



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

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94-64

DIVISION OF
TRADING AND MARKETS

April 29, 1994

Re: Request for Relief from Listing Principals

Dear :

This is in response to your letter dated August 12, 1993, as supplemented by letter dated March 8, 1994 and telephone conversations with Division staff, in which you request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief such that "A", "B", "C" and "D" need not be listed as principals of the Company.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Company is registered as a commodity pool operator ("CPO") and as an investment adviser and has been so registered since 1987 and 1985, respectively. It serves as the general partner of several limited partnerships, including "V".^{2/} The Company operates as a CPO for each of these partnerships, either pursuant to relief under Commission Rule 4.12(b) or similar relief from Division staff issued to the Company prior to the Commission's adoption of Rule 4.12(b). Accordingly, all pools which the Company operates are engaged primarily in securities transactions

^{1/} By telephone conversation with Division staff on March 28, 1994, you stated that "C" was promoted to the position of Senior Vice President and that you wished to withdraw your relief request with respect to him. Accordingly, this response addresses only your request with respect to "A", "B" and "D".

^{2/} The other partnerships for which the Company is a general partner are "W", a New York limited partnership, and "W", "Y", and "Z", each a Delaware limited partnership. Your request arose from a comment letter received from Division staff on "V"'s Disclosure Document which was filed in conjunction with the Company's Rule 4.12(b) claim of exemption with respect to its operation of "V". Commission rules referred to in this letter may be found at 17 C.F.R. Ch. I (1993).

and engage in commodity interest trading in a manner solely incidental to their securities trading activities.^{3/}

In support of your request, you state that all five of the Company's directors and eleven of the Company's officers are listed as principals of the Company. You request relief on behalf of "A" and "B" and "D", however, because you state that they are not involved with any of the Company's commodity interest trading or related activities nor do they have any direct or indirect power to exercise a controlling influence over the Company's business that is subject to regulation by the Commission.^{4/} Specifically, their duties with respect to the Company are as follows: (1) "A" is the "head securities trader" for the Company, performing order entry functions on behalf of the Company, including placing trades for "V",^{5/} but having no discretion with respect to which trades are made; (2) "B" is Vice President of Sales and Client Services, and is responsible for servicing institutional managed account clients and making presentations to potential new institutional account clients; he does not service accounts involved in commodity-interest trading or make presentations regarding such trading nor does he make any presentations with respect to investing in "V"; and (3) "D" is an employee of the Company's parent company. His sole responsibility with respect to the Company is preparing the Company's income tax returns. "B" and "D" do not have any responsibilities with respect to "V".

Commission Rule 4.10(e) defines the term "principal" to include, among other persons "any person, including, but not limited to, a sole proprietor, general partner, officer, director . . ." or other person having the power, directly or indirectly, to exercise a controlling influence over the activities of the entity.

Based on the foregoing, we find no grounds for providing relief with respect to listing "A" and "B" as principals on the Company's Form 7-R, and filing a Form 8-R and fingerprint card on each individual's behalf. Accordingly, your request for relief with respect to "A" and "B" is hereby denied. However, in light

^{3/} In fact, you represent that "V" has not engaged in any commodity interest trading to date, and has no present intention to do so. You indicate, however, that the Company filed a notice for relief pursuant to Rule 4.12(b) so that it would have the option of engaging in limited commodity interest trading in the future should the Company wish to do so.

^{4/} "D" is an Assistant Secretary of the Company. "A" and "B" are each Vice-Presidents.

^{5/} Such trades are placed with various brokers. The Company is not a member of any exchange.

of your representations, we will not recommend that the Commission take enforcement action against the Company or against "D" if the Company fails to list "D" as a principal for registration purposes pursuant to Rule 3.10 or in "V" disclosure document in compliance with Rule 4.21.

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 activities of "D" or the operations of the Company change in any way from those represented to us.

We note that this letter does not excuse the Company from compliance with any other applicable requirements contained in the Commodity Exchange Act, as amended ("Act"),^{6/} or the Commission's regulations issued thereunder. For example, it 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, 17 C.F.R. Parts 15, 18 and 19 (1993), and to all other applicable provisions of Part 4.

If you have any questions regarding this letter, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{6/} 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992).