



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

94-73

DIVISION OF
TRADING AND MARKETS

July 20, 1994

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter dated May 31, 1994, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff, by which you request relief from certain requirements of Rule 4.7^{1/} in connection with the operation of (the "Partnership") by (the "Corporation").

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Corporation is actively engaged in business and is closely held and owned exclusively by members of the "A" family. It also serves as the general partner of the Partnership, which was formed in March, 1991 for the purpose of providing an investment vehicle for members of the "A" family and certain executive officers and directors of the Corporation. In addition, to participate in the Partnership, any such "A" family member or executive officer or director must be an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933. The Partnership has approximately \$40,000,000 in assets, a significant portion of which was contributed by the Corporation.

Specifically, the limited partners of the Partnership are as follows:

1. "B". "B" is the President and a shareholder of the Corporation and serves as Chairman of the Board of the Corporation. "B" is also a "qualified eligible participant" as defined in Rule 4.7. "B" has a net worth of \$26,000,000 and an investment portfolio worth approximately \$23,200,000. "B" has thirty-five years of investment experience.

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

2. "C". "C" is the son of "B" and is a Vice President, Director and shareholder of the Corporation. "C" has a net worth of \$1,800,000 and an investment portfolio worth approximately \$1,575,000. "C" has invested in the stock market for fifteen years.

3. "D". "D" is the son of "B" and is a Director and shareholder of the Corporation. "D" has a net worth of \$1,950,000 and an investment portfolio worth approximately \$1,600,000. "D" has invested in the stock market for twenty years and has also invested in various limited partnerships.

4. "E". "E" is the niece of "B" and is a Director and shareholder of the Corporation. "E" has a net worth in excess of \$3,000,000 and an investment portfolio worth approximately \$2,800,000. "E" has been employed during the past twenty years as a registered representative with two national securities firms, investing principally in stocks and bonds.

5. "F". "F" is the niece of "B" and is a shareholder of the Corporation. "F" has a net worth of \$2,095,000 and an investment portfolio worth approximately \$2,020,000. "F" has invested in stocks and bonds and in various limited partnerships for the past twenty-three years.

6. "G". "G" is the nephew of "B" and is a Director and shareholder of the Corporation. "G" has an individual net worth of \$2,650,000 and an investment portfolio worth approximately \$2,535,690. "G" has over twenty years of investment experience in equity securities and ten years of experience in real estate related investments.

7. "H". "H" is the niece of "B" and is a shareholder of the Corporation. "H" has a net worth of approximately \$3,000,000 and an investment portfolio worth approximately \$2,200,000. "H" has invested in real estate related investments during the past thirteen years and has invested in the stock market for five years.

8. "I". "I" is the Executive Vice President of the Corporation and is the individual responsible for managing the Partnership on behalf of the Corporation. "I" has a net worth of \$2,600,000 and an investment portfolio worth approximately \$2,100,000. "I" has invested in the stock market since 1965 and possesses extensive investment experience in, among other things, real estate, venture capital and hedge funds. "I" currently manages a portfolio of investments in various partnerships and real estate with a value in excess of \$45,000,000.

The Partnership is a qualified eligible participant ("QEP"), as defined in Rule 4.7(a)(1)(ii)(B)(2)(xi), but not all of its limited partners are QEPs. Specifically, while limited partners

1 and 8 are QEPs, limited partners 2 through 7 (the "Non-QEPs") are not because they fail to meet the portfolio requirement of Rule 4.7(a)(1)(ii)(B). Limited partners 4 through 7 do not meet the portfolio requirement because each of their investment holdings includes \$1.2 million of securities in the Corporation. Pursuant to Rule 4.7(a)(1)(ii)(B)(1)(i), the Corporation represents an "issuer affiliated with such participant", and therefore the value of securities of the Corporation must be excluded in calculating the value of these limited partners' investment portfolios. This exclusion significantly reduces limited partners 2 through 7's investment portfolios, and, in the case of limited partners 4 through 7, reduces their investment portfolios to a level below that required of a QEP. Thus, absent relief, the Partnership is subject to the provision in Rule 4.7(a)(1)(ii)(B)(2)(xi) prohibiting a pool in which not all of the participants are QEPs from investing more than ten percent of its assets in Rule 4.7 exempt pools (the "Ten Percent Limitation").

In support of your request you note that each non-QEP has: (1) extensive investment experience; (2) with one exception, a net worth of approximately \$2 million;^{2/} and (3) an investment portfolio of at least \$1,575,000, including shares of the Corporation. Further, any Rule 4.7 exempt pool in which the Partnership invests would devote most of its assets to securities trading, in a manner consistent with Rule 4.12(b), such that its commodity interest trading would be incidental to its securities trading. You also represent that each of the limited partners has consented to a waiver of the Ten Percent Limitation and has been notified that more than ten percent of the fair market value of the assets of the Partnership will be invested in Rule 4.7 exempt pools if the relief requested is granted by the Division.

Based upon the representations you have made to us, it appears that granting the requested relief would not be contrary to the public interest. Accordingly, the Division will not recommend that the Commission take any enforcement action against the Corporation or the CPO of any Rule 4.7 exempt pool in which the Partnership is a participant if the Corporation invests more than ten percent of the Partnership's assets in Rule 4.7 exempt pools. 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 the Partnership, the Corporation, or the participants in the Partnership change in any way from those as

^{2/} The exception is limited partner 2, who has a net worth of \$1,800,000.

represented to us.^{3/} Further, this letter is applicable to the Corporation solely in connection with its operation of the Partnership and to the CPOs of Rule 4.7 exempt pools in which the Partnership is a participant solely in connection with the Partnership's participation in them.

We note that this letter relieves the Corporation solely from certain requirements of Rule 4.7 and does not excuse it 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 in the Commission's regulations issued thereunder. For example, it remains 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.

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 Barbara Stern Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} For example, in the event the Partnership accepted additional limited partners, the position taken herein may no longer obtain.