COMMODITY FUTURES TRADING COMMISSION
2033 K STREET, N.W., WASHINGTON, D.C. 20581

DIVISION OF
TRADING AND MARKETS

April 29, 1986

Re: CPO Registration "No-Action" Position Where Pool Consists of Two Foreign Participants

Dear :

This is in response to your letter dated February 7, 1986, as supplemented by telephone conversations with Division staff, whereby you requested an interpretative letter that the General Partner, in connection with the operation of the Partnership, need not comply with the registration, reporting and related requirements applicable to commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), or their principals or associated persons ("APs") under Sections 4k, 4m and 4n, respectively, of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§6k, 6m and 6n, and the Commission's regulations issued thereunder. 1/

Based upon the representations made in your letter, as supplemented, we understand the facts in general to be as follows: The Partnership is a New York limited partnership, which was formed and commenced business in April of 1985. Its principal business purpose is to permit foreign investors to invest and trade in securities through the Partnership.

1/ In this regard we note that, among other things, the Commission's regulations prescribe for such persons registration requirements at Part 3, 17 C.F.R. Part 3 (1985), and disclosure, reporting, recordkeeping and advertising requirements at Part 4, 17 C.F.R. Part 4 (1985).

Alternatively, you have requested that the Commission issue an order exempting the General Partner, its principals and APs from such registration, reporting and related requirements. In light of the positions we are taking below, however, it has not been necessary to consider that alternate request.

The General Partner is a New York general partnership whose sole business activity is to serve as the general partner and the investment manager of the Partnership. The General Partner's three partners are "X," who organized the Partnership, and "X"'s father and "X"'s brother-in-law, both of whom are U.S. persons. Other than the Partnership, none of the partners of the General Partner currently conducts any investment advisory activities involving securities or commodity interests for other persons. Moreover, in connection with receipt of the requested interpretative letter, you have represented that neither the General Partner nor any individual partner thereof "would do anything further in commodities outside the Partnership." 2/

There are two limited partners in the Partnership. One is a non-resident alien individual who has been known both socially and professionally to "X" for 10 years and to his father for 15 years. The other limited partner is a foreign corporation whose sole shareholder is a non-resident alien individual who has been known socially to "X" for 2 years and to his father for 4 years. These individuals sought out "X" to manage their funds and, accordingly, the Partnership was formed as a result of a series of informal conversations between the parties. 3/

Net profits and losses of the Partnership are allocated among the partners in accordance with their respective capital accounts, except that (1) any net profits are first allocated to the limited partners in an amount sufficient to provide them with a preferred return equal to an agreed upon percentage of their capital, and (2) any net profits in excess of that amount are split between the limited partners and the General Partner in accordance with an agreed upon percentage.

With respect to the Partnership's trading activities in particular, your letter represents:

> Since its inception, the preponderance of investments of the Partnership have consisted of investments in securities and options and rights relating thereto. However, the Partnership's investment focus has expanded recently to include, to a very limited extent, futures contracts on Treasury bond and municipal bond indices.
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> . . . .

2/ March 5, 1986 telephone conversation.

3/ Id.

> The Partnership's primary investment focus and the bulk of its assets have been and will remain committed to investments in securities. Within the Partnership's overall investment program, trading in futures contracts, in terms of aggregate contract values and of margin deposits relative to the total assets, . . . will . . . be a limited secondary activity [and will be incidental to the Partnership's overall trading activity 4/]. In this regard, the General Partner and the Partnership represent that at no time will the Partnership commit more than five percent of its assets for initial margin deposits and premiums for commodity futures contracts and options thereon.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against the General Partner if it fails to register as a CPO in connection with the operation of the Partnership. This position is based upon, among other things, our understanding of the facts as stated above that: (1) the Partnership was formed to trade in the securities markets and its commodity interest trading will be incidental to its overall trading activities; (2) the Partnership will commit no more than 5% of its assets for initial margin deposits and premiums for its commodity interest positions; (3) the limited partners are non-U.S. citizens or residents who have known two of the partners of the General Partner for the past several years; and (4) neither the General Partner nor any individual partner thereof intends to "do anything further in commodities outside the Partnership." 5/

4/ March 5, 1986 telephone conversation.

5/ Compare Division of Trading and Markets Interpretative Letter No. 84-2, Comm. Fut. L. Rep. (CCH) ¶21,983 (January 17, 1984), wherein we concluded, based on similar facts, that the trading vehicle at issue would not be a commodity "pool" -- and that the vehicle's investment manager and its managing director would not be CPOs. In that case, however, both the trading vehicle itself and the managing director were located outside the United States.

Compare also Division of Trading and Markets Interpretative Letter No. 86-10, April 24, 1986, to be reprinted in Comm. Fut. L. Rep. (CCH), wherein we also concluded that the trading vehicle at issue would not be a "pool" -- and that the vehicle's general partners would not be CPOs. Like the instant case, the (U.S.) participants in the trading vehicle had known the individual partners of the GP for several years. Unlike the instant case, however, which concerns a "passive" investment vehicle, in that other case the trading vehicle itself was actively engaged in a

(Footnote continued)

In light of the fact that the General Partner will be providing advice on commodity interest trading to a U.S. person (the Partnership), we believe that, absent relief, it would be required to register as a CTA. In this regard, we note that Section 4m(1) of the Act provides for an exemption from CTA registration for any person --

> who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor.

We further note that, based upon our understanding of the facts as stated above, it appears that the General Partner would be eligible to claim this exemption. With respect to the first criterion of the exemption, there are essentially two -- "not . . . more than fifteen" -- clients. With respect to the second criterion, in light of the facts that these individuals sought out the General Partner to manage their funds and that the Partnership was formed as a result of a series of informal conversations between the parties, it appears that the General Partner has not held itself "out generally to the public as a commodity trading advisor." 6/

You should be aware that this letter does not excuse the General Partner from any otherwise applicable requirements contained in the Act or the Commission's regulations thereunder. For example, it remains subject to the provisions of Section 4o of the Act, 7 U.S.C. §6o (1982), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, 17 C.F.R. Parts 15, 18 and 19 (1985).

This letter is based on the representations that have been made to us and is strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. 7/ In this connection, we request that you notify us immediately in the event the Partnership's operation, including its investment objectives

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(Footnote continued)

commercial business -- i.e., that of a securities options market maker. Moreover, as such, the vehicle's activities were subject to ongoing oversight by various regulatory authorities.

6/ Thus, there would appear to be no APs of the General Partner, as that term is defined in Section 4k(3) of the Act -- i.e., a person associated with a CTA in any capacity which involves the solicitation of a client's or prospective client's discretionary account or the supervision thereof.

7/ For example, in the event the General Partner accepted more participants into the Partnership the conclusions reached herein may no longer obtain.

and membership composition, changes in any way from that as represented in your letter and in telephone conversations with Division staff.

Very truly yours,

Andrea M. Corcoran
Director

cc: Daniel A. Driscoll, National Futures Association