COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
(202) 254 - 8955
(202) 254 - 8010 Facsimile

94-18

DIVISION OF
TRADING AND MARKETS

December 27, 1993

Re: Request for Relief Under Rule 4.7

Dear :

This is in response to your letter dated November 10, 1993, as supplemented by telephone conversations with Division staff, in which, on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor, you request relief under Rule 4.7(a)[1/] as set forth herein, in connection with "X"'s operation of the "Fund".

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 Fund. "X" qualifies in all respects for Rule 4.7 relief in connection with its operation of the Fund but for the fact that four of the Fund's thirty-six participants are not qualified eligible participants ("QEPs") as defined in Rule 4.7. You represent that these non-QEPs were senior executives with "Y" at the time they purchased an interest in the Fund. Three of the four continue to be affiliated with "Y" and the fourth is now the manager of private banking with "Z". All have extensive experience in financial services and investment management and are capable of evaluating the risks of an investment in the Fund. Moreover, all are accredited investors as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933, 17 C.F.R. 230.501 (1992). Non-QEPs are no longer being admitted as participants in the Fund.

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992). Upon the filing of a notice of claim for exemption, Rule 4.7(a) provides relief from certain Part 4 requirements to, among others, registered CPOs in connection with specified pools sold only to "qualified eligible participants" as defined in the rule.

Based on the foregoing, and consistently with prior Division positions,[2/] the Division will not recommend that the Commission take any enforcement action against "X", based solely on the presence of the four non-QEPs discussed above, provided that "X" complies with the requirements of Rule 4.7(a), including the procedure contemplated in Rule 4.7(a)(3)(i)(I)(2) for pools in which participations have been sold prior to the filing of a Rule 4.7 claim for exemption, in lieu of the disclosure, reporting and recordkeeping requirements of Rules 4.21, 4.22 and 4.23, and provided further that the four non-QEPs in the Fund duly consent to being treated as a QEPs.[3/]

This letter is based on the representations that you have made to us 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 "X" or the Fund change in any way from those represented to us.

This letter is applicable to "X" solely in connection with its operation of the Fund. Further, this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988), 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 (1992), and to all other applicable 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.

2/ See Division of Trading and Markets Interpretative Letter No. 93-2 [1990-1992 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶25,532 (December 10, 1992).

3/ In addition, the cover letter to the Rule 4.7 notice of claim for exemption for the Fund, "X" must note that it is withdrawing the claim for exemption previously filed for the Fund under Rule 4.12(b).

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