



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

94-14

DIVISION OF
TRADING AND MARKETS

December 28, 1993

Re: Request for Relief Under Rule 4.7

Dear :

This is in response to your letter dated December 7, 1993, as supplemented by telephone conversations with Division staff, in which you request confirmation that Messrs. "A", "B", "C" and "D" (collectively, the "General Partners") may claim relief under Rule 4.7^{1/} in connection with their operation of "V" and "W" collectively the "Pools" despite the fact that "X", a participant in the Pools, is not a qualified eligible participant ("QEP"), as defined in the rule. The General Partners also would like to admit as participants in the Pools "E" and "F", two individuals who are not QEPs. You also request confirmation that "X", "E" and "F" (the "Non-QEPs") may be treated as QEPs of the Pools for the purposes of Rule 4.7. In addition, you request a waiver from the ten percent limitation ("ten percent limitation") on investment in Rule 4.7 exempt pools set forth in Rule 4.7(a)(1)(ii)(B)(xi) for pools that are QEPs but in which some participants are not QEPs to permit "Y" and "Z", two partnerships that are QEPs but in which some participants are not QEPs, to make or maintain an investment of more than ten percent of each of "Y"'s and "Z"'s assets in each of the Pools.

(a) Representations

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. Each of the four General Partners is a general partner of the law firm (the "Firm") and has applied for CPO registration in connection with his operation of the Pools. Each of the Pools is an investment partnership in which all but three of the limited partners are clients of the Firm, family of those clients or entities related to those clients. The other three limited partners are individuals who are business associates of the General Partners. "V" is an operative partnership. "W" will begin operating on January 1, 1994. Neither has traded commodity

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

interests or invested in commodity pools. Each Pool intends to invest in other private funds, some of which are Rule 4.7 exempt pools.

The Non-QEPs are:

(1) "X", a trust with \$3,000,000 in assets established by a General Partner who is a QEP with his children as ultimate beneficiaries and himself as annuitant. Another of the General Partners, also a QEP, is the trustee of "X". Pursuant to the trust agreement, the grantor will receive an annuity for ten years which will equal approximately 98 percent of his original investment in "X". All of the assets of "X" are invested in the Pools. Pursuant to Rule 4.7(a)(1)(ii)(B)(xi), a trust is a QEP if: (1) it meets the portfolio requirement of 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)(2)(xi)). "X" is not a QEP because it has \$3,000,000 in assets and therefore meets neither the portfolio requirement of Rule 4.7(a)(1)(ii)(B)(1) nor the \$5 million total assets requirement of (Rule 4.7(a)(1)(ii)(B)(2)(xi));

(2) "E", a certified public accountant employed by the Firm as its tax director. "E" has been with the Firm for six years. "E" performs all accounting functions for the Pools and acts as the Pools' financial officer in preparing and reviewing the Pools' financial statements; and

(3) "F", an accredited investor, as defined in Regulation D under the Securities Act of 1933. "F" is a trust and estates attorney and a senior associate at the Firm with which she has been employed for one year. "F" has approximately eight years of legal experience.

You claim that "E" and "F" are informed about financial matters in general and have access to all information regarding the Pools.

The Pools also have two existing participants that are QEPs and with respect to which, as noted above, you request a waiver from the ten percent limitation. These participants are the following entities:

(1) "Y", a general partnership that is a QEP and has assets in excess of \$5,000,000. "Y" is comprised of five grantor trusts, each with between \$2,000,000 and \$5,000,000 in assets. One General Partner who is a QEP serves as the trustee of each

trust. Each trust was formed by one of five children^{2/} of a wealthy client^{3/} of the Firm with himself as beneficiary. Each child is a QEP if the assets in the trust established for his benefit are included in making the determination of QEP status; and

(2) "Z", a general partnership that is a QEP and has assets in excess of \$5,000,000. Two of the partners of "Z" are QEPs and children of a General Partner, himself a QEP. The third is a grantor trust with between \$2,000,000 and \$5,000,000 in assets established for the benefit of another adult child of that General Partner. That child also is a QEP if the assets in the trust established for her benefit are included in making the determination of QEP status. The General Partner who is the father of these children is the trustee of the grantor trust.

(b) Relief

The Non-QEPs

Based upon the representations made in your letter as supplemented, the Division believes that your request to file a Rule 4.7 notice of claim for exemption for the Pools despite "X"'s and "E"'s participation in the Pools has merit. With respect to "X", this is because: (1) the trust agreement provides that approximately 98 percent of the original assets contributed to the trust by the grantor will be paid out to the grantor over the next ten years; (2) the grantor, who established the trust for the benefit of his children, is a QEP who will be a CPO of the Pools; and (3) the trustee of the trust is a QEP who also will be a CPO of the Pools. With respect to "E", this is because, among other things, she has been employed for six years by the Firm whose general partners will be the CPOs of the Pools, acts as the Pools' financial officer and thus has extensive involvement in financial matters regarding the Pools, and has access to all information regarding the Pools. As to "F", the Division has determined that it is not appropriate to treat "F" as a QEP. Accordingly, this part of your request is hereby denied.

Accordingly, subject to the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against the General Partners if they file a Rule 4.7 notice of claim for exemption for the Pools, admit "E" as a participant in the Pools and treat "X" and "E" as QEPs. This position is subject to the conditions that: (1) the General

^{2/} The children now range in age from 25 to 40.

^{3/} This client is a QEP who is the original provider of the funds that were placed in the trusts and is a participant in "V".

Partners' CPO registrations become effective before any Pools' assets are allocated to commodity pools or used to enter into commodity interests transactions; (2) prior to filing a notice of claim for exemption for the Pools, the General Partners follow the procedure set forth in Rule 4.7(a)(3)(i)(I)(2) for existing pools; and (3) the trustee of "X" consents to "X" being treated as a QEP and "E" also consents to being treated as a QEP.

"Y" and "Z"

Based upon the representations made in your letter, as supplemented, and subject to the condition set forth below the Division will not recommend that the Commission take any enforcement action against the General Partners for failure to comply with Rule 4.7 if they treat "Y" and "Z" as QEPs not subject to the ten percent limitation under Rule 4.7(a)(1)(ii)(B)(2)(viii). This position is subject to the condition that the General Partners' CPO registrations become effective before any Pools' assets are allocated to pools or used to enter into commodity interest transactions.

This letter is based on the specific representations made in your letter, as supplemented, and is subject to compliance with the conditions 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 the General Partners or any of the entities referred to above change in any way from those as represented to us.

We note that this letter relieves the General Partners solely from certain Rule 4.7 requirements in connection with some of the participants in the Pools and does not excuse them 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, the General Partners remain subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. § 60 (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 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.

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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