86-19

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

DIVISION OF
TRADING AND MARKETS

July 3, 1986

Re: CPO No-Action Where Limited Partners are Related.

Dear Mr.:

This is in response to your letter dated June 17, 1986, as supplemented by a telephone conversation with Division staff held on June 26, 1986, wherein you requested relief from regulation as a commodity pool operator ("CPO") on behalf of "A" with respect to the Partnership in which "B" and "C" would be the limited partners. 1/

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows:

> "C", [a] merchant bank in the United Kingdom, owns all of the outstanding stock of "D", a holding company which owns all of the outstanding stock of "B".
>
> "C" and "B" have had a joint trading account at "B" for several months. "B" directs the trading, which exclusively is arbitrage trading between U.S. government securities and futures contracts based on such government securities. For internal reasons, "C" and "B" have determined to change the legal status of the account from a joint venture to a limited partnership where "C" and "B" would be the sole limited partners. The partnership will not be available for investment by any limited partner other than "C" and "B".
>
> "B" approached "A", with which it has an ongoing business relationship [as, from time to time, that firm's "clearing broker"], and proposed that "A", act as general partner of the limited partnership. 2/ For its services [in acting as the general partner -- e.g., assuming the liabilities of that position and being the "tax partner"

1/ Your letter represents, and Commission records confirm, that "A" and "B" are each registered as a futures commission merchant under the Commodity Exchange Act, as amended (the "Act").

2/ "B" will continue to direct the Partnership's trading.

> for all Federal tax issues], "A" will receive $50,000 annually from the limited partnership and a portion of the government securities trading will be done with "A", which is a government securities dealer. ["A" will not, however, receive any portion of the brokerage commissions generated by the Partnership's commodity interest trading.] For tax purposes, "A" will contribute to the Partnership 1% of the total capital contributed by the partners.

Based upon the foregoing representations, you have asked for concurrence in your view that the Partnership would not be a "pool" within the meaning and intent of Rule 4.10(d), 17 C.F.R. §4.10(d) (1985). In this regard, you argue that a joint account made up of "family" members -- i.e., "C" and "B" -- should not be deemed to a be a commodity pool because its structure will be changed to that of a limited partnership. This argument ignores the addition of a "non-family" member to the account, "A". 3/

Based upon the foregoing representations we do, however, believe that relief from CPO registration should be available to "A". Specifically, this belief is based upon the representations that: (1) "C" and "B" are affiliated firms; (2) "B" approached "A" to form the Partnership; (3) "C" and "B" will be the only limited partners in the Partnership; and (4) "B" will continue to direct the Partnership's commodity interest trading. Accordingly, based upon those representations the Division will not recommend that the Commission take any enforcement action against "A" if it fails to register as a CPO in connection with its operation of the Partnership. This position is, however, subject to the condition that "A" advise the Division of the name of the Partnership when that name is selected.

You should be aware that the "no-action" position taken by this letter does not excuse "A" from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, it remains subject to Section 4o of the Act, 7 U.S.C. §6o (1982), and to the reporting requirements for traders set forth in Parts 15 and 18 of the Commission's regulations, 17 C.F.R. Parts 15 and 18 (1985).

The position taken by this letter is based on the representations that have been made to us and is subject to compliance with the condition set forth above. Any different, change or omitted facts or conditions might

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3/ Compare Division of Trading and Markets Interpretative Letter No. 83-9, Comm. Fut. L. Rep. (CCH) ¶21,909 (November 3, 1983), wherein we concluded that a joint trading account would not be a "pool" within Rule 4.10(d) because of, among others, the fact that it would be comprised essentially of family members.

require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the Partnership's operation, including its membership composition, changes in any way from that as represented in your letter and in your telephone conversation with Division staff.

Very truly yours,

Andrea M. Corcoran
Director

cc: Daniel A. Driscoll, National Futures Association