COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
ECONOMIC ANALYSIS

90-4

July 24, 1990

Re: Request for No Action Regarding Speculative Position Limits

Dear :

By letter dated June 29, 1990, you requested the Division's views with regard to the application of speculative position limits to the positions of and . Letter from to Paul M. Architzel, Division of Economic Analysis, dated June 29, 1990 (June 29 letter). That correspondence included a cover letter, an affidavit of on behalf of , an internal memorandum to all and , employees, an affidavit of on behalf of , an internal memorandum to all employees from , and Disclosure Documents for both and . These were supplemented with two additional letters dated July 12 and 13, 1990. From this correspondence, we understand the facts to be as follows.

is a registered commodity trading advisor (CTA). , as a limited partner, has joined with , as the general partner, to form , also a registered CTA. is predominantly owned by and . has no ownership interest in . will be owned 90 percent by .

will manage both customer and proprietary accounts, using a technical trading system. This trading system was developed through the joint research of and beginning in 1985 and prior to "any involvement with the principals of ." Moreover, technical trading system operates independently from :

> trading is long-term and trend-following in nature, with only three to four transactions per year per market on average, and all trading decisions are made basis market closes for action to be taken the next day. The system, in contrast, is short-term in orientation, with trades initiated basis intra-day market action and may have positions with or against the prevailing long-term trend.

June 29 letter, at page 2.

will maintain its place of business in , apart from offices, which are situated in . and will be responsible for the day-to-day operation of , and involvement in will be limited to "the development of strategic planning initiatives, including marketing plans." Id.

The trading system is a technical, nondiscretionary computer-based trading system which, under the partnership agreement, will be followed on a nondiscretionary basis. anticipates providing with a weekly summary of trades for the purpose of demonstrating adherence to the terms of the agreement. However, the staff member having access to trading data will have no involvement in the trading of customer or proprietary accounts, and will have no access to trade position data. Both and have written screening procedures to keep confidential the trading positions of each from the other.[1/]

Your letter contends that "[t]he closest analogy to the facts presented above is to be found in the information presented by commodity pool operators in seeking relief under Commission Rule 150.3(b), the multi-advisor pool rule" (June 29 letter, at page 2). However, the exemption from speculative position limits

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1/ In this regard, an internal memorandum to all employees of and , from states that:

> Persons having information on past, current, or anticipated trades are cautioned that they must refrain from discussing such matters where they may be heard by persons not authorized to receive such information. Also, written materials must be maintained at all times so that they are not accessible to unauthorized persons. In particular, it is important to emphasize that persons having trading authority for or involved in the process of filling trades may not discuss with or in any way make such information available to persons having trading authority for or involved in the process of filling trades, nor may they receive from persons having trading authority at or involved in the process of filling trades any confidential information on past, present, or future trades.

A reciprocal memorandum was sent by to its employees.

provided for under Commission Rule 150.3(a)(4) does not, on its face, apply to the facts outlined in your letter.

The exemption under Commission Rule 150.3 for positions which have a common owner, but which are independently controlled, is limited to the positions of commodity pool operators or similar entities. In proposing this rule, the Commission considered whether the exemption should be broadened to include other entities such as CTAs. The Commission determined that, in light of the unprecedented nature of this exemption, caution was warranted. In particular, the Commission determined that an "initial period for study and reflection of the effect and operation of the rule is appropriate," 53 Fed. Reg. 41563, 41567 (October 24, 1988). In this regard, the Commission reasoned that:

> This will provide the Commission with a reasonable opportunity to ascertain how the exemptive procedures operate, to study further the trading of commodity pools and others, and to determine, based upon actual experience with the rules, what, if any, additional information may be required for a broadened exemption.

Id.

Nevertheless, the facts represented in your letter are analogous to those required to be established by affiliated account controllers to be deemed to qualify for exemption under Commission Rule 150.3(b). In this regard, the Division believes that the June 29, and July 12 and 13, letters, affidavits, and internal memoranda demonstrate sufficient indicia of independence to deem the account controllers to be independent under the analytic framework of Commission Rule 150.3. In particular, we note that you have outlined written procedures designed to preclude the affiliated account controllers from gaining access to, or receiving data about, the trades of each other, and you have represented that the two trading systems to be used were separately developed and are independent in nature. Moreover, the account controllers are separately registered, will use a separate Disclosure Document, and, as you represent, will market the trading programs separately.[2/]

2/ With regard to the separate marketing of these trading programs, the Division notes that Rule 4.21, 17 C.F.R. §4.21, requires registered commodity pool operators to disclose their past performance and the past performance of their principals, the past performance of the pool's CTA, and the principals thereof. Rule 4.31, 17 C.F.R. §4.31,
(Footnote Continued)

Thus, although affiliated CTAs are not eligible for exemptive relief under Commission Rule 150.3(a)(4), the facts, as represented in your letter, would otherwise meet the requirements for exemptive relief under that rule. Moreover, the Commission is considering amending Commission Rule 150.3(a)(4) to include CTAs within the class of entities eligible for exemptive relief. Accordingly, in light of the representations in your letter, and the pending proposal to amend the rule, the Division will not recommend to the Commission any enforcement action under §4a(1) of the Commodity Exchange Act (7 U.S.C. §6a(1)) to the extent that and together may maintain maximum net positions of twice the speculative position limit contained in Commission Rule 150.2. However, this position is conditioned upon and individually[3/] not exceeding the applicable spot-month, single-month, or all-futures speculative limit, and upon both and in the aggregate not exceeding the applicable spot-month limit. This position is further conditioned on and compliance with any future rules promulgated by the Commission relating to this issue.

The above position is based upon your letters of June 29, and July 12 and 13, 1990, including, in particular, the affidavits, facts, representations, and documentation contained therein. Any different, omitted, or changed facts or conditions might require a different conclusion. This position does not excuse or from complying with any otherwise applicable provisions of the Commodity Exchange Act or Commission regulations, nor does it address trading by any other entities. In particular, this position in no way diminishes or otherwise affects the requirements of Commission registrants "to diligently supervise the handling...of all commodity interest accounts...,"

(Footnote Continued)
requires CTAs to disclose their past performance and the past performance of their principals. Commission staff has interpreted these requirements to mean that commodity trading advisors must disclose the past performance of any advisor with which they are affiliated in their Disclosure Documents. The affiliated advisor similarly must disclose the past performance of the pool operator or trading advisor in directing accounts in its Disclosure Documents. These disclosures, required under Rules 4.21 and 4.31, would not constitute marketing.

3/ and individual positions, for purposes of speculative position limits, would include all of the positions held or controlled by the respective entities and their account controllers. Thus, any positions of and , the account controllers for , and , would be aggregated with those of .

17 C.F.R. §166.3 (1989), including the responsibility to ensure that trading information is not improperly used. See also, §2(a)(1)(A) of the Commodity Exchange Act, 7 U.S.C. §2. It should be noted that this position is that of the Division of Economic Analysis, and is not binding upon the Commission or any other of its staff.

Sincerely,

Steven Manaster
Director