

COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

94-37



DIVISION OF  
TRADING AND MARKETS

March 22, 1994

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

Dear :

This is in response to your letter dated January 24, 1994, as supplemented by telephone conversations with Division staff, in which you request confirmation that "X", a registered commodity pool operator ("CPO"), may continue to claim relief under Rule 4.7<sup>1/</sup> in connection with its operation of the "Pool" in the event that the Foundation, a charitable foundation, which is not a qualified eligible participant ("QEP") as defined in the rule, becomes a participant in the Pool.<sup>2/</sup> You also request confirmation that the Foundation 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 Foundation is an organization satisfying the criteria set forth in section 501(c)(3) of the Internal Revenue Code, with approximately \$1,000,000 in assets. All distributions of the Foundation's income are made to charities. It was created by "A" and "B" who, with their adult children and their adult children's spouses (collectively the "C" Family), serve as directors and officers of the Foundation. The "C" Family has assets in excess of \$100 million. All investment decisions for the Foundation are made by "D", "A"'s brother. "D" is a QEP, an equity partner in "X", has forty-four years of investment experience and was the

---

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

<sup>2/</sup> The Pool currently has as participants a few trusts and a charitable foundation which are non-QEPs. Pursuant to discussions between "X"'s counsel and Division staff and correspondence from "X"'s counsel to the Division dated December 28, 1992 and January 4, 1993, "X" was permitted to continue to claim relief under Rule 4.7 despite the investment of these trusts and the charitable foundation in the Pool.

chief executive officer of "X" until 1990. The Pool permits the admission of new limited partners on a quarterly basis. It is anticipated that the Foundation will become an investor in the Pool during the second quarter beginning on April 1, 1994.

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, an organization described in section 501(c)(3) of the Internal Revenue Code 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. Because the Foundation has approximately \$1,000,000 in assets, it 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)(vii).

However, based on the foregoing and subject to the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with the QEP criteria of Rule 4.7 with respect to the Foundation if "X" allows the Foundation to invest in the Pool and treats the Foundation as a QEP. This position is subject to the conditions that: (1) "D", the individual responsible for making all investment decisions for the Foundation, consents to the Foundation being treated as a QEP; and (2) "A" and "B", their adult children and their adult children's spouses, as directors and officers of the Foundation, consent to the Foundation being treated as a QEP. This position is based on the representations made in your letter, as supplemented and, in particular, your representations that: (1) "D" is a QEP; and (2) the "C" Family has a net worth in excess of \$100 million. 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 Foundation change in any way from those as represented to us.

We note that this letter relieves "X" solely from the QEP criteria of Rule 4.7 with respect to the Foundation's participation in the Pool and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992) ("Act"), or in the Commission's regulations promulgated thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4. Further, this letter is applicable to "X" solely in connection with its operation of the Pool.

Page 3

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 Mary Cademartori, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin  
Chief Counsel