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

DIVISION OF
TRADING AND MARKETS

88-8 ?

April 8, 1988

Re: Registration of Foreign Associated Persons of a U.S. Commodity Trading Advisor.

Dear Mr. :

This is in response to your letter dated February 25, 1988, by which you sought our opinion on whether, as described more fully below, the activities of certain foreign persons would require registration as an associated person ("AP") of a commodity trading advisor ("CTA") with the Commission.

Based upon the representations you made in your letter we understand the facts to be as follows: "X" of which you serve as president is registered as a CTA. Another company in which you are a partner currently is involved in importing goods, e.g., minerals and chemicals, from Japan and Brazil. Through that other company you have come to make the acquaintance of various foreign businessmen, including "Y," a Japanese citizen currently living in the United States but whose business takes him to Asia on a continuing basis, and "Z", a Brazilian citizen living in Sao Paulo, Brazil. "Y" and "Z" have expressed an interest in "showing" "X"'s CTA Disclosure Document to their contacts in Asia and Brazil, respectively. By your letter you explain that neither "Y" nor "Z" would market "X"'s Disclosure Document to United States citizens or to any individual residing in the United States. 1/ Rather, their activities would be conducted solely outside the United States and would be directed to non-United States citizens and residents.

It appears that in showing the Disclosure Document to their contacts Messrs. "Y" and "Z" would be soliciting discretionary accounts for Pollard and, as such, would be acting as an AP of a CTA as defined in Rule 1.3(aa)(4), 17 C.F.R. §1.3(aa)(4) (1987). In this regard, Section 4k(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 6k(3) (1982), generally requires each AP of a CTA to register as such with the Commission.

In the Federal Register release accompanying the adoption of regulations on AP registration, the Commission explained its position with respect to the registration of foreign APs of futures commission merchants ("FCMs") as follows:

1/ For the purpose of this letter the term "United States" means the United States, its territories or possessions.

> The Commission and its staff have periodically received inquiries as to whether persons who are engaged in activities which would require registration if conducted in this country are nonetheless required to register if they confine their activities to areas outside the United States. The Commission has previously indicated with respect to the APs of [FCMs] that it believes that, given this agency's limited resources, it is appropriate at this time to focus [the Commission's] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories and possessions may best be for local authorities in such areas. Any person who solicits or accepts from within, or from any person residing within, the United States, its territories or possessions, or who supervises any person or persons so engaged, however, would be required to register. . . .
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> . . . Affected persons should also be aware that the Commission views advertising to be a form of solicitation, so that a person who employs any form of advertising medium which can reasonably be expected to reach persons residing within the United States, its territories or possessions will, absent some other exemption, be required to register in an appropriate capacity.

48 Fed. Reg. 35248, 35261 (August 3, 1983).

We see no reason why the foregoing reasoning and relief should not be applied in the context of domestic CTAs with respect to their foreign APs inasmuch as similar to the FCMs addressed in the Federal Register release, those persons are subject to registration, recordkeeping and other requirements under the Act and the Commission's regulations. Accordingly, based upon the representations you have made to us, the Division will not recommend that the Commission take any enforcement action for failure to register as an AP of a CTA against "Y" or "Z".

We note that this letter does not excuse Messrs. "Y" and "Z" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations thereunder. For example, each would remain subject to the anti-fraud 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 (1987).

The position taken in this letter is based upon the representations that you have made to us, as stated above. Any different, changed or omitted facts or conditions might require us to reach different conclusions. In this connection, we request that you notify us immediately in the event the operations and activities of "X" or its foreign APs change in any way from that as represented to us. Finally, this position is that of the Division of Trading and Markets and does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions about this letter, please feel free to contact Barbara S. Gold, the Division's Assistant Chief Counsel, at 202/254-8955.

Very truly yours,

Andrea M. Corcoran
Director

cc: Daniel A. Driscoll, National Futures Association