

COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile



DIVISION OF TRADING AND MARKETS

March 13, 1995

Re: Rule 4.7 Relief to Permit Officer to be Treated as a QEP.

Dear:

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated February 10, 1995, as supplemented by telephone conversations with Division staff, by which you request on behalf of "X", the general partner and registered commodity pool operator ("CPO") of (the "Fund"), relief from Rule 4.7, as is set forth more fully below.^{1/}

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Fund is a "fund of funds," with the Fund's assets allocated among different investment vehicles, including other commodity pools. Prior to January 1, 1995, "X" accepted only "qualified eligible participants" ("QEPs"), as that term is defined in Rule 4.7(a)(1)(ii), as participants in the Fund, and the Fund was operated pursuant to a claim of exemption under Rule 4.7(a).^{2/} On January 1, 1995, "X" admitted a participant into the Fund who is not a QEP.^{3/} By your letter, you request confirmation that "X" may continue to claim full relief under Rule 4.7, including the ability to invest more than ten percent of the Fund's assets in

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

^{2/} Division records indicate that "X" filed a Rule 4.7 Notice of Claim for Exemption with respect to the Fund, which was originally named the "Y", on February 15, 1994.

^{3/} Thus, pursuant to Rule 4.7(a)(3)(iii), the exemption claimed by "X" with respect to the Fund ceased to be effective on January 1, 1995.

other pools for which a claim of exemption has been filed under Rule 4.7 ("Investee Pools").^{4/}

The non-QEP investor is "A". "A" is the Managing Director and a listed principal of "X". As Managing Director, "A" is one of four officers responsible for "X"'s selection of Fund managers and for "X's" determination of the amount of Fund assets to be allocated to each manager. "A" evaluates managers to whom the Fund allocates its assets and provides evaluations of management techniques employed by the Fund's managers. From 1990 to 1993, when he became an officer of the firm, "A" acted as a consultant to "X". As a consultant, "A" was responsible for assisting "X's" selection of the managers to whom Fund assets were allocated and the amount of Fund assets to be allocated to each manager, in addition to evaluating the Fund's managers and their management techniques. Prior to 1990, "A" was the general partner of investment partnerships specializing in market-neutral, hedging strategies. "A" holds a law degree and a Ph.D. in mathematics, and is an "accredited investor" as defined in Regulation D under the Securities Act of 1933. Finally, you represent that "A" has consented to being treated as a QEP.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with Rule 4.7 if, notwithstanding its acceptance of "A" as a participant in the Fund, it continues to claim the relief made available under Rule 4.7 and invests more than ten percent of the Fund's assets in Rule 4.7 Investee Pools. Similarly, the Division will not recommend that the Commission take any enforcement action against any CPO of a Rule 4.7 Investee Pool based solely upon such Investee Pool accepting subscriptions from the Fund representing more than ten percent of the Fund's assets.

This position is based upon the representations you have made to us. 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 Fund or "A", including his employment and registration status, change in any way from those as represented to us. Further, this position is applicable to "X" solely in connection with its operation of the Fund.

This letter relieves "X" solely from certain requirements under Rule 4.7 in connection with the operation of the Fund and does not excuse it from compliance with any other applicable requirements of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 1 (1988 & Supp. V 1993), or the Commission's rules thereunder. For example, "X" remains subject to the antifraud provisions of

^{4/} Rule 4.7(a)(1)(ii)(B)(2)(xi) limits, to no more than ten percent, the amount of assets that a pool that is a QEP directed by a QEP, but whose participants are not all QEPs, may invest in Rule 4.7 Investee Pools.

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Section 40 of the Act, 7 U.S.C. § 60 (1988 & Supp. V 1993), to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's rules, and all other applicable provisions of Part 4 of the Commission's rules. In addition, the Division notes that it is not excusing or in any way limiting the Commission's authority to proceed against "X" for any past violation of the Act or the Commission's rules thereunder. The position stated herein is prospective only.

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 the Commission. If you have any questions concerning this correspondence, please contact me or Gary Dernelle, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel