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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

August 29, 1994

Re: Request for Relief from the "10% Limitation" of Rule 4.7(a)(1)(ii)(B)(2)(xi).

Dear :

This is in response to your letter dated June 1, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by memoranda dated June 14, 1994, and August 2, 1994, and telephone conversations with Division staff. By your letter you request on behalf of "V"[1/] and "Q", both registered commodity pool operators ("CPOs"), relief from certain requirements of Rule 4.7[2/] in connection with the operation of three commodity pools, "R", "S" and "Y" (collectively, the "Funds").

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "V" is the CPO of "R" and "Q" is the CPO of "S" and "Y". "R" has been operating since April 1988, "S" has been operating since May 1991 and "Y" has been operating since February 1991. Interests in the Funds have been privately offered in accordance with Section 4(2) of the Securities Act of 1933 solely to accredited investors. The current minimum investment per subscriber in each Fund is $100,000. The Funds follow a multi-manager, multi-strategy investment approach. The trading manager for each Fund is "T", a

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1/ Your incoming correspondence represented the name of your client to be "W". However, the National Futures Association ("NFA") records reflect that "P" is the name of the entity that is registered as the commodity pool operator of the commodity pool for which you are seeking relief and do not reflect that "W" is registered with the Commission. Division staff was informed by "A", of your office that the entity's correct name is "W". "A" advised Division staff that she would inform the NFA of the entity's correct name.

2/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

registered commodity trading advisor ("CTA") and an affiliate of "V" and "Q."[3/]

"Y" is the "core" fund of the three Funds in that "R" and "S" invest approximately fifty percent of their assets in "Y". "Y" allocates its assets among numerous managers, operating through managed accounts and collective investment vehicles (including commodity pools and hedge funds organized as limited partnerships and offshore corporations). As of April 30, 1994, "Y" had sixteen managers, with no single manager being allocated more than fifteen percent of "Y"'s assets. "Y"'s managers are all registered as CTAs.

The remaining fifty percent of the assets of "R" and "S" are invested in "U", a multi-manager commodity pool for which "V" is the general partner and CPO and "T" is the trading manager. Approximately fifty percent of the assets of "U" are invested in securities with the balance invested in commodity interest contracts, either directly or through commodity pools.

"R" has two investors that are not qualified eligible participants ("QEPs"),[4/] an individual and the individual's IRA, both of whom have been investors in "R" since July 1990 and whose participations represent approximately $400,000 of its approximate $11 million in assets.[5/] In addition, you represent that this non-QEP individual has been a friend of "B" for the past seven years.

As of April 1994, two of the eleven limited partners in "S", representing approximately $325,000 of its approximately $7.5 million in assets, were non-QEPs.[6/] Each of these non-QEPs has at least $100,000 invested in "S" and each of these investors also has a preexisting relationship with "B".

As of April 1994, four of the twenty-three limited partners in "Y", representing approximately $600,000 of its approximately $56

3/ "B" is a 100% owner of "V", "Q" and "T".

4/ The definition of a QEP is set forth in Rule 4.7(a)(1)(ii).

5/ Thus, these investors were participants in the Fund prior to the proposal of Rule 4.7.

6/ One of "S's" non-QEPs has been a friend of "B" for the past five years and an investor since June 1991 (prior to the proposal of Rule 4.7). The other non-QEP has been an investor since December 1992 and invested with her husband, although they did not invest as joint tenants. The husband is a QEP and has been a friend of "B" for the past fifteen years.

million in assets, were non-QEPs.[7/] Each of these non-QEPs has at least $100,000 invested in "Y".

You represent that no additional non-QEPs will be admitted in the Funds. Each of the non-QEPs is an "accredited investor" under Regulation D of the Securities Act of 1933.

Rule 4.7(a)(1)(ii)(B)(2)(xi) provides, among other things, that a pool may not invest more than ten percent of its assets in Rule 4.7 exempt pools ("Investee Pools") unless all participants in the pool are QEPs. You claim that each Fund seeks to invest more than ten percent of its assets in Investee Pools because the CPOs and CTAs of the Funds believe that Rule 4.7 Investee Pools offer favorable investment opportunities. Accordingly, you request relief from the ten percent limitation on investments in Rule 4.7 Investee Pools.

In further support of your request, you claim that no existing non-QEP investor would be adversely affected if the Division grants the requested relief. This is because "V" and "Q", the CPOs of the Funds, would continue to comply with the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively, including the requirements of Rule 4.22 to provide quarterly and certified annual reports to the pool participants.

Based upon the representations you have made, it appears that granting the relief you have requested would not be contrary to the public interest. Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against "V" and "Q", or the CPO of any Investee Pool, based solely upon a Fund investing more than ten percent of its assets in Investee Pools. This relief is subject to the condition that "V" and "Q" notify the participants of the Funds who are not QEPs that the Funds may invest more than ten percent of their assets in Investee Pools that are operated pursuant to a Rule 4.7 exemption and provides them an opportunity to redeem their interests in their respective Fund within ten days of their receipt

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7/ One non-QEP has been an investor in "Y" since April 1991 (prior to the proposal of Rule 4.7) and has been a friend of "B" for the past fifteen years. He also was a co-worker with "B" at the "X" where "B" worked from 1976-1990; one non-QEP has been an investor in "Y" since January 1993 and has been a friend of "B" for over 20 years. The remaining two non-QEPs are a charitable foundation and that foundation's pension plan, both of which have been investors since June of 1992. Although the foundation and the pension plan do not each have $2,000,000 in securities investments, they have approximately $2,000,000 on a combined basis. This latter investor was referred to "Y" by "Z", a Memphis-based investment consultant to pension plans and other institutional investors. Although "Z" is unaffiliated with "Y", "T" and "Z" often work together on investment matters.

of notification of the intention to invest more than ten percent of the assets of the Funds in Investee Pools.

This letter is based on the representations provided 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 "V" and "Q" in connection with the Funds change in any way from those as represented to us. Further, this letter is applicable to "V" solely in connection with its operation of "R", to "Q" solely in connection with its operation of "S" and "Y" and to the CPOs of Investee Pools solely in connection with the Funds' investment in them.

We note that this letter relieves "V", "Q" and the CPOs of Investee Pools solely from certain requirements of Rule 4.7 and does not excuse them from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 et seq. (1988 & Supp. IV 1992), or in the Commission's regulations issued thereunder. For example, each remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. § 6o (1988 & Supp. 1992), 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. 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 contact me or Tina Paraskevas Shea, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel