

000665

5



DIVISION OF
MARKET REGULATION

TRADING COMMISSION
WASHINGTON, D.C. 20549

November 10, 1987

Marilyn Cleeff
Treasurer
Wilmington Securities, Inc.
208 South LaSalle Street
Suite 1602
Chicago, Illinois 60604

PUBLIC AVAILABILITY DATE: 12-10-87
ACT SECTION RULE
1934 15(c) 15c3- 1

Dear Ms. Cleeff:

This letter is in response to your letter of July 8, 1987 in which you, on behalf of Wilmington Securities, Inc. ("Wilmington"), requested a no-action letter from the Division of Market Regulation concerning Wilmington's proposed treatment of its interest in a commodity pool as an allowable asset in its net capital computation.

The pertinent facts as I understand them are as follows: Wilmington holds limited partnership interests in an Illinois limited partnership. The partnership, a commodity pool, is managed by Hickney Financial Services, Ltd. ("HFS"). The owners/officers of Wilmington are also owners/officers of HFS. HFS is registered with the Commodity Futures Trading Commission ("CFTC") as a commodity pool operator and commodity trading advisor and as such must comply with the regulations of the CFTC as to commodity pools.

As a trading advisor, HFS engages on behalf of the partnership primarily in arbitraging the cash and futures markets in U.S. Government obligations for the purpose of appreciating the assets of the partnership. HFS's use of arbitrages for the partnership involves the purchases and sales of various U.S. Government securities, financial futures, and options contracts. Furthermore, you state that in your view the partnership is a much less speculative investment vehicle than the typical bond fund or mutual fund which depend solely on increased market movements for their portfolio investments to achieve profits.

In support of your request, you state that the limited partnership agreement provides that additions or withdrawals of interests by the limited partners will be accepted at the end of any month. You also state that Wilmington has received an opinion from the Federal Home Loan Bank Board ("FHLBB") stating that another fund managed by HFS, using the same investment

Marilyn Cleeff
Page 2

strategy, may be included as a liquid asset of federal savings and loan associations in conjunction with their liquidity calculations. The FHLBB's opinion was based on the fact that interests in a limited partnership represent an indirect investment in defined assets with a return calculated on a "pass through" basis and that the assets of the limited partnership fall within the FHLBB's definition of liquid assets, i.e., U.S. Government obligations and options and futures contracts with respect to such securities.

You have provided us with a copy of the Private Placement Memorandum ("PPM") for the Illinois limited partnership Apollo I in which Wilmington invested. The PPM does grant to each limited partner the right to request withdrawal of his or her capital account plus any undistributed profits by giving fifteen (15) days prior written notice to the partnership with distribution of funds occurring within thirty (30) days after the end of the calendar month in which the withdrawal occurs. The PPM however makes that right to withdraw subject to several conditions. The general partner, in its sole discretion, may restrict withdrawal to make adequate provisions for the payment and discharge of the partnership's liabilities and for the establishment of adequate reserves. The general partner may also restrict withdrawal when such withdrawal would cause a termination of the partnership or would jeopardize the treatment of the partnership as a partnership for tax purposes. Furthermore, in the event a limited partner redeems less than all of his or her capital account, the limited partner must leave a minimum of \$30,000 in his or her account.

You do not claim that the partnership interest otherwise has a ready market as defined in Rule 15c3-1(c)(11). It is the view of the Division of Market Regulation that the limited partnership interests under the circumstances described above are securities for which there is no ready market as defined in Rule 15c3-1(c)(11) and as to which Rule 15c3-1(c)(2)(vii) states that a broker-dealer must deduct from its net worth in arriving at net capital 100% of the carrying value of such interest.

Should you have any questions regarding the above matter, please do not hesitate to contact me.

Sincerely,



Michael A. Macchiaroli
Assistant Director

W. J. J. J.

Wilmington Securities, Inc. 000067

July 8, 1987

SECURITIES & EXCHANGE COMMISSION
RECEIVED

JUL 10 1987

Assistant Director
Compliance & Finance Responsibility
Division of Market Regulation
Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, N.W.
Washington, DC 20549

DIVISION OF MARKET REGULATION

Dear Sir:

We have recently received notice that our application for broker dealer registration has been granted by the Securities and Exchange Commission. In connection with the Company's registration, we hereby submit a request for comment from the Staff of the Securities and Exchange Commission that enforcement action will not be taken against the Company for the inclusion of a commodity pool interest as an allowable asset in their computation of minimum net capital pursuant to Rule 15C3-1 promulgated under Section 15 of the Securities Exchange Act of 1934, as amended (the "Act").

Background

The Company has invested a portion of its assets in a limited partnership, which is managed by Hickey Financial Services, Ltd. (HFS) and is both a commodity pool and an exempt investment company. The owners/officers of the Company are also owners/officers of HFS, and HFS is registered with the Commodity Futures Trading Commission as a commodity pool operator and commodity trading advisor. As a registered commodity pool operator, HFS must comply with the regulations of the CFTC for commodity pools which include among other things segregation of assets, computation and reporting of monthly net asset values, annual audit by an independent public accountant and specific disclosures to prospective and active participants.

As trading advisor, HFS engages on behalf of the partnership primarily in arbitraging the cash and futures markets in U.S. Government obligations for the purpose of appreciating the assets of the partnership. HFS's use of arbitrages for the partnership involves the purchases and sales of various U.S. Government securities, financial futures, and options contracts in the form of cash/cash, cash/futures or futures/futures arbitrage positions.

208 South LaSalle Street, Suite 1602
Chicago, Illinois 60604
Tel.: (312) 899-0150 Telex: 759964

10

Since arbitraging involves creating offsetting long and short positions in the same or similar markets, the partnerships will not be affected by price movements to the same extent as a speculator since their positions are hedged. We view the partnership as a much less speculative investment vehicle than the typical bond fund or mutual fund which depend solely on increased market movements for their portfolio investments to achieve profits.

The partnership was formed as an Illinois limited partnership, and the Company holds limited partnership interests. The limited partnership agreement holds that additions or withdrawals of interests by limited partners will be accepted at the end of any month. Therefore, the Company's investment in the partnership is at most redeemable within thirty days.

Recently, we received an opinion from the Federal Home Loan Bank Board stating that another fund managed by HFS, using the same investment strategy, may be included as a liquid asset of federal savings and loan associations in conjunction with their liquidity calculations. Their opinion was based on the facts that (1) interests in a limited partnership represent an indirect investment in defined assets, with a return calculated on a "pass-through" basis; and (2) the assets of the limited partnership fall within their definition of liquid assets, i.e. U.S. Government obligations and options and futures contracts with respect to such securities used for hedging and arbitraging purposes. The form and functions of these partnerships are virtually identical to mutual funds.

Also on December 8, 1985, the Staff of the Commission issued a no-action position letter to Oppenheimer & Co., Inc. in connection with the effect of their investment in certain limited partnerships on their calculation of net capital under Rule 15C3-1. The Staff decided that Opco's investment in these partnerships are readily available investments and that the limited partnership structure was a "pass through" entity. Therefore, the investments in the limited partnerships were considered as allowable assets, the investment portfolio of the limited partnerships were reviewed for haircut purposes and passed through to the limited partners, and a concentration haircut would be taken if the investment exceeded 25% of its excess net capital.

Conclusion

With respect to the value of the Company's investment in the partnership, we are aware that, generally, an interest in a limited partnership is treated as a security for which there is

000069

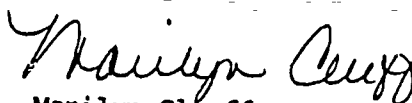
no ready market under Rule 15C3-1 (c) (2) (vii) and, accordingly, a broker-dealer must deduct from its net capital 100% of the carrying value of such interest in its minimum net capital computation.

However, we propose that the investment made by Wilmington Securities in a commodity pool managed by HFS or other similar funds should be treated as an allowable asset with a 30% haircut similar to other securities where a ready market exists. We feel that the following facts support our request:

- 1) The commodity pool invests solely in U.S. Government obligations and their related futures and options contracts which are allowable assets.
- 2) The pool's investment portfolio are normally hedged creating a relatively risk free investment in comparison to other alternative securities.
- 3) The owner/officers of the Company are also responsible for the trading decisions of the commodity pool and have control over their investments.
- 4) The investment into limited partnership interests of these commodity pools allows for redemption at the end of any thirty day period.
- 5) The Federal Home Loan Bank Board has given us relief from their definition of liquid assets with respect to limited partnership interests of similar funds.
- 6) The Staff of the SEC has given relief to Oppenheimer & Co. for its investment in certain limited partnerships for their net capital calculation.

If you have any questions or comments with respect to this request, please do not hesitate to contact the undersigned directly. We thank you for your consideration in this matter.

Sincerely,



Marilyn Cleeff
Treasurer

SEC

MC:vs