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COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

March 16, 1995

Re: Section 4m(1) -- Request for Relief from Registration by
Co-CPO

Dear :

This is in response to your letter dated November 22, 1994. In your letter, you requested that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief from registration as a commodity pool operator ("CPO") to "U", a corporation organized under the laws of Bermuda ("the "Administrative General Partner").^{1/}

The Administrative General Partner serves as one of two general partners of "V", a Bermuda limited partnership (the "Limited Partnership"). The other general partner is "W", a corporation organized and existing under the laws of the State of New York (the "Investment General Partner").

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the relevant facts to be as follows. The Limited Partnership is a fund formed to invest in a portfolio of U.S. and foreign, publicly traded and privately placed, equity and debt securities. From time to time, the Limited Partnership also may invest not more than ten (10) percent of its assets in margin or premiums for commodity futures contracts or options thereon. The Limited Partnership may solicit U.S. and non-U.S. persons as investors and has considered marketing the limited partnership interests generally. However, currently, the Limited Partnership has only one limited partner, described below.

The General Partners. The Investment General Partner is the general partner that will conduct the Limited Partnership's

^{1/} In your letter, you also requested that the Limited Partnership, which is the investment fund, be granted relief from registration as a commodity pool operator. The Limited Partnership is not required to register as a commodity pool operator, and therefore, relief is not required.

investment and trading program. It is registered under the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq. (1988 & Supp. IV 1992) (the "Act"), as a CPO and a commodity trading advisor ("CTA"). The Administrative General Partner, a Bermudian corporation, is wholly owned by the Investment General Partner. The Administrative General Partner is responsible for all matters relating to the administration of the Limited Partnership. These obligations have been delegated by contract to the "T", a Bermuda corporation.

Natural Person Principals of The General Partners. Within the two general partners, "A" has the following roles. In the Investment General Partner, "A" is the chief operating officer and is listed as a principal. In the Administrative General Partner, "A" is a director and the President. The two other directors of the Administrative General Partner are members of the Bermuda bar who regularly engage in the practice of law in Bermuda at the same law firm. One of them also serves as the Vice President of the Administrative General Partner. The corporate secretary of the Administrative General Partner is an employee of a service company affiliated with the same Bermuda law firm. "B" is the president and chief executive officer of the Investment General Partner, and is listed as a principal, and registered as an associated person, thereof. Neither "A", "B", the Bermudian who serves as corporate secretary, nor either of the two Bermudian directors of the Administrative General Partner is subject to statutory disqualification pursuant to Section 8a of the Act.

The Limited Partner. You represent that the Limited Partnership considered marketing the limited partnership interests to U.S. and non-U.S. persons, but is not presently engaged in soliciting limited partners and currently has only one limited partner. The limited partner is "X", a corporation organized and existing under the laws of the Republic of Ireland. "X" has made a \$5 million capital contribution to the Limited Partnership. Although organized as a foreign corporation, "X" is considered a U.S. person under the Commission's regulatory scheme^{2/} because a U.S. person, "Z", a corporation organized and existing under the laws of the state of New York, indirectly owns all of the equity capital of "X". Both "X" and "Z" are large institutions. First, "X" is a "qualified eligible participant" ("QEP") as defined under Rule 4.7.^{3/} Second, "Z" is a "qualified institutional buyer" ("QIB") as defined under Rule 144A, 17 C.F.R. §230.144A, adopted pursuant

^{2/} See Interpretative Letter 92-3 [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) para. 25,221 (January 29, 1992).

^{3/} Commission rules referred to herein are found at 17 C.F.R. Ch. 1 (1994).

to the Securities Act of 1933 and it has marketable securities in excess of \$34 billion and total assets in excess of \$100 billion.

In support of the instant request, the Investment General Partner and the Administrative General Partner provided the Division with a written acknowledgement whereby each accepts joint and several liability for any violation of the Act or Commission regulations thereunder committed by the other. Further, both represent that the Administrative General Partner, in the future, will not exercise discretion, supervision or control over, or participate in: (i) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Limited Partnership, or (ii) the investment, use or disposition of funds or property of the Limited Partnership.

Subject to the condition that "X" remain the sole limited partner of the Limited Partnership and based on the foregoing, the Division will not recommend that the Commission take any enforcement action against the Administrative General Partner if it fails to register as a CPO in connection with its serving as a general partner of the Limited Partnership.

In addition, the Division has determined that, based upon the facts as presented, it is appropriate to grant an exemption to the Investment General Partner from the requirement of Rule 4.23 regarding the location where original books and records must be kept. This determination is based primarily upon your representations that the Limited Partnership: (i) will maintain its original books and records at the main office of the Limited Partnership in Bermuda; (ii) must maintain these records in Bermuda to comply with Internal Revenue Service requirements for relief from United States taxation; and (iii) will maintain duplicates of such books and records at the main office of the Investment General Partner in New York. Based upon the foregoing, pursuant to the authority delegated by Rule 140.93(a)(1) and subject to the condition set forth below, the Division hereby exempts the Investment General Partner from the requirements of Rule 4.23 to the extent it requires that the original books and records be kept at the Investment General Partner's main business office in New York. This exemptive relief is granted on the condition that, within 72 hours after a request of a Commission representative is made, the Investment General Partner will obtain the original books and records from the Administrative General Partner's office in Bermuda 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 the Administrative General Partner or the Investment General Partner from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, the

Administrative General Partner remains subject to the antifraud provisions of Section 40 of the Act,^{4/} 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. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to take action with respect to any past violation of the Act or the Commission's regulations thereunder. Further, the relief issued by this letter is applicable only to the Administrative General Partner and the Investment General Partner solely in connection with their operation of the Limited Partnership. Finally, the no-action relief provided herein is prospective only.

This letter is based upon the representation you have made to the Division and is subject to the conditions stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify the Division immediately in the event that the activities of (i) the Limited Partnership or (ii) the Administrative General Partner or the Investment General Partner, in connection therewith, change in any way from those as represented to us.

Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Sharon Zackula, an attorney on my staff, at (202) 254-8955. Thank you.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{4/} 7 U.S.C. § 60 (1988 & Supp. IV 1992).