



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

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93-97

DIVISION OF
TRADING AND MARKETS

September 28, 1993

Re: Request for Relief from CPO Registration

Dear :

This is in response to your letter dated July 14, 1993, as supplemented by telephone conversations with Division staff, in which you request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") confirm your view that the "Company" is not required to register as a commodity pool operator ("CPO") in connection with its operation of certain offshore commodity pools (the "Funds").^{1/}

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Company is a corporation which serves as the CPO of the Funds. Except for you, all officers and directors of the Company are non-United States persons.^{2/} You currently serve as one of four directors of the Company, solely for the purpose of acting as a liaison for the Company with respect to business matters which may require attention in the United States. You have agreed, however, to withdraw your membership from the Company's Board of Directors as a condition of receiving the relief you have requested.^{3/}

^{1/} These Funds are "V", "W", "X", "Y" and "Z".

^{2/} By telephone conversation with Division staff supplementing your letter, you explained that your definition of United States person is identical to the definition we have employed in Division of Trading and Markets Interpretative Letter No. 92-3, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

^{3/} You state that following such event the Company will grant you a limited power of attorney so that you may sign certain documents on the Company's behalf when specifically authorized by the Company to do so. For example, you will be given authority to sign advisory agreements with CTAs located in the United States who have been chosen by the Company to advise the Funds.

With respect to the operation of the Funds, you represent that:

1. Each Fund is, and will remain, organized and operated outside of the United States.
2. No Fund will hold meetings or conduct administrative activities within the United States.
3. No shareholder of any Fund is or will be a United States person.
4. No Fund will contain any capital directly or indirectly contributed from sources within the United States.
5. All commodity trading advisors and futures commission merchants engaged by the Fund will be duly registered, and maintain their registration, with the Commission.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against the Company if it fails to register as a CPO in connection with its operation of the Funds.^{4/} This relief is, however, subject to the condition that you take appropriate steps to withdraw your membership from the Company's Board of Directors within 30 days from the date of this letter.

The relief issued by this letter does not excuse the Company from compliance with any other applicable requirements contained in the Commodity Exchange Act, as amended (the "Act")^{5/} or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. §60, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to the operational and advertising requirements of Rules 4.20 and 4.41, which apply to each person who comes within the CPO definition regardless of registration status. Further, the relief issued by this letter is applicable to the Company solely in connection with its serving as the CPO of the Funds.

This letter is based upon the representations that have been made to us and is subject to compliance with the condition stated

^{4/} See Office of General Counsel Interpretative Letter No. 76-21 [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,222 (August 15, 1976).

^{5/} 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992).

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above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operation of the Funds, including shareholder and board of directors compositions, change in any way from those represented to us.

If you have any questions concerning this correspondence, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel