



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

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94-4

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 16, 1993, as supplemented by telephone conversations with Division staff, in which you request relief under Rule 4.7(a)^{1/} on behalf of "S", a registered commodity pool operator ("CPO"), in connection with its operation of certain commodity pools (the "Funds") such that it may treat "A" as a qualified eligible participant ("QEP") in the Funds.^{2/}

Based upon the representations made in your letter, as supplemented, we understand the facts concerning "A" to be as follows:

"A" is sophisticated and informed about financial matters in general and . . . the Fund[s] in particular. "A" is an accredited investor as defined in Regulation D under the Securities and Exchange Act and owns an investment portfolio in excess of \$1,000,000. He has been associated with "S" as a limited partner in [one of] the Fund[s] since its inception in 1991. In addition, since 1988 he has been one of two independent directors

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

^{2/} Specifically, the Funds, for each of which "S" has filed a Rule 4.7 claim of exemption, are as follows: "T", "U", "V", "W", "X", "Y" and "Z". Certain of the Funds were existing limited partnerships at the time "S" filed the Rule 4.7 claim. In this regard, you have represented that for each filing made with respect to an existing limited partnership, "S" complied with the procedure set forth in Rule 4.7(a)(3)(i)(I)(2) for previously offered pools.

of "B", a series investment company registered with the Securities and Exchange Commission and sponsored by an affiliate of "S".

"A" has a Masters Degree from Columbia University in International Affairs and has spent over 20 years as a corporate executive involved in international transactions in the pharmaceutical field. "A" spent 12 years as a corporate executive of "R", a publicly owned company, where he had responsibility for all Far East Division activities including recommending various capital investments in excess of \$50 million. "A" was also a director of several foreign subsidiaries and joint ventures of "R" and the Chairman of the Board of its Japanese subsidiary for 12 years. Since 1989 "A" has been a director of "Q", a NASDAQ listed company, where "A" serves as Chairman of the Compensation Committee and the Product Acquisition Committee. In addition, "A" provides consulting services to companies doing business internationally in the pharmaceutical field through his company, "P".

In support of your request you thus claim that, in addition to "A" being an accredited investor with a substantial investment portfolio, "A"'s employment history demonstrates both financial sophistication and knowledge and experience with "S" and its affiliates.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action against "S" for failure to comply with Rule 4.7 based solely upon the participation of "A" in the Funds, provided that "A" duly consents to being treated as a QEP with respect to each Fund in which he participates.

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 "S" change in any way from those as represented to us.

This letter does not excuse "S" from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act") or the Commission's regulations thereunder. For

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example, it remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (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. Further, this letter is applicable to "S" solely in connection with its operation of the Funds.

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 Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Sincerely,

Andrea M. Corcoran
Director