



COMMODITY FUTURES TRADING COMMISSION

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94-46

DIVISION OF
TRADING AND MARKETS

November 24, 1993

Re: Request for Treatment as a Qualified Eligible Person
Under Rule 4.7

Dear :

This is in response to your letter dated October 27, 1993, 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 in connection with its operation of (the "Pool") if it admits A as a participant in the Pool, despite the fact that A is not a qualified eligible participant ("QEP"), as defined in the rule.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. A is the sole shareholder and director, and the president and secretary-treasurer of Y, a CPO and commodity trading advisor ("CTA") registered as such since May 1985. Until May 1993, A was also the sole principal of Y.^{2/} Y has been active as a CPO since December 1985, and as a CTA since 1990, and has served as a CPO or CTA to four commodity pools whose current aggregate assets are approximately \$160 million.

X filed a Rule 4.7 notice of claim for exemption for the Pool on March 13, 1993. Relief under Rule 4.7 is available with respect to pools that, among other things, have only QEPs as participants. Pursuant to Rules 4.7(a)(1)(ii)(A)(3) and (A)(4), respectively, a registered CPO who has been active as such for two years or who operates pools with aggregate assets of no less than \$5 million is a QEP, and a registered CTA who has been registered and active as such for two years or who provides commodity interest trading advice to pools with aggregate assets of no less than \$5 million deposited at one or more futures commission merchants is a QEP. Y is a QEP under each of these pro-

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

^{2/} B became senior vice-president of Y on May 11, 1993.

visions. However, because the CPO and CTA registrations are in the name of Y rather than in the name of A, A is not a QEP under these provisions. You claim, however, that, as the sole shareholder, director and president of a registered CPO and CTA that is a QEP, A possesses the qualifications required of QEPs.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against X for failure to comply with Rule 4.7 if X accepts A as a participant in the Pool.

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 A or the Pool change in any way from those as represented to us.

We note that this letter relieves X solely from a Rule 4.7 requirement in connection with A'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. 1992) ("Act"), or in the Commission's regulations issued thereunder. For example, X 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 provisions of Part 4.

Further, 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