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COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF TRADING AND MARKETS

March 10, 1995

Re: Rule 4.7(a): Request to Treat Investor as a Qualified Eligible Participant

Dear :

This is in response to your letter dated February 9, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request on behalf of "X", a registered commodity pool operator ("CPO"), relief from Rule 4.7(a)^{1/} in connection with "X's" contemplated operation of a commodity pool (the "Pool").

Based on the representations made in your letter, we understand the pertinent facts to be as follows. "X" is registered with the Commission both as a commodity pool operator ("CPO") and a commodity trading advisor ("CTA"). It proposes to serve as the CPO of the Pool. All investors in the Pool, with the exception of "A", will be qualified eligible participants ("QEPs") as defined in Rule 4.7(a), and but for "A's" presence, the Pool would qualify as an exempt pool under Rule 4.7(a).

"A" is Vice President of "X" and is listed as a principal on "X's" CPO and CTA registration applications. Additionally, he has applied for registration as an associated person ("AP") of "X".^{2/} His responsibilities with "X" will require "A's" direct involvement in the operation of the Pool as well as involvement in the day-to-day management of "X". "A" will have unrestricted access to and familiarity with all information regarding "X" and the Pool. While "A" does not qualify as a QEP, he is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act of 1933 and has over twenty years of trading and investment experience, including experience trading in the commodity futures markets. Finally, "A" has agreed to confirm in

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

^{2/} Currently, "A" is registered as an associated person of "Y", a registered futures commission merchant.

writing his acceptance of QEP treatment with respect to his participation in the Pool.

Based on the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" solely based on "A's" presence as a non-QEP investor in the Pool. This position is, however, subject to the condition that "X" provide the Division with written notice of the name of the Pool as soon as that name is selected.

This letter is based on the representations made to us and is subject to compliance with the condition set forth above. Any different, changed or omitted facts might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event "A's" responsibilities with respect to "X" or the Pool change in any way from those as represented to us.

This letter is applicable to "X" solely in connection with its operation of the Pool. Further, 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 thereunder. For example, "X" remains subject to the antifraud provisions of Section 4_o of the Act,^{3/} to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and all other applicable 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 do not hesitate to contact me or Thomas E. Joseph, an attorney on my staff, at (202)254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} 7 U.S.C. § 6_o (1988).