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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

August 26, 1994

Re: Section 4m(1) and Rule 3.10: Relief from Commodity Pool Operator Registration Requirements

Dear :

This is in response to your letter dated February 4, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by letters dated March 1, 1994, March 16, 1994, June 8, 1994, and August 24, 1994, and telephone conversations with Division staff. By your letter you request, on behalf of your clients, "X" and "Y", that the Division not recommend that the Commission take any enforcement action against "Y" for failure to register as a commodity pool operator ("CPO") in connection with its serving as one of the general partners of the Fund. You also request relief from the requirements of Rule 4.23 regarding the location of the Fund's original books and records.

Based upon the representations made in your letter, as supplemented, we understand that the facts are as follows. "X" is a registered CPO, is one of two general partners of the Fund and holds a 0.5% interest in the Fund. You represent that "X" will be the "investment general partner" of the Fund, will perform all CPO-related activities on behalf of the Fund and generally will be responsible for the oversight of the Fund's investment portfolio. "Y" is a Cayman Islands limited liability company, is the other general partner of the Fund, and also holds a 0.5% interest in the Fund. "Y" will be the "administrative general partner" of the Fund, and, in this capacity, will be responsible for the Fund's administrative affairs, but will have no responsibility or authority with respect to the solicitation of investors or the management of the Fund's investment or trading activities.[1/]

1/ As the administrative general partner, "Y's" responsibilities will include: acceptance of subscriptions and receipt of capital contributions forwarded to "Y" pursuant to instructions provided to investors in the Fund's subscription agreement; payment of Fund expenses; making distributions to investors; maintenance of a registry for the ownership and transfer of interests in the Fund;

(continued...)

"Y" is a wholly-owned subsidiary of "X" and has three directors: "A", a United States person[2/] who is registered as an associated person of "X"; "B", a United States person; and "Z", a Cayman Island Company. None of the directors is subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").[3/]

The Fund is organized as a Cayman Islands limited partnership and is being established as an investment vehicle for non-United States persons. It is anticipated that the Fund will invest and trade in a variety of financial instruments, including commodity interest contracts. You represent that all of the investors of the Fund will be qualified eligible participants, as that term is defined in Rule 4.7, and that "X" intends to file the required notice of claim under Rule 4.7 in connection with its operation of the Fund.[4/]

Inasmuch as "Y" will be a general partner of the Fund, it would be required to be registered as a CPO of the Fund, absent the relief requested herein.[5/] In support of the instant request, "X" has represented by written acknowledgment that it accepts joint and several liability with "Y" for any violations of the Act or the Commission's regulations promulgated thereunder applicable to CPOs in connection with its serving as the general partner and a CPO of the Fund. In addition, "Y" has provided the Division with a written acknowledgment whereby it accepts joint and several

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1/ (...continued)
transfer of interests in the Fund; maintenance of the Fund's original books and records; coordination with the Fund's auditors of the audit of the Fund's books and the preparation of its tax returns; preparation and distribution of reports to investors; communications with investors; furnishing the offering and redemption prices of interests in the Fund; conducting meetings of Fund investors; and making such filings and keeping such records as are required by Cayman Islands law.

2/ The definition of "United States person" set forth in Division of Trading and Markets Letter No. 92-3, [1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992) applies for purposes of this correspondence.

3/ 7 U.S.C. § 12a(2) or 12a(3) (1988).

4/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

5/ See Interpretative Letter 75-16, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,104 (October 15, 1975).

liability with "X" for any violations of the Act or the Commission's regulations promulgated thereunder applicable to CPOs in connection with its serving as a general partner of the Fund.

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action against "Y" for failure to register as a CPO in connection with its serving as a general partner and CPO of the Fund. This position is, however, subject to the condition that "Y" will not exercise discretion, supervision or control over or take part in the solicitation of investors or the management of the Fund's investment or trading activities.

In addition, based upon your representations, the Division has determined that it is appropriate to grant an exemption from the requirement of Rule 4.23 regarding the location where original books and records must be kept. This determination is based primarily upon your representations on behalf of "X" that: (1) duplicates of the books and records of the Fund will be kept by "X" at its New York office; (2) the Fund maintains its original books and records offshore to comply with Internal Revenue Service requirements for relief from United States taxation; and (3) upon request of a Commission or National Futures Association representative, "X" will obtain the original books and records from the Fund's main office for inspection at the place specified by the representative within seventy-two hours after the request is made. Accordingly, the Division hereby exempts "X" from the requirement of Rule 4.23 regarding the location of books and records with respect to the Fund.

The relief provided by this letter does not excuse "X" and "Y" from compliance with any otherwise applicable provisions of the Act and the Commission's regulations issued thereunder. For example, "X" and "Y" remain subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition, regardless of registration status. Moreover, the position which we have taken herein is applicable to "Y" solely in connection with its serving as a general partner and CPO of the Fund.

The positions taken in this letter are based upon the representations that have been made to us and are subject to compliance with the conditions stated above. Any different, changed or omitted facts or conditions might require us to reach different conclusions. In this connection, we request that you notify us immediately in the event that the activities of "X" or "Y" change in any way from those as represented to us.

Further, the no-action position taken in 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 Tina Paraskevas Shea, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel