



COMMODITY FUTURES TRADING COMMISSION

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94-74

DIVISION OF  
TRADING AND MARKETS

May 17, 1994

Re: Request for Relief from Rule 4.7

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated April 6, 1994, by which you request on behalf of "X", the general partner and registered commodity pool operator ("CPO") of (the "Partnership"), relief from Rule 4.7, as is set forth more fully below.<sup>1/</sup>

Based upon the representations made in your letter, we understand the facts to be as follows. The Partnership is operated pursuant to a claim of exemption under Rule 4.7(a). From time to time it invests in other commodity pools and directly in commodity interests.<sup>2/</sup> To date, "X" has accepted only "qualified eligible participants" ("QEPs"), as that term is defined in Rule 4.7(a), in the Partnership. "X" now wishes to admit an investor into the Partnership who is not a QEP and, at the same time, continue to claim full relief under Rule 4.7, including the ability to invest more than ten percent of the Partnership's assets into Rule 4.7 Investee Pools.<sup>3/</sup>

The proposed non-QEP investor is "A". Among other things, your letter represents that "A": (1) is responsible for the administrative management of "Y", whom "X" has engaged to provide

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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> Commission records indicate that "X" filed a Rule 4.7 claim of exemption for the Partnership on December 22, 1992.

<sup>3/</sup> Rule 4.7(a)(1)(ii)(B)(xi) limits to no more than ten percent the amount of assets that may be invested in Rule 4.7 Investee Pools by a pool that is a QEP but whose participants are not all QEPs.

certain investment advisory and administrative support services to it; (2) for approximately the past three years has been listed as a principal and registered as an associated person of "Y"; (3) is an "accredited investor" under Regulation D of the Securities Act of 1933; and (4) has been a close personal friend of "B", who wholly owns and controls "X's" general partner, for the past twenty years.

Based upon the foregoing and the additional representations concerning "A" in your letter, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with Rule 4.7 in the event "X": (1) accepts "A" as a participant in the Partnership; and (2) notwithstanding the participation of "A" in the Partnership, invests more than ten percent of the Partnership's assets in Rule 4.7 Investee Pools.<sup>4/</sup> This position is, however, subject to the condition that "A" consent in writing to being treated as a QEP.

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 the operations and activities of the Partnership or "A", including his employment and registration status, change in any way from those as represented to us.

This letter relieves "X" solely from certain requirements under Rule 4.7 in connection with the operation of the Partnership 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 the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, 7 U.S.C. §60, 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

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<sup>4/</sup> This position, then, is also applicable to the CPOs of any Rule 4.7 Investee Fund in which the Partnership sought to invest.

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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