



COMMODITY FUTURES TRADING COMMISSION

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94-15

DIVISION OF  
TRADING AND MARKETS

December 10, 1993

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter dated October 19, 1993, as supplemented by telephone conversations with Division staff, in which, on behalf of "X", a registered commodity pool operator ("CPO"), you request relief from certain requirements of Rule 4.7<sup>1/</sup> in connection with the operation of the "Pool".

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "X" is the CPO of the Pool. The Pool follows a multi-manager, multi-strategy investment approach, allocating its assets among numerous investment managers operating through managed accounts and collective investment vehicles, including commodity pools. The Pool currently has approximately \$228 million in assets allocated to approximately sixty managers.

Many of the Pool's investment managers have elected to operate Rule 4.7 exempt pools. As a result, almost ten percent of the Pool's assets are currently invested in Rule 4.7 exempt pools. Furthermore, you expect more of the Pool's existing managers and many of the managers "X" may wish to engage as managers for the Pool to claim Rule 4.7 relief. The Pool is a qualified eligible participant ("QEP"), as defined in Rule 4.7(a)(1)(ii)(B)(xi), but not all participants in the Pool are QEPs. Rule 4.7(a)(1)(ii)(B)(xi) ("ten percent limitation") provides, among other things, that a pool may not invest more than ten percent of its assets in Rule 4.7 exempt pools unless all participants in the pool are QEPs.

As of October 1, 1993, 27 of the Pool's 97 participants were non-QEPs. You represent, however, that all of the Pool's non-QEPs, except for one assignee of an interest in the Pool, were Pool participants prior to January 1, 1992, that is, prior to the

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

date when Rule 4.7 was proposed. No new non-QEPs will be admitted as Pool participants. You note that, other than officers and advisors to "X", all but five of the non-QEPs have at least \$1 million invested in the pool and each of these five has invested at least \$300,000. Further, you claim that no existing non-QEP investor would be adversely affected if the Division grants the requested relief. This is because "X" would continue to comply with the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively, including the requirements of Rule 4.22 to provide quarterly and certified annual reports to the pool participants. Accordingly, you request relief from the ten percent limitation on investments in Rule 4.7 exempt pools ("Investee Pools") by the Pool.

Based upon the representations you have made, it appears that granting the relief you have requested would not be contrary to the public interest. The purpose of the ten percent limitation is, among other things, to preclude non-QEPs who could not invest in Rule 4.7 exempt pools based on their own qualifications from using QEP entities to access Rule 4.7 exempt pools.<sup>2/</sup> However, because the Pool's non-QEPs were Pool participants prior to the proposal of Rule 4.7, it is clear that they did not invest in the Pool to gain access to Investee Pools.

Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against "X" or the CPO of any Investee Pool if the Pool invests more than ten percent of its assets in Investee Pools. This relief is subject to the condition that "X" notifies the Pool's participants who are not QEPs that the Pool may invest over ten percent of its assets in Investee Pools that are operated pursuant to Rule 4.7 exemptions and gives them an opportunity to redeem their interests in the Pool within ten days of their receipt of notification of "X"'s intention to invest more than ten percent of the Pool's assets in Investee Pools.

This letter is based on the representations provided to us. 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" in connection with the Pool change in any way from those as represented to us. Further, this letter is applicable to "X" solely in connection with its operation of the Pool and to the CPOs of Investee Pools solely in connection with the Pool's investment in them.

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<sup>2/</sup> See 57 Fed. Reg. 3148 at 3152 (January 28, 1992).

Lawrence H. Hunt, Jr., Esq.  
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We note that this letter relieves "X" and the CPOs of Investee Pools solely from certain requirements of Rule 4.7 and does not excuse them from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. 1992), or in the Commission's regulations issued thereunder. For example, each 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.

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,

Susan C. Ervin  
Chief Counsel