



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

94-72
May 6, 1994

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter dated April 14, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("CFTC"), in which you request certain relief from Rule 4.7^{1/} on behalf of "V", a registered commodity pool operator ("CPO") in connection with its operation of "W", "X" and "Y" (collectively, the "Funds"). Specifically, on behalf of "V" and for the benefit of "V" and the CPOs of commodity pools in which the Funds invest or may invest (the "Investee CPOs"), you request a waiver from the ten percent limitation ("Ten Percent Limitation") on investments in Rule 4.7 exempt pools set forth in Rule 4.7(a)(1)(ii)(B)(xi) for pools that are "qualified eligible participants" ("QEPs") but in which some participants are not QEPs to permit the Funds, each of which is a pool that is a QEP but has some participants who are not QEPs, to invest more than ten percent of the fair market of their respective assets in other commodity pools that are Rule 4.7 exempt pools ("Rule 4.7 Investee Pools").

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. Each Fund is what is commonly referred to as a "fund of funds." Each Fund, considered alone, would qualify as a QEP since: (1) it satisfies the portfolio requirement of Rule 4.7(a)(1)(ii)(B); (2) it has total assets in excess of \$5,000,000; (3) it was not formed for the purpose of participating in a Rule 4.7 pool; and (4) its participation in any Rule 4.7 Investee Pool is directed by "V", a QEP.^{2/}

The individual investors in each of the Funds are all "accredited investors" under Regulation D of the Securities Act

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

^{2/} See Rule 4.7(a)(1)(ii)(A)(3), which includes within the QEP definition certain registered CPOs.

of 1933 but they are not all QEPs. Rather, they are managing group members and key employees ("Eligible Employees") of "Z", all of whom you have represented to be experienced professionals in the consulting business or in administrative, financial, accounting, legal or operational activities related thereto. Specifically, the Eligible Employees are: (1) shareholders of "Z", i.e., management group members, who are directors, principals and a limited number of high-level administrators and client service support personnel of "Z", i.e., administrative shareholders who hold high-level positions in the administrative, financial, accounting, legal or operational departments of "Z" and whose positions are comparable to those held by the chief financial officer, general counsel and other executive positions in other large corporations; (2) certain retired directors of "Z"; and (3) the director of Investment Programs, the director of Retirement Plan Investments, and the director of European Investment Programs.^{3/}

Based upon the foregoing, the Division will not recommend any enforcement action for failure to comply with Rule 4.7 against "V" or any Investee CPO if a Fund invests more than ten percent of the fair market value of its assets in a Rule 4.7 Investee Pool. This relief is, however, subject to the condition that "V" notifies each Fund's investors who are not QEPs that their Fund may invest more than ten percent of its assets in Rule 4.7 Investee Pools and gives the non-QEP investors an opportunity to redeem their interests in their Fund within ten days of their receipt of notification of "V's" intention to exceed the Ten Percent Limitation.

This position is based upon the representations you have made to us and is subject to compliance with the condition set forth above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the operations and activities of a Fund, including its limited partner composition or criteria, change in any way from those as represented to us.

^{3/} By letter dated December 17, 1993, the Division issued certain relief from Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) to "V" in connection with its operation of the Funds. That relief was based upon the representation that only Eligible Employees could participate in the Funds. By your letter you incorporated by reference the discussion of the background and definition of the term "Eligible Employee" as employed in our December 17, 1973 letter.

This letter relieves "V" and the Investee CPOs solely from compliance with certain provisions of Rule 4.7 in connection with the Funds and does not excuse them from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992) or the Commission's regulations issued thereunder. For example, they remain subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o, 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 represents the position of the Division of Trading and Markets only. It 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 Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel