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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

January 10, 1992

Re:

Dear :

This is in response to your letter dated November 30, 1990, to the Division of Trading and Markets (the "Division"), as supplemented by telephone conversations with Division staff, in which you requested on behalf of relief from registration as a commodity pool operator ("CPO").

Based on your letter, as supplemented, we understand the facts to be as follows. is an international labor union of which various local unions are members. Officers of are elected every three years by a convention of delegates who are in turn elected by individual members of the local unions. The number of delegates representing a local depends on the number of individual members of the local. Each local is represented by at least one delegate.

maintains and invests monies belonging to itself and to some, but not all, of the local unions of . These monies, in contrast to certain employee benefit plans monies administered by trustees, are referred to within the as "general funds" or collectively as the "General Fund." Such general funds are used by and by the participating local unions for general operating and administrative purposes of and those local unions and not to fund specific benefits to individual worker-members of those unions. desires to invest some assets of the General Fund in the trading of commodity interests.

has been duly authorized by the participating local unions to pool and invest their funds together with its own funds. and the participating local unions share investment income and losses in the ratio that each of them have deposited funds into the General Fund. , acting through an investment committee composed of representatives of the and some, but not all, of the participating local unions (the

"Investment Committee")[1/] selects and hires an investment consultant for the General Fund. The investment consultant is registered as an investment adviser with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940. The investment consultant recommends and oversees several investment managers, each of whom is hired by to manage a portion of the General Fund. The Investment Committee meets quarterly on a regular basis, with special meetings scheduled as needed, to review the status and performance of the General Fund and make decisions with respect thereto.

The investment consultant prepares reports on the performance of the investment managers and distributes the reports to the participating local unions at each quarterly meeting of the Investment Committee. provides the participating local unions with monthly reports which include a report of , custodian of the General Fund, as well as a "cash flow analysis" that sets forth, inter alia, that local union's percentage of the General Fund, interest and dividend income earned, deposits and withdrawals made, and gains and losses on sale of investments.

Both and the local unions of (the "Union") are subject to reporting, disclosure, administration and enforcement requirements under the Labor-Management Reporting and Disclosure Act of 1959, as amended. 29 U.S.C. § 401 et seq. (1988). Specifically, and each local union, inter alia, must file a detailed annual financial report with the Department of Labor, providing information with respect to its financial condition and operations, including its assets and liabilities. Failure to comply with this requirement, including the disclosure of false or misleading information, is punishable by criminal and civil penalties. The officers of the Union are also personally liable for any losses suffered by the Union as a result of the breach of their fiduciary responsibilities to the Union.

The General Fund, notwithstanding that it engages in the business of investing, reinvesting and trading in securities, is not beneficially owned by more than 100 persons, nor has it offered or does it propose to offer participation to the public. On these bases, neither the Union nor the General Fund has

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1/ Although each participating local union is entitled to at least one representative on the Investment Committee, as a practical matter some of the participating local unions do not send a representative to Investment Committee meetings. Others may designate the representative of another participating local union as their own representative. Investment Committee decisions are made by majority vote.

registered as an investment company under the Investment Company Act of 1940, as amended. See 15 U.S.C. §§ 80a-3(a)(1) and (c)(1) (1988). Each of the unions participating in the General Fund is exempt from federal income taxation under Section 501(c)(5) of the Internal Revenue Code.

intends to conduct the proposed commodity interest trading activities of the General Fund solely for bona fide hedging purposes.[2/] Commodity interest trading is proposed to be conducted by only one of the General Fund's six current investment managers. This investment manager is registered as a commodity trading advisor. At no time will enter into futures and options contracts for which the aggregate initial margins and premiums exceed five percent (5%) of the fair market value of the General Fund's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. intends to disclose the purposes and scope of the commodity interest trading engaged in by the General Fund to the Investment Committee before their quarterly meetings. will not be, and has not been, marketing participations in the General Fund to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets.

does not receive any compensation, directly or indirectly, for operating the General Fund, except for reimbursement of administrative expenses related to the operation of the General Fund. The General Fund is administered by as part of a union governance structure in which the locals are participating members and thus have a voice in the administration of the fund. The General Fund is the only fund operated by which proposes to engage in commodity interest trading.[3/] does not conduct any advertising

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2/ For the purpose of the position we are taking below, we are strictly interpreting the term "bona fide hedging" as employed in this letter to mean the same as "bona fide hedging transactions and positions" in Rule 1.3(z)(1). Compare Rule 4.12(b)(1)(D), which specifies that one of the operating criteria for relief under Rule 4.12(b) is that a pool may only trade commodity interests "in a manner solely incidental" to its securities trading activities. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1991).

3/ , a multiemployer welfare benefit plan administered by a Board of Trustees comprised of officials of and various local unions, has proposed to engage in commodity interest trading. A letter was submitted to the Commission on

in connection with the General Fund. is not otherwise required to register with the Commission, nor is it a business affiliate of any person required to register with the Commission.[4/]

The Union requests that the Division staff recommend that the Commission take no enforcement action against and its affiliated local unions if fails to register as a CPO in connection with its proposed commodity interest trading activities on behalf of the General Fund. Based upon your representations, the Division believes that your request has merit and that your requested relief would not be contrary to the public interest. Accordingly, the Division will not recommend that the Commission take any enforcement action for failure to register as a CPO against in connection with its operation of the General Fund. This no-action position is conditioned upon maintaining all books and records prepared in connection with its activities as a CPO for a period of five years from the date of preparation, and keeping such books and records readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

We note that this letter does not excuse from compliance with any applicable requirements contained in the Commodity Exchange Act (the "Act"), 7 U.S.C § 1 et seq., or in the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988), and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations.

This letter is based upon the representations that have been made to us. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us in the event that the General Fund's operations, including membership composition

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November 7, 1990 requesting relief with respect to the proposed activities of the Fund. The Division affirmatively responded to that request by letter dated May 28, 1991. You have also requested relief with respect to the proposed activities of the Death Benefit Fund of , which is also administered by a Board of Trustees comprised of officials of and various local unions, by letter dated August 1, 1991. The Division is responding to that request by a separate letter.

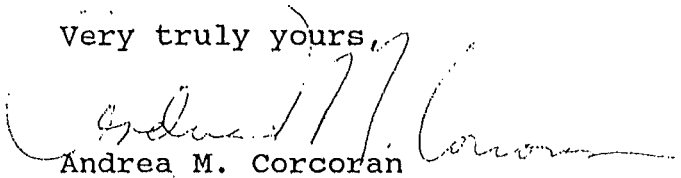
4/ See Rule 4.13(a)(1).

and the source of capital contributions, change in any way from those as represented to us.

Finally, this position is that of the Division of Trading and Markets only and does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning the foregoing, please call Carla Behnfeldt, an attorney on my staff, at (202) 254-8955.

Very truly yours,



Andrea M. Corcoran
Director