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U.S. COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING & MARKETS

May 6, 1996

Re: Request for Relief from Registration as a Commodity Trading Advisor under Section 4m(1) with Regard to Trading System Licensed to Registered Commodity Trading Advisor of Offshore Commodity Pool

Dear :

This is in response to your letter dated January 25, 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 correspondence, you request on behalf of "X", a United Kingdom corporation registered with the Securities and Futures Association, relief from registration as a commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act ("the Act")[1/] with respect to "X's" provision of commodity interest trading advice to an offshore commodity pool organized under the laws of Bermuda ("the Fund").

Based upon the representations contained in your letter, as supplemented, we understand the relevant facts to be as follows. "X", which advises solely non-United States persons, has no United States shareholders, directors or officers.[2/] You represent that neither "X" nor any of its principals are subject to a statutory disqualification under Section 8a(2) or 8a(3) of the Act.[3/] "X" licensed a commodity interest trading program (the "Program") to "Y", a United Kingdom corporation that is registered as a CTA and serves as the Fund's CTA. "A", a fifty-one

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1/ 7 U.S.C. § 6m(1) (1994). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

2/ For the purpose of this letter, the term "United States person" has the definition employed in CFTC Interpretative Letter No. 92-3, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

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

percent majority shareholder and officer of "X", is a registered associated person of "Y". The Fund's commodity pool operator ("CPO") is "Z", a Bermuda corporation that is a registered CPO and CTA.

The Fund, which has assets in excess of $60 million, has no United States directors or officers, but has three United States shareholders. It offers interests solely to investors who are "qualified eligible participants" as that term is defined in Commission Rule 4.7.[4/] These investors participate in all profits and losses, but have no right to vote or otherwise direct the Fund's trading activities. Of the three United States investors, two are natural persons and one is a limited partnership that filed a Rule 4.7 Notice of Claim for Exemption on December 15, 1995.[5/] You represent that "Z" will neither solicit nor accept any additional United States persons as investors in the Fund unless and until "X" becomes a registered CTA.

"A" directs the Fund's commodity trading activities on behalf of "Y", using the Program. You represent that the Program is licensed solely to "Y" and is not marketed to any other person or entity. "X" permits "Y" to use the Program strictly for the "U" Group, which is composed of funds controlled by "V", an affiliate of "Y", or its subsidiaries. The "U" Group's sole (indirect) clients who are United States persons are the three investors in the Fund. You represent that the "U Group" similarly will not solicit or accept any additional United States persons as investors unless and until "X" becomes a registered CTA.

Our review of the licensing agreement indicates that "Y" must provide office space and equipment to "X", but "X" is deemed an independent contractor and not an employee, agent or partner of "Y". In turn, "X" is obligated to use the Program to provide trading signals for the "U" Group's clients, continue to research and develop the system, and pay for certain market information or technical systems supplied by "Y". The agreement also contains provisions for the payment of fees by the "U" Group to "X" and the allocation of funds by the "U" Group to "X". Finally, it specifies that no formal marketing exclusivity exists, although

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4/ Commission records indicate that "Z" filed a Rule 4.7 Notice of Claim for Exemption with respect to the Fund on August 7, 1995.

5/ The limited partnership, "W", invests all of its assets in the Fund. Its sole investors are a husband and wife who meet the Rule 4.7(a) criteria for qualified eligible participants.

"X" would be required to consult with "Y" before entering into any arrangement with a third party.

You state that, although "Y" serves as the Fund's CTA, it is possible that "X" (and "A" as an agent thereof) might be viewed as a de facto trading advisor to the pool. Accordingly, you request that "X" be exempted from CTA registration with respect to the Fund. As you may know, the Division views sellers or developers of commodity interest trading programs as coming within the CTA definition contained in Section 1a(5) of the Act.[6/] Consequently, the Division in interpretations has recognized the applicability of the CTA definition to persons selling and licensing such computer systems.[7/]

Based upon the representations you have made, however, the Division will not recommend that the Commission take enforcement action against "X" for failure to comply with Section 4m(1) of the Act based solely upon "X's" failure to register as a CTA in connection with its licensing agreement with "Y". This position is, however, subject to the conditions that: (1) "X" will not license, sell or market the Program to any person or entity who either directly or indirectly provides commodity interest trading advice to any United States person; (2) "Y" will not use the Program to advise any United States person, except for the three United States persons who currently are investors in the Fund; (3) "X" will not hold itself out as a CTA; (4) "X" will submit to such special calls as the Division may make of it to show compliance with the terms and conditions of this letter; (5) the Fund may not solicit or accept any additional United States persons as investors without "X" first becoming registered as a CTA; and (6) within thirty days of the date of this letter, "Y" and "Z" provide the Division with signed and dated acknowledgements whereby each accepts joint and several liability for any violation of the Act or the Commission's regulations thereunder involving or resulting from "X's" activities in connection with the Program.

The relief granted by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of

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6/ 7 U.S.C. § 1a(5) (1994).

7/ See, e.g., CFTC Interpretative Letters No. 94-51, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,115 (May 10, 1994) and No. 84-9, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,092 (March 1, 1984 and April 6, 1984).

Section 4o of the Act,[8/] the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable provisions of Part 4, including Rule 4.7.

This letter is based upon the representations that you have made to us and is subject to compliance with the conditions stated 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 that the operations or activities of "X", "Z", "Y" or the Fund change in any way from those as represented to us. Moreover, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

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

Very truly yours,

Susan C. Ervin
Chief Counsel

8/ 7 U.S.C. § 6o (1994).