96-27

U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

DIVISION OF
TRADING & MARKETS

February 20, 1996

Re: Section 4m(1): Request for Relief from Commodity Pool Operator Registration Requirements

Dear :

This is in response to your letter dated December 29, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your letter you request on behalf of "U" relief from the CPO registration requirements in connection with the conversion of "U" from a general partnership to an Illinois limited partnership to be named the "Fund", as explained more fully below.

Based upon the representations contained in your letter, as supplemented, we understand that the facts are as follows. "U" is a private investment partnership that principally invests in securities and non-U.S. regulated futures and options on futures. The sole general partners of "U" are "V" and "W", both of which are Illinois corporations. The sole principal of "V" is "A" and the sole principal of "W" is "B" (collectively the "Principals"). Both "A" and "B" are former floor traders at the Chicago Board of Trade ("CBOT") and are currently registered with the Commission as floor brokers.[1/] "A" and "B" combined have in excess of twenty-five

---

1/ "A" has been trading for his own account at the CBOT since 1980. "A's" trading was concentrated primarily on the U.S. treasury bond futures contract. You state that he has traded other interest rate futures and options contracts for his own account for more than five years. You state that since approximately 1990, "A" has dedicated much of his time to off-floor activities, including a number of venture capital and real estate projects as well as the trading activities of "U". "A" was previously registered with the Commission as an associated person from 1976 through 1980.

"B" has been a member of the CBOT since 1981. He has traded U.S. treasury bond futures for his own account since 1978 and also has traded other interest rate futures and options contracts for his own account for more than five years.

years experience trading in the securities and commodity interest markets.

In connection with its ongoing business of engaging in securities and commodity interest transactions, "U" employs nine individuals who trade on its behalf. Each trader trades a different account and all of the accounts are for the benefit of "U". Generally, the trading strategies of each of the traders are determined by the individual trader without reference to, or consultation with, the other traders. The majority of "U's" trading activity involves options traded on the Chicago Board Options Exchange ("CBOE") and futures and options traded on various foreign futures and options exchanges, including the London International Financial Futures Exchange ("LIFFE"). The traders' compensation is based upon the performance of the account for which the trader is responsible.

"A" and "B" seek to change the structure of "U" by converting it from a general partnership to an Illinois limited partnership (i.e., the Fund) in order to offer interests in the Fund to certain of the traders and senior personnel of "U" (as outlined below) as an inducement to their continued employment. By structuring the Fund as a limited partnership, it is intended that the traders and senior personnel will be able to participate in the aggregate profits of all of the traders and limit their potential liability to their capital contributions.

You represent that the Fund, like "U", will trade directly, or through one or more affiliated entities, on various foreign and domestic securities and commodity exchanges, including the LIFFE, Deutsche Terminborse ("DTB"), Mercato Italiano Futures ("MIF"), CBOE and, to a significantly lesser degree, the CBOT and Chicago Mercantile Exchange ("CME"). Approximately eighty percent of the Fund's trading will take place on the LIFFE, DTB or MIF, fourteen percent will be the trading of CBOE options and the balance will involve Commission regulated futures and options.[2/] You represent that the aggregate initial margin and premiums for regulated

---

2/ Trading of stocks and CBOE stock and index options will be conducted through "X", an Illinois limited liability company ("Options"). The Fund will own 99% of Options. The remaining one percent will be owned by "Y", an Illinois corporation owned by the Principals.

Trading on the DTB and LIFFE will be conducted through "Z", a limited liability concern organized under German law. "Z" will trade currencies, financial instruments, bonds and foreign stock options. The Fund will own 99% of "Z". The remaining one percent will be owned by "Y".

futures and options contracts that will be traded by the Fund will not exceed five percent of the fair market value of the Fund's total assets, after accounting for unrealized profits and losses on such contracts.

Interests in the Fund will be offered pursuant to Rule 504 of Regulation D promulgated under Section 4(2) of the Securities Act of 1933. "V" and "W" will be the general partners of the Fund. Limited partnership interests will be offered only to six persons (collectively the "Participants"), all of whom are trading currently on behalf of "U" or who are senior personnel of "U" and will be actively involved in the day-to-day operations of the Fund. You represent that the general partners of the Fund (and the Principals) will not allow additional investors to purchase an interest in the Fund without first seeking Division authorization. The Participants will contribute a maximum of $1,000,000, collectively, to the Fund. It is intended that the Participants will be as follows:

1. Participant A is one of "U's" traders and is presently a member of LIFFE, holding a "C" share.[3/] Previously, he was a CBOT(IDEM)[4/] member and registered with the Commission as a floor broker from 1988 through 1990. He currently is registered with the Securities and Futures Association ("SFA") in London. Participant A previously traded municipal bond futures at the CBOT. He now engages in German Bund arbitrage trading between the LIFFE and the DTB. Participant A is an "accredited investor" as defined in Rule 501 of the Securities Act of 1933 ("accredited investor").

2. Participant B is one of "U's" traders, is presently registered with the SFA and is a member of LIFFE, holding an "E" share.[5/] Participant B's current trading focusses on German Bund arbitrage. Participant B previously spent four years as a risk manager in New York for a major Chicago trading concern and

---

3/ A "C" share membership on the LIFFE is a "restricted membership" right which entitles the holder to trade only certain types of instruments as determined by the exchange from time to time. A "C" share membership currently entitles the member to trade the German Bund contract, among others.

4/ "IDEM" is the acronym for the Index, Debt and Energy Market of the CBOT and is a limited membership which enables the member to trade only those contracts that are a part of the IDEM.

5/ An "E" share membership on the LIFFE is a "delimited membership" right which entitles the holder to trade the BTP Italian Bond, among other instruments.

additional time in London trading crude oil products on behalf of the same company. Participant B is an accredited investor.

3. Participant C is one of "U's" traders and is a licensed market-marker with DTB. Previously registered as a floor trader with the Commission, he has been a member of the Philadelphia Stock Exchange, the Chicago Mercantile Exchange ("CME") and the Singapore International Monetary Exchange. At various times, Participant C traded currency option and futures contracts as a floor trader at each of those exchanges over a period of approximately four years. For the past five years, he has traded OEX and SPX options and Standard & Poor's ("S&P") futures.[6/] His trading focusses on S&P-based options traded at the CBOE although he also uses commodity futures contracts for hedging purposes on occasion.

4. Participant D is one of "U's" traders, is a member of the CBOE, and is registered with the Commission as a floor trader. For twelve years Participant D was a market-maker on the floor of the CBOE and CBOT concentrating on OEX and U.S. Treasury Bond Options. His current trading focusses on S&P-based options traded at the CBOE with limited use of commodity futures contracts as a hedging vehicle.

5. Participant E will not trade for the Fund but will function as the manager of the Fund's day-to-day operations. Previously registered with the Commission as a floor broker and floor trader, Participant E's investment experience includes nine years of trading for his own account on the floor of the CBOT and CME, principally in futures and options on stock indices and bond futures and option contracts.

6. Participant F is a certified public accountant, who previously has traded for "U". He has been a CBOT(IDEM) member and CBOT associate member. Since 1987, Participant F has traded U.S. Treasury bond futures and options and various other financial futures and options. Participant F will have administrative responsibilities with respect to the Fund.

The Fund will be the successor-in-interest to "U". You represent that the Fund will be the only commodity pool for which

---

6/ The OEX contract refers to the Standard & Poor's 100 contract traded on the Chicago Board Options Exchange. The SPX contract refers to the Standard & Poor's 500 contract traded on the Chicago Mercantile Exchange.

"V" or "W" will service as the CPO.[7/] In further support of your request, you represent that, as a consequence of each Participant's active involvement in the business of "U", either as a trader or as senior personnel, each Participant is familiar with the Principals on a personal and professional basis, is aware of all material information relating to the Fund, and has access to the Fund's books and records. You also state that none of the general partners or Principals of the general partners (i.e., "A" and "B") is subject to any statutory disqualification from registration under Sections 8a(2) or 8a(3) of the Commodity Exchange Act ("Act").[8/]

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against "V" or "W" based solely upon either's failure to register as a CPO of the Fund. This position is based upon the representations you have made to us. 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 CPOs, the Fund, or its limited partners, change in any way from those as represented to us. Further, this position is applicable to the CPOs solely in connection with their operation of the Fund.

This letter relieves the CPOs solely from certain registration requirements under the Act in connection with the operation of the Fund and does not excuse them from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each CPO remains subject to the antifraud provisions of Section 4o of the Act,[9/] 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.

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 of any other office or division of the Commission. If you have any questions concerning this correspon-

---

7/ In addition, you represent that, with the exception of the Fund, neither of the Principals operates any commodity pools, either, individually or through an ownership interest in any other entity.

8/ 7 U.S.C. §§ 12a(2) or 12a(3) (1994).

9/ 7 U.S.C. § 6o (1994).

dence, please contact me or Tina Paraskevas Shea, an attorney on my staff, at (202) 418-5446.

Very truly yours,

Susan C. Ervin
Chief Counsel