



COMMODITY FUTURES TRADING COMMISSION

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Q4-39

DIVISION OF  
TRADING AND MARKETS

March 29, 1994

Re: No-Action Letter Relief under 4.7

Dear :

This is in response to your letter dated March 2, 1994, as supplemented by telephone conversations with Division staff, in which you request that the Division permit "Y Management" to claim relief under Rule 4.7(a)<sup>1/</sup> with respect to the Y Fund if "Y Management" accepts as participants in the Y Fund certain persons who are not qualified eligible participants ("QEPs") as defined in the rule.

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. By letter dated March 31, 1994, the Division stated that it would not recommend that the Commission take any enforcement action against "Y Management", if "Y Management" filed a Rule 4.7 notice of claim for exemption for "X", despite the presence of certain participants who are not QEPs. All participants in "X" are QEPs or "Y" participants,<sup>2/</sup> some of whom are not QEPs<sup>3/</sup>. Similarly, only QEPs and "Y" participants will be permitted to invest in the Fund.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against "Y Management" based on the presence in the Y Fund of the "Y" participants who are not QEPs if "Y Management" claims relief under Rule 4.7,

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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> The "Y" participants are certain key employees, i.e., either general partners or senior managers, of the "Y Group" and its affiliates (together, "Y"), and their immediate family members.

<sup>3/</sup> You represented that no person, other than a QEP, who is not at least a vice president of "Y" and an accredited investor under Regulation D of the Securities Act of 1933 would be permitted to invest in "X".

provided, however, that: (1) the "Y" participants who are not QEPs duly consent to being treated as QEPs; and (2) all "Y" participants who are not QEPs are and continue to be either general partners or senior managers of a "Y" entity.

This letter is applicable to "Y Management" solely in connection with its operation of the Y Fund. Further, this letter does not excuse "Y Management" 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, "Y Management" 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 is based on the information that has been provided 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 that the operations or activities of "Y Management" or the Y Fund change in any way from those as represented to us. 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