traded securities which are readily marketable and which are acquired solely for passive investment purposes, will constitute the primary business of "Z". However, up to twenty percent of its net assets may be used for other strategies, including strategies intended to take advantage of broad trends in the markets for securities, commodities, currencies and commodity interests thereon.[4/] You represent that, as specified in your January 24, 1994 letter and except as noted below, all of the circumstances that formed the basis for the Prior Relief in connection with the Funds also will apply with respect to "Z".

Unlike the Funds, whose boards of directors include no United State persons, "Z" will have one director, "B", who is a United States person.[5/] This is because "X" believes it is desirable to include on the board at least one member who is an experienced professional in direct equity investments in the United States market. You represent that "B": (1) is not a managing director of "X"; (2) will not engage in the commodity interest business in any capacity; (3) is not subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act ("Act"), 12 U.C.S. §12a(2) or 12a(3) (1988 & Supp. 1992); and (4) is not affiliated with any Commission registrant.

Based upon the foregoing representations, the Division has determined that it is appropriate to extend the Prior Relief in connection with "Z". Accordingly, based upon the representations made in your January 24, 1994 letter, as supplemented, the Division will not recommend that the Commission take any enforcement action against "X", "Y" or "B" if they do not register as

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3/ You represent that the boards of directors of the Funds have the policy to limit the growth of the Funds by declaring regular distributions of profits and to allow the reinvestment of such distributions in an "X" managed or sponsored fund.

4/ "Z", like the other Funds in the Group of Funds, will not commit more than five percent of its assets at any time to initial margin or premiums on futures contracts or options thereon.

5/ By fascimile dated February 7, 1994, you provided us with "B"'s resume which indicates that "B" has extensive securities investment experience.

CPOs in connection with their operation of "Z". In addition, the Division has determined that it will not recommend any enforcement action against "X" or its principals or associated persons in connection with their providing commodity trading advice to "Z" for failure to comply with Sections 4k, 4m and 4n of the Act, 7 U.S.C. §§6k, 6m and 6n, and with the Commission's regulations thereunder. However, please be advised that the Commission has under review the permissibility of funds of the nature described, which have United States investors, being conducted without benefit of compliance with the registration requirements and other provisions of the Act and rules, and the relief provided herein will no longer obtain in the event that the Commission issues any guidance inconsistent with this letter.

This letter is based upon the representations that you have made to us and is subject to compliance with the terms and conditions set forth in the Division's Prior Relief letters. 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 that the operations of "Z", the Funds or the Entities change in any way from those as represented to us.

We note that this letter does not excuse "Z", "B" or the Entities from any other applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, they remain subject to the anti-fraud provisions of Sections 4b and 4o of the Act, 7 U.S.C. §§ 6b and 6o, and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, 17 C.F.R. Parts 15, 18 and 19 (1993).

The views expressed in this letter are those of the Division only and do not necessarily represent the views of the Commission or any other division or office of the Commission.

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

Very truly yours,

Susan C. Ervin
Chief Counsel