COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

95-13

January 17, 1995

Re: Application of Rules 4.7(a) and (b) Where One Class of Participants Includes Non-QEPs

Dear :

This is in response to your letter dated December 12, 1994 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, whereby you request on behalf of "X", a registered commodity pool operator ("CPO"), certain relief from Rules 4.7(a) and (b)[1/] in connection with its operation of The Directors Fund Limited Partnership (the "Fund"), a commodity pool which has two classes of units of participation, Class A, which is held by qualified eligible participants ("QEPs") and non-Qualified Eligible Participants ("Non-QEPs"), and Class B, which is held solely by QEPs.

Preliminarily, we note that by letter dated August 12, 1993 the Division issued to "X" certain relief such that "X" was permitted to file a Rule 4.7 claim of exemption with respect to the Class B units of the Fund, subject to compliance with certain conditions -- e.g., that the Class A participants would continue to receive the full protections of Part 4 of the Commission's regulations.

Based upon the representations you have made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund invests in other investment limited partnerships, one of which, "Y", is a commodity pool.[2/] "Y" is operated by "Z", a registered CPO. The Fund has been an investor in "Y" for the past four years, and before that it was an individual

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

2/ The Fund has approximately sixteen percent of its assets invested in "Y".

managed account client of "Z".[3/] "X" also allocates Fund assets for trading to registered commodity trading advisors. "X's" policy is to employ as CTAs to trade for pools for which "X" serves as a CPO only CTAs who have a trading history of at least twenty-four months, at least six months of which must represent trading of "X" proprietary funds.

You request that the Fund may be treated by "Z" as a QEP under Rule 4.7(a), and by CTAs retained to trade Fund assets as a QEC under Rule 4.7(b), notwithstanding the presence in the Fund of the Class A participants. In support of your request you represent that: (1) "X" will continue to comply with the conditions set forth in the Division's August 12, 1993 letter; (2) in the preparation of the Class A Disclosure Document, "X" will receive from "Z" and each CTA for the Fund all information and disclosures regarding "Z" and the CTAs necessary to prepare a Disclosure Document in compliance with Rule 4.21; and (3) "X" will not accept any new Class A participants in the Fund. In addition, you note the relationship "X" has had with "Z" and "Y" and the relationship it must have with any CTA to whom it allocates Fund assets for trading.

Based upon the foregoing, the Division believes that granting the requested relief would not be contrary to the public interest or the purposes of Rule 4.7. Accordingly, the Division will not recommend that the Commission take any enforcement action against "Z" for failure to comply with Rule 4.7(a) based solely upon "Z's" treating the Fund as a QEP for the purpose of the relief available under that rule or against any of the CTAs for the Fund for failure to comply with Rule 4.7(b) based solely upon such CTAs treating the Fund as a QEC for the purpose of the relief available under that rule.

This letter is based upon the representations that have been made 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 "X" or the Fund change in any way from those as represented to us.

We note that this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act") or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. IV 1992), to the reporting requirements for traders set forth in

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3/ "Y" succeeded to the individual managed account business of "Z".

Parts 15, 18 and 19 of the Commission's regulations and to all other provisions of Part 4.

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