95-79

COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
(202) 254 - 8955
(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

July 21, 1995

Re: Section 4m(1) -- Floor Brokers Who Are Also APs of CPO Need Not Register as CTAs in Connection with Advice Rendered to a Pool CPO Operates.

Dear :

This is in response to your letters to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated May 2, 1995 and May 31, 1995, as supplemented by telephone conversations with Division staff. By your letters, as supplemented, you request on behalf of certain floor brokers ("FBs") relief from registration as commodity trading advisors ("CTAs") in connection with the advice each FB is to render to the Fund.[1/]

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. (The "Operator") is a registered commodity pool operator ("CPO"). The Operator currently employs several registered FBs. These FBs are: "A", "B", "C", "D", "E" and "F" (each a "Trader"). To date, each Trader has been employed by, and has traded exclusively proprietary accounts of, the Operator. The Operator intends to form and operate the Fund, a limited partnership for which the Operator will serve as the general partner. The Operator has not yet solicited participations in the Fund but has submitted a Disclosure Document for the Fund, which the Division is currently reviewing. However, when the Fund begins operations, you represent that each Trader will be registered as an associated person ("AP") of the Operator and will also become an employee of the Fund. As employees of the Fund, each Trader will trade exclusively for the Fund and will have discretionary authority to trade Fund assets allocated to him by the Operator. No Trader will provide commodity interest trading advice to any other person.

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action against any Trader for its failure to register as a CTA in connection with its providing commodity interest trading advice to the Fund. However, this position is subject to the condition that each Trader becomes registered as an AP of the Operator before conducting any commodity interest trading activities on behalf of the Fund. Further, this relief is applicable to each Trader solely in connection with his providing commodity interest trading advice to the Fund.

This letter relieves each Trader solely from certain requirements under Section 4m(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6m(1) (1994), and does not excuse any Trader from compliance with any other applicable requirements contained in the Act or in the Commission's rules thereunder. For example, each remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1994), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all other applicable Commission rules.

Furthermore, the relief granted herein to each Trader is based upon the representations made in your letter, as supplemented. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we ask that you notify us immediately in the event the operations of any Trader or the Operator change in any way from those as represented to us. If you have any questions concerning this letter, please contact me or Gary J. Dernelle, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel