U.S. COMMODITY FUTURES TRADING COMMISSION
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96-48

DIVISION OF
TRADING & MARKETS

June 5, 1996

Re: Section 4m(1) of the Commodity Exchange Act -- Request for CPO Registration Relief Where Trading Vehicles Comprised of Accredited Investors will Commit One Percent of Net Assets for Incidental Commodity Interest Trading

Dear :

This is in response to your letters dated October 30, 1995, November 16, 1995, November 20, 1995, November 28, 1995, December 7, 1995, and January 10, 1996 to the Division of Trading and Markets ("the Division") of the Commodity Futures Trading Commission ("the Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request relief from commodity pool operator ("CPO") registration for "U", "V" and "A") (the "General Partners"), in connection with operating "W", "X", and "Y" ("the Partnerships").

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. Each Partnership is a private investment limited partnership organized in 1983. Five Founding Families[1/] established the Partnerships for the primary purpose of preserving capital through a "value investment" approach. Interests in the Partnerships have been offered and sold in accordance with Regulation D promulgated under the Securities Act of 1933, as amended. Both "V" and "U" are registered as investment advisers under the Investment Advisers Act of 1940. "V" intends to serve as the commodity trading advisor ("CTA") of each Partnership and will register with the Commission as a CTA prior to engaging in such activity. You represent that "V", "U", and "A" are not subject to a statu-

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1/ The five Founding Families consist of four families and "A". The four families were experienced investors who had known each other for many years. Members of two of the Founding Families were professors at Harvard Business School ("Harvard"). "A" graduated in June 1982, where he was a student of one of the professors.

tory disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act").[2/]

The Partnerships have a total of 133 limited partners, which consist of members of 38 families (including the five Founding Families), as well as investment entities controlled by these family members.[3/] Thirty of the families ("Non-Employee Families") have had a personal relationship with one or more of the Founding Families, either through investment, social, philanthropic, or academic contacts dating back at least eight years. In addition, the Founding Families have hired students from their classes at Harvard to serve as investment analysts for the Partnerships. These students have introduced their families to "U" and "V", and the Partnerships currently contain contributions from three of these families (the "Employee Families"). The Founding Families have known all three Employee Families for at least two years.

All limited partners in the Partnerships meet a financial eligibility requirement in that they are accredited investors under Regulation D having either a minimum net worth of one million dollars or have cumulatively invested $500,000 with "U". As of June 30, 1995, the minimum amount invested by any Non-Employee Family in the Partnerships was approximately $1.1 million; the minimum amount invested by any Employee Family was $1,045,000; and the aggregate net asset value of the three Partnerships was approximately $580 million. The limited partners receive monthly account statements, quarterly statements reflecting a summary of transactions and gains and losses, if any, and on an annual basis, certified financial statements prepared by "Z".

You further represent that: (1) 111 of the 133 limited partners are "qualified eligible participants" ("QEPs") as that term is defined in Rule 4.7(a)[4/] and that the remaining twenty-two limited partners are accredited investors; (2) the Partnerships' commodity interest trading will be solely incidental to

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

3/ These entities consist of twenty-eight trusts (including living trusts), twelve charitable organizations, eight pension plans, and eight family partnerships.

4/ 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).

their business of investing in securities; (3) each Partnership will commit no more than one percent of the fair market value of its net assets to establish commodity interest positions; (4) no marketing has been done on behalf of the Partnerships to solicit investments from members of the public, and no such marketing will be done; and (5) the General Partners do not operate any other investment vehicles that trade commodity interests.[5/]

Based upon the representations made in your correspondence, the Division will not recommend that the Commission take any enforcement action against the General Partners for failure to comply with Section 4m(1) of the Act[6/] if they do not register as CPOs in connection with their operation of the Partnerships. This relief, however, is subject to the conditions that: (1) the Partnerships are advised by a registered CTA with respect to their commodity interest trading;[7/] and (2) each person who is subsequently admitted into a Partnership as a limited partner must: (i) meet the QEP criteria of Rule 4.7(a) or (ii) be a member of a family that has known a Founding Family for at least two years, meet the current financial eligibility requirements[8/] and have had a QEP family member make for it the decision to invest in a Partnership.[9/]

5/ "U" serves as the (registered) investment adviser for the Fund, a registered investment company which does not currently trade commodity interests.

6/ 7 U.S.C. §6m(1) (1994).

7/ As stated above, "V" will serve as the Partnerships' CTA. In this regard, you represent that as a registered CTA "V" may treat each Partnership as a qualified eligible client under Rule 4.7(b) upon filing a notice of claim for exemption as specified in the rule.

8/ As also is stated above, this requirement is that the limited partner is an accredited investor and has either a minimum net worth of one million dollars or has cumulatively invested $500,000 with "U".

9/ Where any subsequently admitted limited partner is a trust for the benefit of a minor child, the grantor and the person who makes the investment decisions for the trust will be a QEP. The trust itself will meet the financial eligibility requirements applicable to any limited partner, referred to above.

The relief issued by this letter does not excuse the General Partners from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of Section 4o of the Act, 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. Further, this relief is applicable solely in connection with the operations and activities of the Partnerships.

This letter is based upon the representations 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 that the operation or activities of the General Partners or the Partnerships change in any way from those represented to us. 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 any other office or division of the Commission.

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

Very truly yours,

Susan C. Ervin
Chief Counsel