



93-2

Office of Communication and Education Services
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Advisory: 2-93

For Release: January 7, 1993

Advisory

Two Interpretative Letters Concerning Rule 4.7 Relief for Pools With Non-QEPs

The Commodity Futures Trading Commission's Division of Trading and Markets has issued CFTC Interpretative Letters 93-1 and 93-2. Subject to certain conditions, CFTC Interpretative Letter 93-1 allows filing of a claim for exemption under Rule 4.7 by the commodity pool operators (CPO) of two pools in which some existing participants are not Qualified Eligible Participants (QEPs). The Division's letter permits the CPO to claim Rule 4.7 relief from the disclosure and reporting requirements of Rules 4.21 and 4.22, under the procedure set forth in Rule 4.7(a)(3)(i)(I)(2) for previously offered pools, provided that, among other things, non-QEPs and existing QEPs who have objected as provided in Rule 4.7(a)(3)(i)(I)(2) ("objecting QEPs") continue to receive the full protections of Part 4.

Other CPOs may claim relief from Rules 4.21 and 4.22 under Rule 4.7 for previously offered pools in which some participants are not QEPs ("Pools") by filing the notice of claim for exemption required by Rule 4.7(a)(3) and using the procedure set forth in Rule 4.7(a)(3)(i)(I)(2) provided that: (1) all new participants in the Pools will be QEPs; (2) the CPO will continue to provide non-QEPs and objecting QEPs who are already participants in the Pools with the disclosure and reporting, and will maintain the books and records, required under Part 4 for pools that are not operated pursuant to Rule 4.7; (3) the CPO will modify the statement required by Rule 4.7(a)(2)(i) to read as follows: "PURSUANT TO RELIEF FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH THIS OFFERING TO QUALIFIED ELIGIBLE PARTICIPANTS AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN FILED, WITH THE COMMISSION"; the CPO will not claim exemption from disclosing in the Disclosure Document of non-exempt pools the past performance of the Pools so long as the Pools have any participants who were not QEPs when Rule 4.7 relief was claimed; and (4) the notice of claim for exemption states that the pool for which relief is claimed includes non-QEPs and that the CPO will comply with the applicable requirements of Rule 4.7 as modified by, and under the conditions set forth in, this Advisory.

In CFTC Interpretative Letter 93-2, the Commission's Division of Trading and Markets granted no-action relief to the CPO of a pool that would qualify for Rule 4.7 relief but for the fact that one pool participant is not a QEP. This non-QEP participant is not only an accredited investor, as defined in SEC's Regulation D, but also has been employed by the CPO for sixteen years, is registered with the National Association of Securities Dealers, Inc. as a registered representative, and has consented to being treated as a QEP.

**COMMODITY FUTURES TRADING COMMISSION**

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DIVISION OF
TRADING AND MARKETS

December 10, 1992

Re: Request for Relief Under Rule 4.7

Dear Mr. :

This is in response to your letter dated October 23, 1992, as supplemented by telephone conversations with Division staff, in which, on behalf of ("X"), a registered commodity pool operator ("CPO"), you request relief under Rule 4.7(a)^{1/} as set forth herein, in connection with X's operation of ("A").

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. X is the CPO of A. X qualifies in all respects for Rule 4.7 relief in connection with its operation of A but for the fact that one of A's participants is not a qualified eligible participant ("QEP") as defined in Rule 4.7. You represent that this non-QEP is an accredited investor as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933, 17 C.F.R. 230.501 (1992). She has been employed by X for over sixteen years and is registered with the National Association of Securities Dealers, Inc. as a registered representative. Non-QEPs are no longer being admitted as participants in A.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against X, solely based on the presence of the one non-QEP discussed above, if X complies with the requirements of Rule 4.7(a), including the procedure contemplated in Rule 4.7(a)(3)(i)(I)(2) for pools in which participations have been sold prior to the Rule 4.7 claim for exemption, in lieu of the disclosure, reporting and recordkeeping

^{1/} Upon the filing of a notice of claim for exemption Rule 4.7(a), recently adopted by the Commission, 57 Fed. Reg. 34853 (August 7, 1992), provides relief from certain Part 4 requirements to, among others, registered CPOs in connection with specified pools sold only to "qualified eligible participants" as defined in the rule.

Esq.
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requirements of Rules 4.21, 4.22 and 4.23^{2/}, provided however, that the sole non-QEP in A duly consents to being treated as a QEP.

This letter is based on the representations made to us 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 connection, we request that you notify us immediately in the event the operations or activities of X or A change in any way from those represented to us.

This letter is applicable to X solely in connection with its operation of A. Further, this letter does not excuse X from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations thereunder. For example, X remains subject to the anti-fraud provisions of Section 4_o of the Act, 7 U.S.C. § 6_o (1988), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, 17 C.F.R. Parts 15, 18 and 19 (1992), and to all other applicable provisions of Part 4.

This letter represents the views of this Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or France M.T. Maca, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

FMTM/bgb

cc: Daniel A. Driscoll
National Futures Association

^{2/} Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992).