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U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

96-46

DIVISION OF
TRADING & MARKETS

May 30, 1996

RE: Request for Relief From Registration As A CPO
and Request for Relief From Registration As A CTA

Dear :

This is in response to your letter dated March 1, 1996, as supplemented by your facsimile message dated April 26, 1996 and telephone conversations with the staff of the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you requested that the Division not recommend that the Commission take any enforcement action against: (1) "X" for failure to register as a commodity pool operator ("CPO") in connection with "X's" operation of the "Fund", and (2) "Y" for failure to register as a commodity trading advisor ("CTA"), in connection with "Y's" providing commodity trading advisory services to the Fund, pursuant to Section 4m(1) of the Commodity Exchange Act, as amended (the "Act").[1/]

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The Fund is a limited partnership organized under the laws of the state of "S". Each of the four investors in the Fund is a "qualified eligible participant" ("QEP"), as defined in Rule 4.7(a)(1)(ii). The Fund has approximately four million dollars in assets. Its investment objective is to generate profits from securities trading. Its investment strategy generally is to allocate its assets to a limited number of other investment partnerships -- that is, to act as an investor fund in various investee funds ("Investee Funds"). You characterize the Investee Funds as "securities partnerships." None of the Investee Funds is affiliated with the Fund, "X" or "Y". Your request for a no-action position with

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1/ 7 U.S.C. § 6m(1) (1994). The Act is found at 7 U.S.C. §§ 1 et seq. (1994). Commission rules referred to hereinafter are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

respect to both CPO and CTA registration is triggered because certain Investee Funds have indicated that they are considering allocating a minor portion of their assets to financial futures.[2/] "X" and "Y" do not wish to be foreclosed from investing the Fund's assets in such Investee Funds. However, you claim that it is neither beneficial nor cost effective for "X" and "Y" to register as a CPO and CTA, respectively, given the very limited investment of Fund assets that would be indirectly invested in commodity interest contracts and the limited risk to Fund assets that would arise from such small, indirect investment. "X" does not act as a CPO for any other fund or pool, and "Y" does not provide commodity trading advice to any other person or account.

The Fund's investment in the Investee Funds would operate as follows. The Fund would deposit no more than an aggregate of ten percent of its net assets in Investee Funds that trade commodity interests, and no Investee Fund would deposit as initial margin or option premiums for commodity futures or option contracts more than ten percent of its net assets.[3/] Thus, the Fund's maximum exposure to risks from trading in commodity futures or option contracts would be one percent of its net assets. Both "Y" and "X", at the Fund level, and the CPOs and CTAs, at the Investee Funds level, charge management and other fees. Thus, as a result of the "fund of funds" structure in place, the investors of the Fund are subject to an additional layer of fees. You represent that "X" would provide an offering memorandum that would describe the extent of the Fund's participation in the commodity futures and options markets and the general risks of such trading, and disclose that as a result of the "fund of funds" structure, the Fund's investors are subject to an additional layer of management and other fees. You also represent that the Fund's participants would receive quarterly unaudited reports and annual audited reports containing the information required to be given to QEPs by Rule 4.7[4/] and that "X" and "Y" agree to make their records

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2/ The general partner(s) of each such Investee Fund must be registered as a CPO prior to the Investee Fund's trading of commodity interests.

3/ You state that "X" would enforce such limitation in connection with the Pool by investing only in such Investee Funds in which the limitation would be set forth in the Investee Fund's partnership agreement or would be represented in writing to "X", as CPO of the Fund.

4/ You claim that by doing so the Fund's investors will receive substantially all the reports and disclosures "X" would be required to give them under Rule 4.7.

pertaining to the Fund available to the Commission or its designee for inspection. Finally, you represent that neither "B", the sole owner of "Y", nor "A", who together with "B" are the owners of "X" and the sole principals of "X" and "Y", is subject to any statutory disqualification from registration under Section 8a(2) or 8a(3) of the Act.[5/]

Based upon the foregoing, and in particular on your representations set forth above concerning: (1) the financial qualifications of the Fund's investors as QEPs under Rule 4.7; (2) the Fund's undertaking to deposit no more than an aggregate of ten percent of its net assets in Investee Funds that trade in commodity interests; and (3) the Fund's requirement that each Investee Fund affirm in its limited partnership agreement, or otherwise in writing, that it will not invest more than ten percent of its net assets as initial margin or option premiums for commodity futures or option contracts, the Division will not recommend that the Commission take any enforcement action under Section 4m(1) of the Act against "X" based solely upon "X's" failure to register as a CPO in connection with the activities described above. In addition, based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action under Section 4m(1) of the Act against "Y" based solely upon the failure of "Y" to register as a CTA in connection with its services to the Fund.

The relief issued by this letter does not excuse "X" or "Y" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, each remains subject to the antifraud provisions of Section 4o of the Act,[6/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, to the operational requirements of Rules 4.20 and 4.30, respectively, and to the advertising requirements of Rule 4.41.

The relief set forth in this letter is applicable only to "X" and "Y" in connection with the Fund. This letter is based upon the representations you have made to the Division. 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 any of the activities or operations of "X", "Y", the Fund or any Investee Fund change in any way from those as represented to us.

5/ 7 U.S.C. § 12a(2) and (3) (1995).

6/ 7 U.S.C. §6o (1994).

Finally, this letter represents the position of the Division 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, Special Counsel, on my staff.

Very truly yours,

Susan C. Ervin
Chief Counsel