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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

April 23, 1996

Re: Continued Request for Relief from CPO Registration Despite Addition of Additional Investors and Request for Relief from Requirement to File Annual Reports for 1995 and 1996

Dear :

This is in response to your letter dated March 20, 1996, 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 that the Division confirm that it will not recommend that the Commission take any enforcement action against ("Company") for failure to register as a commodity pool operator ("CPO") in connection with its operation of ("Fund") despite the addition of the investors discussed below. In addition, you request on behalf of the Company that the Division confirm that it will not recommend that the Commission take any enforcement action against the Company for failure to comply with the requirements of Rule 4.22(c)[1/] for the fiscal years ending December 31, 1995, and December 31, 1996, with respect to the Fund.

By letter dated December 18, 1995, you requested that the Division extend no-action relief to the Company as to CPO registration in connection with its operation of the Fund. Based upon the limited nature of the Fund's commodity interest trading, the fact that the three principals (and grantor trusts established for some of their children) own greater than 99.8% of the Fund, and the close professional nexus of the Fund's partners, by letter dated January 29, 1996 ("Prior Relief Letter"), the Division stated that it would not recommend that the Commission take any enforcement action against the Company for failure to register as a CPO.

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).

Subsequent to December 18, 1995, three additional persons acquired ownership interests in the Fund. One person is a charitable foundation established by one of the "Associates" mentioned in the Prior Relief Letter, which owns less than one tenth of one percent (0.1%) of the assets of the Fund. The trustees of the foundation are the Associate, his wife and his attorney. The other two persons are employees of wholly owned affiliates of the Company. The combined investment of these two employees represents less than one one hundredth of one percent (0.01%) of the Fund's assets. Like the employees discussed in connection with the December 18, 1995 letter, these two employees are both actively involved in managing the Fund's securities trading, are accredited investors under Securities and Exchange Commission Rule 501, and have been employed by the Company affiliates for at least four years.

Based upon these representations, and notwithstanding the changes to the ownership of the Fund, the Division confirms that it will not recommend that the Commission take any enforcement action against the Company under Section 4m(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6m(1) (1994), for failure to register as a CPO in connection with its operation of the Fund. This position, however, remains subject to the condition set forth in the Prior Relief Letter that each participant in the Fund consents in writing to the Company's withdrawal of its registration as a CPO.

Your letter also requests, on behalf of the Company, relief from the requirement to distribute and file an Annual Report under Rule 4.22(c). In support of this request, you represent that no persons other than those disclosed in connection with your request for relief from CPO registration have had any ownership interests in the Fund for the period beginning January 1, 1995 through the present. Further, you represent that the Company's Annual Reports are highly confidential and disclose information that if reviewed by the Company's competitors, would cause it serious competitive harm. You nonetheless represent that the Company will prepare annual financial reports for the fiscal years ending 1995 and 1996, and such reports will be certified by an independent public accountant. Further, each investor in the Fund will have access to these annual financial reports, as well as access to the Fund's books and records. The annual financial reports also will be available to the Commission, or its designee, for a period of five years following the date of issuance of the report.

In view of these representations and the fact that the Division has granted the Company a no-action position with respect to registration as a CPO, the Division will not recommend that the Commission take any enforcement action against the

Company for failure to distribute to Fund participants and file with the Commission Annual Reports for the fiscal years ending 1995 and 1996, as required under Rule 4.22(c).

The relief issued by this letter does not excuse the Company from compliance with any other applicable requirements contained in the Act, 7 U.S.C. § 1 et seq. (1994), or the Commission's regulations thereunder. For example, it 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 regulations and to all other applicable provisions of Part 4. The no-action position taken herein represents the position of the Division only. It does not necessarily represent the views of the Commission or of any other office or division of the Commission.

This letter is based on the representations made in your letter, as supplemented, and is subject to compliance with the condition set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations or activities of the Company or the Fund change in any way from those represented to us.

If you have any questions concerning this correspondence, please contact me or Gary L. Goldsholle, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel