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COMMODITY FUTURES TRADING COMMISSION
2033 K STREET, N.W., WASHINGTON, D.C. 20581
(202) 254-8955
(202) 254-6265 FACSIMILE
710-822-9327 TELEX

DIVISION OF
TRADING AND MARKETS

October 18, 1989

Dear Mr. :

This is in response to your letter, dated September 18, 1989, to Mr. Henry Matecki of the Commission's Chicago office. Your letter states that Commission regulation 4.22(c)(4) which requires commodity pools to include a statement of changes in financial position in the annual report differs with generally accepted accounting principles ("GAAP") and Statement of Financial Accounting Standards ("SFAS") Nos. 95 and 102 issued by the Financial Accounting Standards Board.

SFAS No. 95 requires that a statement of cash flows be included as part of a full set of financial statements. The statement of cash flows replaces the requirement for a statement of changes in financial position. SFAS No. 102 exempts certain enterprises from the requirement to include the statement of cash flows, if each of the conditions specified in SFAS No. 102 is met. It exempts:

a. an investment company that is subject to the registration and regulatory requirements of the Investment Company Act of 1940 (1940 Act);

b. an investment enterprise that has essentially the same characteristics as an investment company subject of the 1940 Act; and

c. a common trust fund, variable annuity account, or similar fund maintained by a bank, insurance company, or other enterprise in its capacity as trustee, administrator, or guardian for the collective investment and reinvestment of moneys.

Under FASB No. 102, the entities specified above are not required to include a statement of cash flows as part of a

complete set of financial reports, provided they meet all of the following conditions:

a. during the period, substantially all of the enterprise's investments were highly liquid (for example, marketable securities and other assets for which a market is readily available);

b. substantially all of the enterprise's investments are carried at market value;

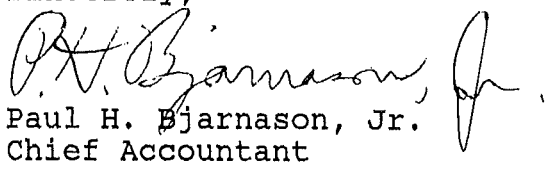
c. the enterprise had little or no debt, based on average debt outstanding during the period, in relation to its average total assets; and

d. the enterprise provides a statement of changes in net assets.

The Division has concluded that most commodity pools would meet all four of the conditions specified, similarly to an investment company subject to the Investment Company Act of 1940, which is specifically exempted. Accordingly, the Division has further concluded that it would be appropriate to take a "no-action" position respecting the non-inclusion by a commodity pool operator of the cash flows statement in its pool's annual report, unless for some reason the pool did not meet all four of the conditions. (For a complete explanation of the conditions, a commodity pool operator should review SFAS No. 102.)

Accordingly, provided all four of the conditions specified in SFAS No. 102 are met, the Division will take no action against a commodity pool operator for failing to include in an annual report filed with the Commission a statement of cash flows or a statement of changes in financial position. The Division believes that commodity pool operators should, on their own, be able to assess whether or not there is any reason why they would not meet the applicable conditions and qualify for the no-action position and, therefore, commodity pool operators wishing to avail themselves of this no-action position need not contact the Division. However, if there is any doubt as to whether a particular pool qualifies for the no-action position, I or Gary Miller, Assistant Chief Accountant, may be contacted at the above telephone number.

Sincerely,



Paul H. Bjarnason, Jr.
Chief Accountant