



U.S. COMMODITY FUTURES TRADING COMMISSION

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96-44

DIVISION OF
TRADING & MARKETS

May 17, 1996

Re: Request for Relief from Commodity Pool Operator ("CPO") and Commodity Trading Advisor ("CTA") Registration Requirements for General Partners of Offshore Funds and Directors of Such General Partners where U.K. Investment Management Company Registers as CPO and CTA for Each Such Fund

Dear :

This is in response to your letter dated April 21, 1995 to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letters dated July 11, 1995, September 19, 1995, October 3, 1995, October 23, 1995 and October 26, 1995, by facsimile transmissions dated October 9, 1995, October 27, 1995, November 24, 1995, November 28, 1995 and December 12, 1995, and by telephone conversations with Division staff. By your letter, as supplemented, you request on behalf of (1) the directors of "I", a British Virgin Islands corporation ("I") and (2) the directors of the respective general partners (and by extension the general partners themselves) of "J", a Bermuda limited partnership ("J") and "K", a Bermuda limited partnership ("K") relief from the requirement of Section 4m(1)^{1/} of the Commodity Exchange Act (the "Act")^{2/} to register as a CPO and/or as a CTA in connection with the operation of "I", "J" or "K" (collectively, the "Funds").^{3/}

^{1/} 7 U.S.C. § 6m(1) (1994).

^{2/} 7 U.S.C. § 1 et seq. (1994).

^{3/} The directors of "I" and of the general partners of "J" and "K" are referred to collectively herein as the "Directors."

Based upon the representations made in your April 21, 1995 letter, as supplemented, we understand the relevant facts to be as follows. Each of the Funds is an offshore investment fund formed and advised by "L". "L" is registered as a CPO and a CTA, and serves as the registered CPO and CTA of each of the Funds.^{4/} The Directors fall into three categories: (1) persons who have placed money with the Funds for investment and who have been elected by their fellow investors; (2) the Bermudian legal adviser to the Funds and two of his employees;^{5/} and (3) a United Kingdom-based consultant formerly employed by "L".

"L" is a London-based investment management company and is registered with the Investment Managers Regulatory Organisation ("IMRO").^{6/} None of the principals of "L" is a United States person.^{7/} "L" is owned by "M", which is a joint venture of (and is wholly-owned by) "N" and "O". "O" is wholly-owned by "P" ("P"), which, in turn is wholly-owned by "R". Both "Q" and "R" are domiciled in the United States. "R's" shares are listed on the New York Stock Exchange, and its total assets exceed \$100 billion. Several of "R's" subsidiaries and affiliates are registered with the Commission.^{8/}

^{4/} But see Rule 4.14(a)(4) which provides that a person need not register as a CTA if the person is registered as a CPO and the person's commodity interest trading advice is directed solely to, and for the sole use of, the pool or pools for which it is the registered CPO. Commission rules referred to herein are found at 17 C.F.R. Ch. I Part 4 (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

^{5/} You represent that Bermuda law requires that enough of the members of a Bermuda company's board of directors be ordinarily resident in Bermuda to constitute a quorum for purposes of holding a meeting of the board.

^{6/} You represent that, effective January 1, 1996, "L" has transferred its former United States subsidiary, "LL", to unaffiliated persons.

^{7/} For purposes of this letter, the terms "United States" and "United States person" shall have the meanings adopted by the Division in Interpretative Letter No. 92-3, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

^{8/} "S" is registered as a CPO and a CTA, as is "T". "U" is registered as an IB.

"L" organized and determined the structure of each of the Funds, and "L" selected the entities responsible for providing legal advice to the Funds. "L" has control of the Fund bank accounts used to receive new contributions, to pay withdrawals and to pay for various investment transactions, and it prepares the monthly account statements that are circulated to the Directors. "L" evaluates the appropriateness of each new participant, and its consent is required for any assignment of Fund units or shares. Accordingly, you claim that "L" should be deemed to be the CPO of each of the Funds.

"L", either directly or through a subsidiary,^{9/} directs the trading of each Fund's assets in securities and derivative instruments, including futures and options traded on United States contract markets.^{10/} "L" has sole authority to determine the allocation of Fund assets and to select individual trades. You represent that the Directors (and where applicable the Funds' general partners) have no input on investment decisions with respect to Fund assets. "L", by contrast, has sole and very broad authority to determine asset allocation and individual trade selection. The Directors' only recourse, if dissatisfied with investment strategies or decisions, is to terminate "L" as advisor (for which six months' notice is required).

The Funds are marketed in the United States by "W", a Bermuda corporation that is registered as an introducing broker ("IB").^{11/} "W" is wholly owned by its marketing executive,

^{9/} "L" directs "J's" trading pursuant to a written advisory agreement between "L" and "J". "I" and "K" have advisory agreements with "V" a Bermuda company wholly-owned by "L". "V" has delegated the responsibility for providing commodity interest trading advice (as well as some securities trading advice) to "L" pursuant to a sub-advisory agreement.

^{10/} You state that in 1994 "L" utilized between 2% and 2.5% of the total assets of any Fund as margin and option premiums for commodity interest positions on United States exchanges. "L" utilized between 6% and 12.5% of a Fund's assets as margin and option premiums for commodity interests traded on all exchanges, including those outside the United States. Upon inquiry by staff, you state that "L" desires the freedom to allocate up to twenty-five percent of a Fund's assets to margin and option premiums.

^{11/} "W's" registration became effective February 16, 1996. You represent that "W" is applying for registration with IMRO.

"A"^{12/} through a Turks and Caicos Islands trust (the "Trust"). "W" was selected by "L", and currently "L" is "W's" sole client. Neither "A", the Trust, "W" or any of the principals of "W" or the Trust is (a) affiliated with "L", or (b) a United States person.^{13/}

"I" is a corporation. Two of its three directors are United States persons.^{14/} The sole United States (beneficial) shareholder is "R", which owns an interest in "I" through a Republic of Ireland subsidiary.^{15/} All of the assets of "I" are invested in "K".

"K" is a limited partnership. "K" has one direct United States participant. In addition, "R" (through its Irish subsidiary's investment in "I"), indirectly owns 77% of "K". Three of the five directors of "K's" general partner are United States persons.^{16/}

"J" is a limited partnership with eight direct United States participants. "R's" Irish subsidiary owns 12.8% of "J". Three of the eight directors of "J's" general partner are United States persons.^{17/}

^{12/} "A", a member of the British peerage, is also known by the names "B" and "C". He is a registered associated person ("AP") of "MM", and he has applied for registration as an AP, a branch manager and a principal of "W", which application is pending as of the date hereof. "A" is also registered with IMRO.

^{13/} The directors of International are "D" (the owner of "NN", which is the Turks and Caicos Islands trustee of the Trust) and one of "D's" employees, both of whom are Bermudian citizens. Neither of the directors is involved in any way in the commodity interest industry.

^{14/} "E" is registered as an associated person ("AP") of, and is listed as a principal of, "X" (a CPO).

^{15/} This subsidiary, "Y", is a corporation organized under the laws of the Republic of Ireland, and wholly-owned by "R".

^{16/} As noted above, "E" is an AP and a principal of a registered CPO.

^{17/} "E" is an AP and a principal of a registered CPO. "F" is registered as a CPO and is listed as a principal of "Z" (a CPO and a CTA), and of "HH" (a CPO and a CTA). "G" is registered as
(continued...)

In addition to the participation in the Funds by United States persons noted above, "R" owns indirectly 12.8% of "J" and 77% of "K". All of the participants in the Funds are qualified eligible participants within the meaning of Commission Rule 4.7(a)(1)(ii) ("QEPs"), and each is either a family trust, a foundation or a "fund of funds."

None of the Directors (1) is affiliated with "L"; (2) holds himself out as a CPO or CTA with respect to the Fund as to which he serves as a director; (3) is subject to statutory disqualification under Section 8a(2) or 8a(3) of the Act;^{18/} or (4) is involved in soliciting participations in the Funds.

Based upon the representations made in your correspondence, and subject to the following conditions, the Division will not recommend that the Commission take any enforcement action against (1) the respective general partners of "J" and "K"; or (2) the Directors, for failure to register as a CPO under Section 4m(1) of the Act. This position is subject to the conditions that: (1) "L" maintains its registration as a CPO and as a CTA; (2) "L" continues to perform the functions of CPO and CTA with respect to each of the Funds; and (3) interests in the Funds are marketed and sold only to QEPs, and only by a registered IB or futures commission merchant.

This position is subject to the further condition that within thirty days from the date of this letter the Division receives signed and dated acknowledgments whereby:

- (1) Each of "L" and "W" accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of "W" in connection with the marketing and sale of interests in the Funds;
- (2) Each of the directors of "I": accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of: (a) any other director of "I"; (b) "L" or its principals or affiliates; or (c) "W" or its principals or affiliates, in connection with the marketing, operation or investment decisions of "I";

^{17/} (...continued)

an AP of, and is listed as a principal of, "II" (a CPO and a CTA) and of "JJ" (a CPO and a CTA). "G" is also a principal of "KK".

^{18/} 7 U.S.C. §§ 12a(2) or 12a(3) (1994).

- (3) The general partner of "J" and the directors of such general partner each accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of: (a) such general partner or any director thereof; (b) "L" or its principals or affiliates; or (c) "W" or its principals or affiliates, in connection with the marketing, operation or investment decisions of "J";
- (4) The general partner of "K" and each of the directors of such general partner accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of: (a) such general partner or any director thereof; (b) "L" or its principals or affiliates; or (c) "W" or its principals or affiliates, in connection with the marketing, operation or investment decisions of "K"; and
- (5) "L" accepts joint and several liability for any violation of the Act or Commission rules involving or resulting from the activities of the general partners of "J" and "K", the directors of such general partners, and the directors of "I" in connection with the marketing, operation or investment decisions of, respectively, "J", "K" and "I".^{19/}

This letter is applicable to the Directors and to the respective general partners of "J" and "K" solely in connection with their respective roles as directors, as directors of general partners or as general partners of the Funds. Furthermore, this letter does not excuse any of such persons from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each such person remains subject to the antifraud provisions of Sections 4b and 4o of the Act^{20/} and to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations.

This letter is based upon the representations provided to us. Any different, changed or omitted facts or circumstances might

^{19/} Enclosed with this letter are forms of acknowledgment you may wish to employ for this purpose.

^{20/} 7 U.S.C. §§ 6b and 6o (1994).

require us to reach a different conclusion. In this connection we request that you notify us immediately in the event the operations or activities of "L", the Funds or any of the Funds' general partners change in any way from those represented to us.

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 correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5445.

Very truly yours,

Susan C. Ervin
Chief Counsel