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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

April 25, 1996

Re: Section 4m(1) -- Request for No-Action Relief from Commodity Pool Operator Registration for United States Director of Offshore Funds

Dear :

This is in response to your letter dated March 19, 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 relief from commodity pool operator ("CPO") registration pursuant to Section 4m(1) of the Commodity Exchange Act ("Act")[1/] on behalf of "A" in connection with his serving as a director of certain offshore funds ("Funds").[2/]

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The Funds are incorporated under the laws of the Commonwealth of the Bahamas. The Funds' principal place of business is in Bahamas. "A" is the only member of the board of directors of the Funds who is a United States person.[3/] He is listed as a principal of "X" and "Y" and registered as an associated person and listed as a principal of "Z". "A" is a member of the board of directors of each Fund.

Interests in any Fund will not be held directly or indirectly by any United States person, and no Fund will contain any capital directly or indirectly contributed from sources within

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1/ 7 U.S.C. §6m(1) (1994).

2/ These offshore funds are "P", "Q", "R", "S", "T", "U", "V" and "W".

3/ For the purpose of this letter, the term "United States person" has the same meaning as that set forth in Division of Trading and Markets Interpretative Letter 92-3, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,221 (January 29, 1992).

the United States. All shareholder meetings and board of directors meetings will be conducted outside of the United States.

Based upon the representations made to us, the Division will not recommend that the Commission take any enforcement action against "A" for failure to comply with Section 4m(1) of the Act if "A" serves on the board of directors of a Fund without being registered as a CPO. This position is subject to the conditions that "A": (1) remains registered with the Commission as an associated person; (2) maintains at his United States business office at "Z"[4/] a duplicate copy of the books and records equivalent to those required under Rule 4.23(a)(1)-(a)(2) and (a)(4)-(a)(8) with respect to the operation of the Funds;[5/] (3) within 72 hours after a request by a duly authorized representative of the Commission is made, obtains the original books and records from a given Fund's main office and provides them for inspection at a place located in the United States as specified by the Commission representative;[6/] and (4) maintains at his business office at "Z" original records equivalent to those required under Rule 4.23(b). This position is further subject to the condition that "A", the Funds, and any person affiliated therewith will not undertake any marketing activity for the purpose of, or that could reasonably be expected to have the effect, of soliciting participation from United States persons.

The relief issued by this letter does not excuse "A" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, he remains subject to the antifraud provisions of Section 4o of the Act[7/], 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. Finally, this letter is

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4/ "A's" business office at "Z" is located in Illinois.

5/ In this regard, we understand that the Funds must maintain their original books and records offshore to comply with Internal Revenue Service requirements for relief from United States taxation. "O", a Bahamian corporation, will maintain the corporate, accounting and financial books and records of each Fund. 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).

6/ We note that we have granted similar relief to others based upon the same representations you have made to us. See, e.g., Division of Trading and Markets Interpretative Letter No. 91-4, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,050 (April 25, 1991).

7/ 7 U.S.C. §6o (1994)

applicable to "A" solely in connection with the operation of the Funds for which he serves as a director.

This letter is based on the representations made in your letter 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 the operations or activities of the Funds, including their shareholder and board of directors' compositions, change in any way from those as represented to us. This letter represents the views of this Division only and 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel