December 11, 1986

Re: Request for relief from registration as a commodity pool operator.

Dear Mr. :

This is in response to your letter to the Division of Trading and Markets ("Division") dated June 24, 1986, as supplemented by letters dated July 2, July 7 and July 25, 1986, and telephone conversations with Division staff on July 15, September 18, and November 19, 1986, on behalf of your client, "A", a New York limited partnership, in which you requested that the Division provide relief from commodity pool operator ("CPO") registration to "B", a general partner of "A". As discussed below, the Division has determined that it will not recommend that the Commission take any enforcement action against "B" in the event he fails to register as a CPO in connection with his serving as a general partner of "A".

Based on your representations, the Division understands the facts to be as follows. "A" was formed in 1980 as a New York limited partnership. Its current capital is approximately $33 million. Limited partnership interests in "A" have been offered and sold in reliance on the exemption for private placements contained in Section 4(2) of the Securities Act of 1933, as amended. "A" is not generally marketed as a commodity pool, and will not commit more than five percent of the fair market value of its assets to be applied as margin for trading in commodity interests.

"A" consists of four general partners and 54 limited partners. The "A" general partners, in addition to "B", are "C", "D" and "E", a New York general partnership. "B" and "C" are registered as CPOs in connection with "A".. The general partners of "E" currently are "C", "D", "F", who is registered as a CPO in connection with the operation of another commodity pool, and "B", who became a general partner this year.

Prior to the addition of "B" as a general partner, "C" and "D" were granted "substitute compliance" exemptions by the Division on December 4, 1984 from certain of the requirements applicable to registered CPOs under rules 4.21 and 4.22, 17 C.F.R §§4.21 and 4.22 (1986), in connection with "A"'s commodity interest trading. In connection with that relief, the

Division also determined not to recommend that the Commission take any enforcement action against "E" for failure to register as a CPO. This determination was based on the fact that each general partner of "E" was registered as a CPO.

Although "B" is a general partner of "A", pursuant to the limited partnership agreement, he is not authorized to exercise direction, supervision or control over: (i) the solicitation, acceptance, or receipt of funds or property to be used for purchasing, holding, selling or otherwise dealing in commodity futures or options contracts; or (ii) the investment, use or other disposition of such funds or property. In response to further staff inquiries, your firm informed Division staff that "B" had previously been registered with the Securities and Exchange Commission as an investment adviser, but that his registration had lapsed in 1980. Your firm also represented that "B" was not subject to a statutory disqualification under Section 8a of the Commodity Exchange Act (the "Act"), 7 U.S.C. §12a (1982).

As you know, Section 2(a)(1)(A) of the Act, 7 U.S.C. §2(a)(1)(A) (1982), defines a CPO as:

> any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery. . . .

Section 4m(1) of the Act, 7 U.S.C. §6m(1) (1982), generally requires each person who comes within the statutory definition to register as a CPO with the Commission.

The Division's review of limited partnership law indicates that pertinent state limited partnership statutes generally provide that a general partner of a limited partnership is jointly and severally liable for all partnership activities -- regardless of whether under the terms of a particular limited partnership agreement the obligation to perform any activity has been specifically delegated to, or removed from, any particular general partner(s). "A" is a New York limited partnership. The rights, powers and liabilities of a general partner in a limited partnership formed under New York law are set forth in Section 98(1) of the Uniform Limited Partnership Act of the State of New York which provides, in pertinent part, that "[a] general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without general partners. . . ." Therefore, under the New York statute, each general partner may be held individually liable for all the obligations of the

general partnership. 1/ With respect to the instant case, then, "B", as a general partner, would be jointly and severally liable for the commodity interest trading activities of "A", notwithstanding the aforementioned restrictions upon his activities with "A". Therefore, "B", in his capacity as a general partner of "A", would be acting as a CPO.

Based upon the foregoing facts, however, the Division has determined that relief from regulation as a CPO is appropriate. Specifically, the Division has determined that it will not recommend that the Commission take any enforcement action against "B" for his failure to register as a CPO based upon, among others, the facts that: (1) all other general partners of "A" are registered as a CPO (or, in the case of "E", have received relief from CPO registration); (2) "A" generally has not been and will not be marketed as a commodity pool; (3) "A" will not commit more than five percent of the fair market value of its assets to commodity interest trading; and (4) "B" is not subject to a statutory disqualification under Section 8a of the Act. 2/ This relief, however, is subject to the condition that "B" submit to the National Futures Association a Form 8-R and fingerprint card for clearance purposes.

We note that "B" remains responsible for compliance with 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 and 18 of the regulations, 17 C.F.R. Parts 15 and 18 (1986). Finally, this "no-action" position is applicable to "B" solely in his capacity as a general partner of "A".

This letter is based on the information that has been provided to us and is subject to compliance with the condition set forth above. 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 immediately in the event "A"'s operation or "B"'s responsibilities thereto, including restrictions on commodity interest trading, change in any way from

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1/ Furthermore, the New York statute is identical to Section 9 of the Uniform Limited Partnership Act (1916) ("ULPA"). Previously, the ULPA had been adopted in every state except Louisiana. However, in 1976, the ULPA was revised and superseded by the Revised Uniform Limited Partnership Act (1976) ("RULPA"). RULPA subsequently has been adopted by several jurisdictions including Arkansas, Connecticut, Maryland, Minnesota, Washington, West Virginia and Wyoming. Our review of Section 403 of RULPA indicates that it corresponds with, and is substantially similar to, Section 98(1) of the New York law.

2/ Further, in light of these facts, the Division also has determined to extend so as to include "B" in the "no-action" position relating to "E"'s failure to register as a CPO taken in our December 4, 1984 letter.

that as represented to us. Should you have further questions, please feel free to contact Philip V. McGuire, Esq., staff attorney, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran
Director

cc: Daniel A. Driscoll, National Futures Association