COMMODITY FUTURES TRADING COMMISSION
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94-13

DIVISION OF
TRADING AND MARKETS

December 27, 1993

Re: Request to Treat Trust as a Qualified Eligible Participant Under Rule 4.7

Dear :

This is in response to your letter dated December 10, 1993, as supplemented by telephone conversations with Division staff, in which you request confirmation that "X", a registered commodity pool operator ("CPO"), may claim relief under Rule 4.7[1/] in connection with his operation of the "Pool" despite the fact that the "Trust", a participant in the Pool, is not a qualified eligible participant ("QEP"), as defined in the rule. You also request confirmation that the Trust may be treated as a QEP of the Pool for the purposes of Rule 4.7.

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Trust, an irrevocable trust with approximately $700,000 in assets, has been a participant in the Pool since the pool was formed in 1988. "B" is the sole trustee and beneficiary of the trust. "B" is a QEP with an investment portfolio of approximately $7 million in assets, virtually all of which are invested in the Pool.[2/]

Relief under Rule 4.7 is available with respect to pools that, among other things, have only QEPs as participants. Pursuant to Rule 4.7 a trust is a QEP if: (1) it meets the portfolio requirement set forth in Rule 4.7(a)(1)(ii)(B)(1); and (2) it has total assets in excess of $5 million, is not formed for the specific purpose of investing in a Rule 4.7 exempt pool and its participation in the Rule 4.7 exempt pool is directed by a QEP (Rule 4.7(a)(1)(ii)(B)(xi). Because the Trust has $700,000 in assets, it meets neither the portfolio requirement of Rule

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

2/ In managing these investments and the investments for the Trust, "B" employs an experienced investment advisory firm.

4.7(a)(1)(ii)(B)(1) nor the $5 million total assets requirement of Rule 4.7(a)(1)(ii)(B)(2)(xi).

However, based on the foregoing and subject to the condition set forth below the Division will not recommend that the Commission take any enforcement action against "A" for failure to comply with Rule 4.7 if "A" files a Rule 4.7 notice of claim for exemption for the Pool and treats the Trust as a QEP. This position is subject to the condition that "B", as trustee of the Trust, consents to the Trust being treated as a QEP. This position is based on the specific representations made in your letter, as supplemented, and in particular on your representations that: (1) "B", the sole beneficiary of the Trust and also its sole trustee, is a QEP and (2) the Trust has been an investor in the Pool since the Pool was formed in 1988.

This letter is based on the specific representations made in your letter, as supplemented. 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 the Trust change in any way from those as represented to us.

We note that this letter relieves "X" solely from a Rule 4.7 requirement in connection with the Trust's participation in the Pool and does not excuse him from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1988 & Supp. 1992) ("Act"), or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. 1992), 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 (1993), and to all other provisions of Part 4. Further, this letter applicable to "X" solely in connection with his operation of the Pool.

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,

Andrea M. Corcoran
Director