

CFTC Letter No. 97-42**May 28, 1997****Division of Trading & Markets**

Re: Request for Exemption from Requirement to Deliver a Disclosure Document Pursuant to Rule 4.31

Dear :

This is in response to your letter dated April 14, 1997, 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 (Company), a registered commodity trading advisor (CTA), relief from the requirement of Rule 4.31¹ to deliver a Disclosure Document to the Fund .

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Company anticipates entering into an agreement with the Fund pursuant to which the Company will have discretionary authority to trade commodity interests, among other things, for the Fund.² The Fund is an open-end investment company organized as a corporation under the laws of the Cayman Islands. The Fund does not have any shareholders, officers or directors who are United States persons as that term is defined in Rule 4.7(a)(1)(ii)(C), nor does it contain any capital directly or indirectly contributed from United States (U.S.) sources. The Fund s sole office is located outside of the U.S. and it does not and will not conduct any meetings or administrative activities within the U.S.

Commission Rule 4.31 requires generally that a CTA deliver to prospective clients a Disclosure Document that contains specified information about the CTA and its principals. Your letter recognizes that, absent relief, the Company must deliver a Disclosure Document to the Fund.

Based upon the representations you have made to us, and consistent with our prior practice in this area,³ we believe that your request has merit. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts the Company from compliance with Rule 4.31 in connection with providing commodity interest trading advice to the Fund.

This letter does not excuse the Company from compliance with any other applicable requirements contained in the Commodity Exchange Act (Act⁴) or the Commission s regulations promulgated

thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act,⁵ to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations, and to all other provisions of Part 4. Moreover, this letter is applicable to the Company solely in connection with its providing commodity interest trading advice to the Fund.

This letter 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 regard, we request that you notify us immediately in the event the activities of the Company or the Fund change from those represented to us. 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

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

² The Company does not have any United States person as a client. Its sole client is the Fund.

³ See, e.g., Division of Trading and Markets Interpretative Letter No. 93-86, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,852 (August 24, 1993).

⁴ 7 U.S.C. § 1 et seq. (1994).

⁵ 7 U.S.C. § 6o.