U.S. COMMODITY FUTURES TRADING COMMISSION

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96-01

DIVISION OF
TRADING & MARKETS

January 4, 1996

Re: Rules 4.35(b) and 4.25(b); Relief From Disclosing The Past Performance Of The CTA's Principals.

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated May 25, 1995, as supplemented by your letter dated September 11, 1995 and telephone conversations with Division staff. By your letter, as supplemented, you request relief from Rule 4.35(b) in connection with the Disclosure Document of (the "Advisor") and relief from Rule 4.25(b) in connection with the Disclosure Documents for funds currently operated by (the "Operator").[1/]

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The Advisor is an Illinois corporation registered as a commodity trading advisor ("CTA") effective April 24, 1995. "A", "B" and "C" are the only listed principals and the president, vice-president and treasurer, respectively, of the Advisor. The Advisor has not previously directed any commodity interest trading accounts and, to date, does not have any actual past performance history.[2/]

"B", "A" and "C" are also listed principals and the chairman, president and vice-president, respectively, of the Operator. The Operator, a general partnership organized under the laws of Illinois, is a registered commodity pool operator ("CPO") and futures commission merchant ("FCM"). The Operator serves as the

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

2/ Subsequent to the making of this representation through your correspondence, the Advisor commenced trading commodity interests for clients and thus, it now has an actual past performance history.

general partner and the CPO of "X" and "Y".

Rule 4.35(b) requires that a CTA disclose the actual past performance of all accounts directed by the CTA and by each of its "trading principals."[3/] Therefore, based upon the foregoing and on behalf of the Advisor, you request relief such that the Advisor need not disclose in its Disclosure Document the performance of "X" and "Y". In support of your request, you make the following representations. "A", as president of the Advisor, has been and will continue to be the sole "trading principal" of the Advisor. He has not been and will not in the future be a "trading principal" of the Operator. "B", as chairman of the Operator, as been and will continue to be the sole "trading principal" of the Operator. He has not been and will not in the future be a "trading principal" of the Advisor. "C" has not been and will not be a "trading principal" of either the Advisor or the Operator. The persons engaged in making the trading decisions for "X" and "Y" are independent CTAs which are not affiliated with the Operator, the Advisor or the principals thereof.[4/] These CTAs employ trading strategies that have been developed independently of those employed by the Advisor. They do not participate in any of the trading decisions of the Advisor. The Advisor has not and will not provide commodity interest trading advice to either "X" or "Y". "A", "B", and "C" have not otherwise directed the trading of client commodity interest accounts.

In light of the foregoing representations, the Division will not recommend that the Commission take any enforcement action against the Advisor for failure to comply with Rule 4.35(b) if it fails to disclose in its Disclosure Document the performance of "X" and "Y" as would otherwise be required under the rule. This position is, however, subject to the condition that for each of "X" and "Y" the Advisor disclose in its Disclosure Document: (1) the net income or loss of a unit of participation for the most recent five calendar years and year-to-date or for the life of a pool, if

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3/ Rule 4.10(e)(2)(ii) states that the term "trading principal," with respect to a CTA, means a principal who participates in making trading decisions for the account of a client or who supervises or selects persons so engaged. Rule 4.10(e)(2)(i) similarly states that, with respect to a CPO, the term "trading principal" means a principal who participates in making trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged. 60 Fed. Reg. at 38182.

4/ You represent that since 1992 the CTAs of "X" have been "V" and "W". Since 1993 the CTAs of "Y" have been "V" and "R". You further represent that each other CTA of "X" and "Y" has been independent of and not affiliated with the Operator, the Advisor or the principals thereof.

less than five years;[5] (2) the largest monthly draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the month and year of the draw-down;[6] and (3) the worst peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the months and years of the draw-down.[7]

As noted above, on behalf of the Operator you also request relief from Rule 4.25(b) such that the Operator need not disclose the performance of client accounts traded by the Advisor in Disclosure Documents for "X" and "Y", each of which has been in operation for more than three years. You represent that during this greater than three-year period at least seventyfive percent of the contributions to "X" and "Y" were made by persons unaffiliated with the Operator, the CTAs of both or the principals of any of the foregoing. The Division notes that, under Rule 4.25(b), where the offered pool has at least a three-year operating history and for at least such three-year period, seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the CPO, the trading manager, the pool's CTA, or the principals of any of the foregoing, the CPO must only disclose the performance of the offered pool, in accordance with paragraphs (a)(1)(i)(A) through (H) and (a)(2) of Rule 4.25. Therefore, under Rule 4.25(b) the Operator need not disclose in the Disclosure Document of "X" or "Y" the performance of the Advisor and, thus, the relief that you request on behalf of the Operator is not needed.

The positions taken in this letter are based upon the specific representations that you have made to us and are 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 the operations and activities of the Advisor, the Operator or the principals thereof change in any way from those as represented to us.

This letter relieves the Advisor solely from certain requirements under Rule 4.35(b). It does not excuse the Advisor or the Operator from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act"), 7 U.S.C. §1 (1994), or the Commission's rules thereunder. For example, each

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5/ The year-to-date information should be current as of a date not more than three months preceding the date of the Document. See Rule 4.36(a)

6/ See Rule 4.25(a)(1)(i)(F).

7/ See Rule 4.25(a)(1)(i)(G).

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 provisions of Part 4 of the Commission's rules.

Further, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or of any other office or division of the Commission. If you have any questions concerning this letter, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel