



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581
(202) 254 - 8955
(202) 254 - 8010 Facsimile

93-33

DIVISION OF
TRADING AND MARKETS

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COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD

March 31, 1993

Re: Rule 4.7 Relief Where Some Participants, Who are Key Employees of CPO, are not QEPs.

Dear :

This is in response to your letter dated February 26, 1993, as supplemented by telephone conversations with Division staff, in which you request that the Division permit a claim for exemption under Rule 4.7(a)^{1/} with respect to the Fund^{2/} under the circumstances set forth in your letter, as supplemented.

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund was originally organized as an investment vehicle for the benefit of the partners and certain key employees of "A" and their immediate family members "the A Participants".^{3/} The Fund invests in investment partnerships and managed funds (such as hedge funds), securities and other investment instruments, in each case managed by outside parties. By letter dated December 26, 1991 to "X", "A"'s counsel concerning a previous request, the

^{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 registered commodity pool operators ("CPOs") in connection with specified pools sold only to "qualified eligible participants" as defined in the rule.

^{2/} Until February 24, 1993, the Fund's name was "B".

^{3/} The key employees allowed to invest in the Fund are at any given time approximately a dozen general partners of various "A" entities and a dozen senior managers of such entities. No such person who is not at least a vice president and an accredited investor, as defined in Regulation D under the Securities Act of 1933, is allowed to invest in the Fund. In addition, most "A Participants" are QEPs or would own the portfolio of investments required of QEPs except that a major portion of their investments is in "A" related entities (Rule 4.7 requires that a QEP's securities investment be in securities of issuers unrelated to the QEP).

Division stated that it would not recommend that the Commission take any enforcement action against "C", the Fund's general Partner, for failure to register as a CPO in connection with its operation of the Fund.^{4/} This no-action position was based in part on representations that the limited partners of the Fund were all "A Participants", that participation in the Fund by "A Participants" was voluntary and a benefit of being affiliated with "A", that new participants in the Fund would not be solicited and that parties other than "A Participants" would not be permitted to invest in the Fund.

The management of "A" now, however, seeks to allow as participants in the Fund persons who are not "A Participants" but who are qualified eligible participants ("QEPs") as defined in Rule 4.7. To accomplish this purpose, "D" will replace "C" as the general partner of the Fund.^{5/} "D" also will register as a CPO. Thus, you represent that once registered as a CPO, "D" would qualify in all respects for Rule 4.7 relief in connection with its operation of the Fund but for the fact that some of the current "A Participants" are not QEPs and some of the future "A Participants" may not be QEPs.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against "D", solely based on the presence in the Fund of the "A Participants", if "D" 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 record-keeping requirements of Rules 4.21, 4.22, and 4.23,^{6/} provided however: (1) that the "A Participants" duly consent to being treated as QEPs; and (2) that all "A Participants" continue to be either general partners of a "A" entity or a senior manager of a "A" entity.

This letter is applicable to "D" solely in connection with its operation of the Fund. Further, this letter does not excuse "D" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act"), as amended by

^{4/} The December 26, 1991 letter is incorporated herein by reference.

^{5/} "D" and "C" are composed of the same individuals. "C" will continue to exist but will no longer act as a general partner of the Fund.

^{6/} Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992).

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the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (October 28, 1992), or in the Commission's regulations thereunder. For example, "D" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (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 is based on the information that has been provided 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 "D" or the Fund change in any way from those represented to us.

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