



COMMODITY FUTURES TRADING COMMISSION

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Records
94-95

DIVISION OF
TRADING AND MARKETS

July 25, 1994

Re: Relief for No-Action Relief Regarding QEP Status

Dear :

This is in response to your letter dated June 29, 1994, as supplemented by telephone conversations with Division staff, which we have treated as a request that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") not recommend that the Commission take any enforcement action against "X" or any of "X's" co-general partners if none of the general partners of (the "Fund") registers as a commodity pool operator ("CPO"). Additionally, you request confirmation that "X" may treat as Qualified Eligible Participants ("QEPs") certain Fund participants who do not come within the QEP definition set forth in Commission Rule 4.7.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. "X" is a corporation organized for the purpose of serving as the managing partner of the Fund. The Fund is a general partnership organized for the purpose of investing in other investment partnerships. Except for "X", participation in the Fund is limited to partners of the law firm of "Y" who are "accredited investors" as defined in Rule 501 of Regulation D of the Securities Act of 1933, as amended. All of the principals and shareholders of "X" also are partners of "Y" who are accredited investors.

I. Request for Relief from CPO Registration

The management of the Fund is vested exclusively with "X", as the managing partner of the Fund, under the terms of the Fund's partnership agreement. You represent that "X's" authority includes, without limitation "the power to invest the assets of the Fund, enter into and perform contracts, make tax elections,

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

exercise voting rights and select advisers and other service providers." You further represent that, pursuant to the Fund's partnership agreement, except as otherwise provided therein, the other general partners have no authority to act on behalf of the Fund in any matter. Additionally, the individual partners are prohibited from opting out of any investment made by "X" on behalf of the Fund.

In support of the instant request you represent that:

1. "X" does not receive any compensation or other payment, directly or indirectly, except for administrative expenses, if any, and "X's" allocation of profits based on its pro rata investment in the Fund;
2. The Fund is the only commodity pool that "X" operates;
3. "X" is not otherwise required to register with the Commission and is not affiliated with any person required to register with the Commission; and
4. Neither "X" nor any other person involved with the Fund does any advertising in connection with the Fund.

You further represent that all investors in the Fund will have access to any offering materials regarding the underlying funds in which the Fund will invest.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against "X" or any of the other general partners of the Fund if no general partner of the Fund registers as a CPO in connection with its activities as a general partner of the Fund. This position is, however, subject to the conditions that "X": (1) furnishes to each participant in the Fund on a quarterly basis a statement indicating the Fund's net profit or loss for the quarter; and (2) maintains and keeps all books and records prepared in connection with its activities as the CPO of the Fund in accordance with the requirements of Commission Rule 1.31(a)(1).

II. Request to Treat Fund Participants as QEPs

"X" also seeks to treat as QEPs certain Fund participants who do not come within the QEP definition set forth in Rule 4.7, to enable the Fund to invest in investment limited partnerships

that accept capital contributions only from Rule 4.7 entities.^{2/} As noted above, all of the individual general partners of the Fund are "accredited investors." However, you state that several partners are not QEPs. In this regard you represent that:

"Y" is among the most respected corporate law firms in the United States. Its partners provide legal services of all types to major corporate clients. In addition to corporate and finance, the firm's departments include litigation, real estate, tax, trusts and estates, bankruptcy, employee benefits, trademark and insurance. In light of "Y's" extensive practice, the non-QEP investors in the Fund are sophisticated in securities and financial matters and possess the investment expertise and experience necessary to understand the risks involved in investments such as the Fund.

You further represent that each non-QEP partner will consent to being treated as a QEP upon execution of the Fund's partnership agreement.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against "X" or against any of the other general partners of the Fund if "X" treats those non-QEP Fund participants discussed above as QEPs for the purpose of enabling the Fund to invest in investment limited partnerships that accept capital contributions only from Rule 4.7 entities. This position is subject to the condition that, as you have represented, each non-QEP partner of the Fund consents to being treated as a QEP.

* * * * *

This letter is based upon the representations you have made to us, and is subject to compliance with the conditions stated above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations or activities of the Fund, "X" or any of the

^{2/} You note that each of the Fund's participants must be treated as a QEP in order for the Fund to meet the QEP definition set forth in Rule 4.7(a)(1)(D). The Fund does not fall within the QEP definition set forth in paragraph (a)(1)(B)(2)(xi) of the rule because the Fund will have less than \$5 million in total assets.

Fund's other general partners change in any way from those represented to us.

We note that the relief issued by this letter does not excuse the Fund, "X" or any of the Fund's other general partners from compliance with any other applicable requirements contained in the Commodity Exchange Act, as amended (the "Act"),^{3/} or the Commission's regulations thereunder. For example, they remain 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 reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992).