

COMMODITY FUTURES TRADING COMMISSION

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94-1



DIVISION OF
TRADING AND MARKETS

December 27, 1993

Re: No-Action Relief under Rule 4.7

Dear :

This is in response to your letter dated December 14, 1993, as supplemented by telephone conversations with Division staff, in which you request relief under Rule 4.7(a)^{1/} on behalf of "A", a registered commodity pool operator ("CPO"), in connection with his operation of the "Fund".

Based upon the representations made in your letter, as supplemented, we understand the material facts to be as follows. In June, 1993, "A" claimed Rule 4.7 relief with respect to the Fund. Prior to June, 1993, "B", a partner in your law firm who is the engagement partner for the Fund, invested in the Fund as a limited partner. As permitted by the Fund's limited partnership agreement, "B" now seeks to make an additional capital contribution to the Fund. However, in order to maintain the Fund's status as an exempt pool under Rule 4.7, the Fund now accepts capital contributions only from investors who are qualified eligible participants ("QEPs") as defined in Rule 4.7(a)(1)(ii). While "B" is an accredited investor as that term is defined in Regulation D under the Securities Act of 1933, he does not meet the portfolio test of the QEP definition.

"A" has been operating the Fund as a Rule 4.7 exempt pool and treating "B" as a non-QEP investor therein in accordance with the terms and conditions of CFTC Interpretative Letter No. 93-1, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH), ¶ 25,531 (December 10, 1992), as provided by CFTC Advisory 2-93 (January 7, 1993). The instant request arises from the facts that "B" seeks to make an additional capital contribution to the Fund subsequent to the Rule 4.7 filing and that "A" now seeks to treat "B" as a QEP.

In support of your request, you represent that "B", as the Fund's engagement partner, is familiar with the structure,

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

operation and objectives of the Fund; that "B" has been engaged in the practice of law as a corporate and securities law specialist for twenty years, with an emphasis on both registered and unregistered investment pools; and that he is thus well qualified to assess the merits and risks of an additional investment in the Fund.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "A" for failure to comply with Rule 4.7 based solely upon the participation of "B" in the Fund, provided that "B", as the sole non-QEP of the Fund, duly consents to being treated as a QEP.

This letter is based upon 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 "A" or the Fund change in any way from those represented to us.

This letter is applicable to "A" solely in connection with his operation of the Fund. Further, this letter does not excuse "A" from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act") or the Commission's regulations thereunder. For example, he remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. § 60 (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 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 any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or George G. Wilder, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran
Director