U.S. COMMODITY FUTURES TRADING COMMISSION
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records

DIVISION OF
TRADING & MARKETS

95-100

November 21, 1995

Re: Rule 4.7; Request to Treat Trusts Whose Beneficiaries are Relatives of CPO's Managing Member and the CPO's Chief Administrative Officer as QEPs

Dear :

This is in response to your letter dated October 30, 1995 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request on behalf of "W" a registered commodity pool operator ("CPO") and managing general partner of the ("Pool"), confirmation that "W" may continue to claim relief under Rule 4.7(a)[1/] in connection with serving as the CPO of the Pool in the event that it admits certain persons as investors in the Pool who will not be qualified eligible participants ("QEPs"), as that term is defined in the rule. In addition, you request relief on behalf of "W" from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "ten percent restriction") that would prevent the Pool, as a pool with non-QEP participants, from investing more than ten percent of its assets in other pools for which the CPOs thereof have claimed relief under Rule 4.7 ("Rule 4.7 Exempt Pools").

Based upon the representations made in your letter, as supplemented by telephone conversations with Division staff, we understand the pertinent facts to be as follows. "W" filed a Notice of Claim for Exemption pursuant to Rule 4.7 on behalf of the Pool that was effective October 30, 1995.[2/] Pursuant to this exemption, interests in the Pool are currently being sold only to QEPs. However, "W" would like to admit certain investors in the Pool who

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

2/ "W" recently took over as CPO of the Pool. The CPO of the Pool had previously been "A". The Notice of Claim for Exemption filed pursuant to Rule 4.7(a) in connection with "A." "A's" operation of the Pool was effective September 25, 1992.

are not QEPs (the "Select Investors"). In one case, the non-QEP investor is an officer of "W". In the other case, the non-QEP investors are trusts whose beneficiaries are grandnieces or grandnephews of "A", the principal beneficial owner and Managing Member of "W".[3/]

You have identified the Select Investors as the following persons:

(1) "B", the Chief Administrative Officer of "W", and a certified public accountant. "B" has served in this capacity since May 1994. Prior to joining "W", he was an audit partner at "X", where his clients were primarily hedge funds and broker-dealers. He joined "X" in 1980. "B's" income in 1994 was in excess of $200,000 and is expected to continue to be at this level for 1995 and 1996. Although "B" does not currently qualify as an accredited investor, as that term is defined in Regulation D of the Securities Act of 1933, you expect that he will so qualify within one year. In addition, you represent that "B" has substantial investment experience and a high degree of financial sophistication.

(2-4) Three separate trusts ("Trusts"), the beneficiary of each of which is a grandniece or grandnephew of "A". Specifically, the Trusts are the "C" Trust, the "D" Trust, and the "E" Trust. The sole trustee of each Trust is "F", who is "A's" nephew. "F" is a QEP and makes all investment decisions on behalf of

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3/ Our records indicate that "A" is a listed principal and registered associated person of "W". In addition, our records show that "A" is a listed principal of the firms "A", which is registered as a CPO, and "Y", a registered commodity trading advisor. "A" is also a listed principal of "Z", a firm currently registered with the Commission as a futures commission merchant, but our records indicate that a request to withdraw this registration is pending.

the Trusts.[4/] None of Trusts qualifies as a QEP because each has total assets below $5,000,000.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7. Accordingly, subject to the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against: (1) "W", if "W" continues to claim relief from certain Commission requirements pursuant to Rule 4.7(a) in connection with its role as CPO of the Pool, notwithstanding an investment in the Pool by any of the Select Investors, and treats each such Select Investor as a QEP; and (2) the CPO of any Rule 4.7 Exempt Pool in which the Pool is or becomes a participant based solely upon the Pool's investment of more than ten percent of its assets in such Rule 4.7 Exempt Pool. This relief is subject to the conditions that each Select Investor consents to being treated as a QEP and "W" notifies each Select Investor that the Pool may invest more than ten percent of its assets in pools that are operated pursuant to a Rule 4.7 Claim of Exemption.

This letter is based upon the representations made to us and is subject to compliance with the conditions stated above. 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 if the operations or activities of "W" or the Pool change in any way from those represented to us. Further, this letter is applicable to "W" solely in connection with its operation of the Pool and to the CPOs of Rule 4.7 Exempt Pools in which the Pool is a participant solely in connection with the Pool's investment therein.

We note that this letter relieves "W" solely from certain requirements of Rule 4.7 in connection with its operation of the Pool and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")[5/] or in the Commission's regulations issued thereunder. For example, "W" remains subject to the antifraud provisions of Section 4o of the Act,[6/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other applicable requirements of Part 4. This letter represents the views of the Division only and does not

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4/ Our records show that "F" also is a registered CPO.

5/ 7 U.S.C. § 1 et seq. (1994).

6/ 7 U.S.C. § 6o (1994).

necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Thomas E. Joseph, an attorney on my staff, at (202)418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel