

COMMODITY FUTURES TRADING COMMISSION

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94-16



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 November 8, 1993, as supplemented by telephone conversations with Division staff, in which you request confirmation that "A", a registered commodity pool operator ("CPO"), may continue to claim relief under Rule 4.7<sup>1/</sup> in connection with his operation of the "Pool" if he admits the "Trust" as a participant in the Pool despite the fact that the Trust 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 is an irrevocable, living trust established in 1993 by "B" for the benefit of her grandchildren.<sup>2/</sup> The Trust has approximately \$600,000 in assets. The trustees of the Trust are "C", "B"'s father, and "D", her husband. "C", together with "D" as co-trustee, makes the investment decisions for the Trust. "C" is a qualified eligible participant ("QEP"), as defined in Rule 4.7. "C" and various other family trusts that are QEPs are substantial investors in the Pool. "C", who has an investment portfolio of approximately \$50 million, has approximately twenty years experience as an investor in real estate partnerships, venture capital partnerships, mutual funds and individual securities. "D" is an accredited investor as defined in Regulation D under the Securities Act of 1933.

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

<sup>2/</sup> By your letter you state that these beneficiaries "are not yet lives in being."

The family net worth exceeds \$85 million. The Trust is one of the investment and estate-planning vehicles of the family. You represent that all of the investment acumen and resources (such as experienced investment counselors) of the family are available to the trustees in their decision to invest Trust assets in the Pool.

"A" filed a Rule 4.7 notice of claim for exemption for the Pool on December 18, 1993. 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 a Rule 4.7 exempt pool is directed by a QEP (Rule 4.7(a)(1)(ii)(B)(xi)). The Trust is not a QEP because: (1) it has \$600,000 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)(B)(2)(xi); and (2) "D", one of the two trustees of the Trust, is not a QEP.

However, based on the foregoing representations 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" accepts the Trust as a participant in the Pool and treats the Trust as a QEP. This position is subject to the condition that "C" and "D", as trustees of the Trust, consent to the Trust being treated as a QEP.

This position 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 "A" or the Trust change in any way from those as represented to us.

We note that this letter relieves "A" 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, "A" remains 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 provision of Part 4. Further, this letter is applicable to "A" solely in connection with his operation of the Pool.

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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