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COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF  
TRADING AND MARKETS

March 15, 1995

Re: Confirmation of Continued No-Action Relief

Dear :

This is in response to your letter dated January 24, 1995, as supplemented by telephone conversations with Division staff, wherein you requested relief from registration as a commodity pool operator ("CPO") on behalf of "X" in connection with its operation of "Y".<sup>1/</sup>

Based upon the representations made in your letter, as supplemented, we understand the facts to be in follows. "Y" will be organized as a limited partnership under the laws of the Cayman Islands. The general partner of "Y" will be "X", a Cayman Islands corporation wholly owned by "A". "X" will select "Z", a registered CPO and commodity trading advisor ("CTA"), as "Y's" sole CTA. "A" is a registered associated person ("AP") of "Z" and is the firm's sole principal.

"X's" sole business purpose is to provide marketing, advisory and management services to "Y" -- e.g., the selection of "Z" as "Y's" CTA. "Y's" business purpose is to engage in the trading of futures, options on futures, spot contracts and related interests. In support of the requested relief, you make the following representations:

1. "Y" will be organized and operated outside of the United States;
2. "Y" will not hold meetings or conduct administrative activities within the United States;

<sup>1/</sup> By letter dated October 22, 1991, the Division granted similar relief to "X" with respect to its operation of (the "Prior Fund"). You state that the Prior Fund never commenced operations and that "X" now intends to form and operate "Y" rather than the Prior Fund. The relief granted herein, therefore, supersedes and makes null and void the relief granted to "X" in our October 22, 1991 letter.

3. With the exception of "A", who will own all of "Y's" voting shares, no shareholder of "Y" is or will be a United States person;<sup>2/</sup>
4. With the exception of "A's" contribution, "Y" will not contain any capital directly or indirectly contributed from sources within the United States;
5. The CTA and futures commission merchant (and introducing broker, if any) that "Y" will employ will be registered with the Commission or will not be required to register as such; and
6. "X", "Y" and any person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participations from United States persons.

In further support of your request, you have represented that "X" will make and keep at "Z's" main business office books and records equivalent to those required under Rules 4.23(a)(1)-(a)(9) and (b)(1)-(b)(3) with respect to the operations of "Y" and that it will make those records available for inspection by representatives of the Commission and the National Futures Association within seventy-two hours after receipt of a request therefor.

Under these facts you seek relief from registration as a CPO on behalf of "X". Where a CPO is located in and is a citizen of the United States but all of its pool activities are offshore, the CPO must register as such. However, upon request, the Division generally has granted the CPO relief from Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11). Separately, the Division has granted no-action relief with respect to registration as a CPO to the domestic CPO of a foreign pool where the CPO: (1) is a registered AP who has undergone fitness and qualifications examinations; (2) has represented that books and records equivalent to those required under Rules 4.23(a)(1)-(9) and (b)(1)-(3) will be made and kept at its main business office in the United States; and (3) has represented that those books and records will

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<sup>2/</sup> In your letter, as supplemented, you use the term "United States person" set forth in CFTC Interpretative Letter No. 92-3, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

be made available for inspection.<sup>3/</sup> Inasmuch as "X" is wholly-owned by "A", who is a United States person and is listed as the sole principal and is registered as an AP (of "Z"), we believe the requested relief would not be inconsistent with the public interest or prior Division precedent. Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against "X" based solely upon its failure to register as a CPO in connection with its operation of "Y".<sup>4/</sup> This relief is subject to the condition that, within thirty days from the date hereof, you provide the Division with a signed and dated acknowledgement whereby "Z" accepts joint and several liability with "X" for "X's" activities relating to the operation of "Y".

In addition, the Division has determined that, under the facts as presented, it is appropriate to grant an exemption from the requirements of Rule 4.23 regarding the location where original books and records must be kept. This determination is based primarily upon your representations that: (1) duplicates of "Y's" books and records will be kept by "X" at "Z's" main business office in the United States; and (2) "Y" must maintain its original books and records offshore to comply with Internal Revenue Service requirements for relief from United States taxation. Based upon the foregoing and pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts "X" from the requirements of Rule 4.23 to the extent it requires that "Y's" original books and records be kept at "X's" main business office, provided that, as you have represented, within seventy-two hours after a request of a Commission representative is made, "X" will obtain the original books and records from "Y's" main office in the Cayman Islands and provide them for inspection at a place located in the United States and specified by the Commission representative.

The relief issued by this letter does not excuse any person addressed herein from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act"), as amended,<sup>5/</sup> or the Commission's regulations thereunder. For example, "A" and "X" remain subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. 6o (1988), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.

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<sup>3/</sup> See, e.g., CFTC Interpretative Letter 91-4, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,050 (April 25, 1991).

<sup>4/</sup> See id.

<sup>5/</sup> 7 U.S.C. §1 et seq. (1988 & Supp. V 1993)

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Finally, this letter is applicable solely in connection with the operation of "Y".

This letter is based upon the representations that have been made to us, and is subject to the condition stated 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 the operations of "Y" including, but not limited to, its shareholder composition or "A's" involvement with "X" and "Z", change in any way from those as represented to us. Finally, the no-action position taken in this letter represents the position of this Division only. It does not necessarily reflect the views of the Commission or of any other office or division of the Commission.

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

Very truly yours,

Susan C. Ervin  
Chief Counsel