COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

COMMODITY FUTURES TRADING COMMISSION
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April 26, 1993

Re: Request for Relief Under Rule 4.7

Dear :

This is in response to your letter dated March 31, 1993, 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 "Y".

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "X" is the CPO of "Y". "X" qualifies in all respects for Rule 4.7 relief in connection with his operation of "Y" but for the fact that one of "Y"'s participants is not a qualified eligible participant ("QEP") as defined in Rule 4.7. Non-QEPs are no longer being admitted as participants in "Y". The sole non-QEP in "Y", "Z", is an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act of 1993, 17 C.F.R. 230.501, has been the finance director of "Y" for the past six years and an investor in "Y" since January 1, 1991. "Z" is a certified public accountant with almost two decades of experience with investment partnerships, financial analysis and compliance. You represent that "Z" "is in the unique position of being the individual who prepares the very documents from which Rule 4.7 provides an exemption — namely, the CPO [D]isclosure [D]ocument, financial reports and records," and that "she works closely with "X" in every aspect of "Y", including the screening of the various managers to which "Y" allocates its assets; the analysis of each manager's strategy, including the manager's historical performance and operations; the final selection of the managers;

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 CPOs in connection with specified pools sold only to "qualified eligible participants" as defined in the rule.

and the performance monitoring of each investment." Thus, it is your opinion that "Z" is thoroughly knowledgeable about the structure and operations of "Y" and that she does not need the protections of Rules 4.21-4.23.

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 requirements of Rules 4.21, 4.22 and 4.23[2/], provided however, that the sole non-QEP in "Y" duly consents to being treated as a QEP.[3/]

This letter is based on the representations that you have 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 "Y" change in any way from those represented to us.

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

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

3/ We note that a Rule 4.7 claim for exemption was filed on behalf of "X" on March 31, 1993, for "Y". You should be aware that the relief granted in this letter is prospective only.

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

Very truly yours,

Susan C. Ervin
Chief Counsel