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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

October 13, 1994

Re: Section 4m -- Request of Co-General Partner of a Commodity Pool for Relief from Registration as a Commodity Pool Operator ("CPO")

Dear :

This is in response to your letter dated June 8, 1994 to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letter dated September 24, 1994 and by telephone conversations with Division staff, wherein you request that the Division not recommend that the Commission take any enforcement action against (the "Investment General Partner") for failure to register as a CPO in connection with its serving as a co-general partner of (the "Partnership").[1/]

Based upon the representations made in your letter as supplemented, we understand the facts to be as follows. The Partnership was formed as a limited partnership and commenced operations in 1991. The Partnership seeks to obtain high rates of return, principally by taking long and short positions in the common stocks of small- to medium-sized companies, but also effecting "incidental" futures and options transactions. The general partners of the Partnership are the Investment General Partner and (the "Managing General Partner"). The Managing General Partner (but not the Investment General Partner) registered as a CPO and as a commodity trading advisor ("CTA") in September, 1993, having initially believed that such registration was unnecessary if commodity futures and options transactions constituted no more than

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1/ We believe a brief summary of relevant prior contacts between the Partnership and the Division is appropriate. By letter dated February 28, 1994, the Managing General Partner (then known as "Z") filed a claim for relief pursuant to Commission rule 4.12(b) (17 C.F.R. Ch. 1 §4.12(b) (1994)), and submitted the Partnership's Disclosure Document for review by the Division. In a March 9, 1994 letter to "A" the Division advised that the Investment General Partner would have to be registered as a CPO before the requested Rule 4.12(b) relief could become effective.

an incidental part of the Partnership's investment activities.

The ownership of the Partnership's general partners is as follows. The Investment General Partner is owned by "X". The Managing General Partner has two general partners, one of which is a wholly-owned subsidiary of "X" and the other of which is "Y", a corporation owned by "A" and other individuals. The Managing General Partner's limited partners are "X" and "Y". "A" is a registered associated person of the Managing General Partner. The Investment General Partner and the Managing General Partner do not share any individual principals.

You represent that from its inception the Partnership and its business and day-to-day operations, including all investment decisions, have been managed exclusively by the Managing General Partner. The Investment General Partner serves as a general partner solely by reason of its capital contribution to the Partnership, and not because of any involvement in the Partnership's investment activities. You also represent that neither the Investment General Partner nor any of the principals of the Investment General Partner is subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act").[2/]

In further support of your request you represent that the Partnership's Amended and Restated Limited Partnership Agreement (the "Partnership Agreement") gives the Investment General Partner no authority to manage the Partnership or otherwise to exercise any of the prerogatives of a CPO. You represent that the Partnership Agreement provides that "[t]he Managing General Partner, to the exclusion of the Investment General Partner and the Limited Partners, shall conduct and manage the business of the [Partnership], including without limitation the investment of the monies of the [Partnership]."[3/]

By letter dated March 9, 1994 the Division provided comments on the Partnership's Disclosure Document. By your June 8, 1994 letter, you formally withdrew the previously-filed Rule 4.12(b) claim and sought the instant relief.

2/ 7 U.S.C. §§ 12a(2) and 12a(3) (1988 & Supp. IV 1992).

3/ Paragraph 7(a) of the Partnership Agreement (a copy of which you provided with your September 24, 1994 letter to the Division). You also indicate other provisions giving the Managing General Partner exclusive powers and authority in conducting the Partnership's business, including Paragraphs 5(b), 5(d), 6(e), 6(g), 6(i), 6(k) and 7(b)-(g).

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action against the Investment General Partner for its failure to register as a CPO in connection with its serving as a co-general partner of the Partnership. This position is, however, subject to the conditions that:

1. The Managing General Partner will prepare and file an amended Disclosure Document in full compliance with the requirements of Rule 4.21;

2. Concurrently with the distribution of the Disclosure Document to limited partners, the Managing General Partner will offer to each of the limited partners the opportunity to rescind their respective investments in the Partnership;

3. The Investment General Partner will not exercise discretion, supervision or control over, or take part in: (a) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Partnership; or (b) the investment, use or other disposition of funds or property of the Partnership;

4. The Investment General Partner will deliver to the Division within thirty business days following the date of this letter an acknowledgment in writing that it shall be jointly and severally liable with the Managing General Partner for any violation by the Managing General Partner of the Act or of the Commission's regulations thereunder applicable to CPOs committed in connection with the Managing General Partner's serving as a co-CPO of the Partnership; and

5. The Managing General Partner will deliver to the Division within thirty days following the date of this letter an acknowledgment in writing that it shall be jointly and severally liable with the Investment General Partner for any violation by the Investment General Partner of the Act or of the Commission's regulations thereunder applicable to CPOs committed in connection with the Investment General Partner's serving as a co-CPO of the Partnership.

We note that the Investment General Partner remains subject to the antifraud provisions of Sections 4b and 4o of the Act,[4/] and to all otherwise applicable provisions of the Act and the

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[4/] 7 U.S.C. §§ 6b and 6o (1988 & Supp. IV 1992).

Commission's regulations thereunder, e.g., the reporting requirements for traders set forth in Parts 15, 18 and 19, and to all other provisions of Part 4. Further, the relief granted by this letter is applicable to the Investment General Partner solely in connection with its serving as a general partner of the Partnership.

The relief provided hereby is prospective only. In addition, the Division notes that it is not excusing, or in any way limiting the Commission's ability to proceed against the Managing General Partner or the Investment General Partner for, any past violation of the Act or the Commission's regulations thereunder.

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 Partnership's activities or those of the Investment General Partner 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 Christopher W. Cummings, an attorney on my staff, at (212) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel