



U.S. COMMODITY FUTURES TRADING COMMISSION

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96-14

DIVISION OF
TRADING & MARKETS

January 29, 1996

Re: Relief from CPO Registration Where Fund is Owned
by Principals, Affiliates and Employees of CPO and
Commits Less Than One Percent of its Assets to
Commodity Interest Trading

Dear :

This is in response to your letter dated December 18, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your letter, you request that the Division grant relief to the "Company" from registration as a commodity pool operator ("CPO") in connection with its operation of the "Fund".

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund is a New Jersey limited partnership, which was formed in 1989. The Company, a New Jersey limited liability company, is the general partner of the Fund and is the registered CPO solely of the Fund. The Fund invests virtually all of its assets in securities. The Fund currently commits less than one tenth of one percent (0.1%) in commodity futures interests, and its commodity interest trading is incidental to its securities trading.

The three principals of the Company and grantor trusts established by two of the principals for their children collectively own over 99.8 percent of the Fund.^{1/} Each of the three principals jointly participated in the formation of the Fund and has been directly involved in managing the Fund since its incep-

^{1/} The principals are the trustees of the grantor trusts.

tion. Moreover, each principal is a qualified eligible participant ("QEP"), as that term is defined in Rule 4.7.^{2/}

In addition, approximately one tenth of one percent (0.1%) of the assets of the Fund are owned by two long-standing business associates of the principals ("Associates"). Each Associate has had a close business relationship with the principals for at least six years, has over ten years of investment experience and has participated in the Fund since its inception. Each Associate is a QEP.

The remaining portion of the Fund's assets, less than one tenth of one percent (0.1%), is owned by five employees of wholly-owned affiliates of the Company that provide trading, research and administrative services to the Company and the Fund. Each of these employees is actively involved in managing the Fund's securities, finances or operations, is an accredited investor under Securities and Exchange Commission Rule 501, and has been employed by a Company affiliate for at least four years.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against the Company under Section 4m(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6m(1) (1994), for failure to register as a CPO in connection with its operation of the Fund. This position is, however, subject to the condition that each participant in the Fund consents in writing to the Company's withdrawal of its registration as a CPO.

The relief issued by this letter does not excuse the Company from compliance with any other applicable requirements contained in the Act, 7 U.S.C. § 1 et seq. (1994), or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1994), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4.

This letter is based on the representations made in your letter, as supplemented, and is subject to compliance with the condition set forth above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations or activities of the Company or the Fund change in any way from those represented to us.

^{2/} Commission rules referred to herein are found at 17 C.F.R. Ch. I. (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

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If you have any questions concerning this correspondence, please contact me or Gary L. Goldsholle, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel