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COMMODITY FUTURES TRADING COMMISSION 2033 K Street, NW, Washington, DC 20581 (202) 254 - 8955

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DIVISION OF TRADING AND MARKETS

September 5, 1995

Re: Section 4m of the Commodity Exchange Act[⊥]/ ("Act") -- Request for No-Action Position with respect to Failure of General Partners of Two Commodity Pools To Register as Commodity Pool Operators ("CPOs")

Dear :

This is in response to your letter dated July 24, 1995 to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by notarized statements (the "Statements") of "A", "B" and "C" and by telephone conversations with Division staff. By your letter, as supplemented, you request relief on behalf of "A" and "B" from the requirement to register as CPOs, as specified in Section 4m of the Act, $\frac{2}{}$ in connection with becoming general partners of "X" and "Y", in the case of "A", and of "X" only, in the case of "B".

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. "X" and "Y" are privately offered commodity pools operated pursuant to claims of exemption under Commission Rule $4.12(b).^{3/}$ Each pool currently has four general partners: "C", "Z", "D" and "E". Both "C" and "Z" are registered as CPOs. By letter dated March 7, 1988 (and based upon representations made in support thereof), the Division stated that it would not recommend that the Commission take any enforcement action against "D" and "E" for failure to register as CPOs in connection with their operation of "X" and "Y".

<u>1</u>/ 7 U.S.C. § 1 <u>et</u> seq. (1994).

 $\frac{2}{7}$ U.S.C. § 6m (1994).

³/ Commission rules referred to herein are found at 17 C.F.R. Ch. I Part 4 (1994), <u>as amended by</u> 60 Fed. Reg. 38146 (July 25, 1995).

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"A" intends to become a general partner of "X" and "Y", in which capacity his principal responsibility will be to perform back office operational functions in connection with transmission of orders and communications with broker-dealers and other persons with whom "X" or "Y" do business. "B" intends to become a general partner of "X", for which he will research and analyze investments in securities. You represent that application has been made to the National Futures Association ("NFA") to list both "A" and "B" as principals of "Z", and that "A" and "B" have submitted to the background check customarily performed by NFA.

You represent that neither "A" nor "B" will exercise discretion, supervision or control over (a) the solicitation, acceptance or receipt of funds or property to be used in purchasing interests in "X" or "Y", or (b) the investment, use or disposition of funds or property of "X" or "Y". You further represent that neither "A" nor "B" will make or participate in making investment or trading decisions on behalf of "X" or "Y" with respect to commodity futures, commodity options, securities or any other investments, and that neither general partner will have authority to initiate transactions in, or to liquidate or dispose of, commodity futures, commodity options, securities or other investments for "X" or "Y".

Based upon the representations you have made to us, it appears that granting the requested relief would not be contrary to the public interest. Accordingly, based upon compliance with the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against "A" for failure to register as a CPO of "X" and "Y" or against "B" for failure to register as a CPO of "Y". This position is subject to completion of the pending background checks concerning "A" and "B" to the satisfaction of NFA, and is further subject to the condition that within thirty days from the date of this letter the Division receives signed and dated acknowledgments whereby:

- (1) "A" accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of any of the other general partners of "X" or "Y" as a general partner (and in the case "C" or "Z", a CPO) of such partnership;
- (2) "B" accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of any of the other general partners of "Y" as a general partner (and in the case "C" or "Z", a CPO) of such partnership; and
- (3) "C" and "Z" each accepts joint and several liability for any violation of the Act or Commission rules in-

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volving or resulting from the activities of "A" or "B" as a general partner of "X" or "Y". $\frac{4}{2}$

This letter is based on the representations that have been made to us and is subject to compliance with the conditions 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 that the activities of "C", "A" or "B", or the operation of "Z", "X" or "Y" change in any way from those as represented in your letter as supplemented. This letter is applicable to "A" solely in connection with his serving as a general partner of "X" and "Y", and to "B" solely in connection with his serving as a general partner of "X".

We note that each of the general partners of "X" and "Y" remains subject to the antifraud provisions of Section 40 of the Act⁵/ and to all otherwise applicable provisions of the Act and the Commission's regulations thereunder, <u>e.g.</u>, the reporting requirements for traders set forth in Parts 15, 18 and 19, and to all other provisions of Part 4.

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

Very truly yours,

Susan C. Ervin Chief Counsel

 $\frac{4}{}$ Enclosed with this letter are forms of acknowledgment acceptable to the Division.

<u>5/</u> 7 U.S.C. § 6<u>0</u> (1994).