COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

95-50

March 15, 1995

Re: Rule 4.7 -- Request to Treat Certain Persons as Qualified Eligible Participants

Dear :

This is in response to your letter dated June 23, 1994, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by letters dated November 30, 1994, December 14, 1994, February 22, 1995 and March 7, 1995 and telephone conversations with Division staff, by which you request relief from certain requirements of Rule 4.7[1/] in connection with the operation of "W", a limited partnership (the "Partnership"), by "X", "Y" and "Z", (collectively the "General Partners").

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. The Partnership commenced operations on November 1, 1988. The General Partners are each registered as commodity pool operators ("CPOs"). Additionally, "Z" is registered as a commodity trading advisor ("CTA"). As of February 28, 1995, the Partnership had approximately $106.75 million in assets. The Partnership is an investment limited partnership which offers diversified asset management to its limited partners and operates as a "fund-of-funds." As of February 28, 1995, the Partnership had eighty-two limited partners, seventy-seven of whom are qualified eligible participants ("QEPs") as defined in Rule 4.7(a)(1), and five of whom are not QEPs. One of these limited partners will withdraw from the Partnership on or prior to July 1, 1995. At such time there will be four limited partners who are not QEPs (the "Non-QEPs"). The General Partners seek relief such that they may: (i) treat each non-QEP as a QEP; and (ii) invest more than ten percent of the fair market value of the Partnership's assets in Rule 4.7 exempt pools.

Specifically, the Non-QEP limited partners of the Partnership are as follows:

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

1. "The Trust", which has $750,000 invested in the Partnership and became an investor in July 1992. "X" is the sole trustee of and decision-maker for the trust. "X" is a QEP and is one of the general partners of the Partnership. The grantor of the trust, "A", is also a QEP. The beneficiaries of the trust are the grantor's adult daughters, "B" and "C", each of whom is an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933.

2. "D" Children 1993 Irrevocable Trust, which has $600,000 invested in the Partnership and is the successor to a trust that became an investor in the Partnership in December 1989. This trust has two trustees, who are also the sole beneficiaries of the trust and make all investment decisions for the trust. "E", one of the trustee/beneficiaries, owns, together with her husband, securities and other investments with an aggregate market value in excess of $2 million. "E" has investment experience in stocks, bond, mutual funds and the futures markets. "F", "E's" sister and the other trustee/beneficiary, has, together with her husband, securities and other investments with an aggregate market value in excess of $2 million. Both "E" and "F" are accredited investors. The grantors of the trust are the parents of the trustee/beneficiaries. Each of the grantors is a QEP.

3. "G" and "H", which has $200,000 invested in the Partnership and became an investor in December 1988. The beneficiaries of the foundation are aspiring musicians who have been awarded scholarships by the foundation. The persons who make the investment decisions for the foundation are "I" (President) and her husband, "J" (Vice President), each of whom is a QEP. They have extensive experience with securities and other investments.

4. "K" Children Trust Partners, which has $550,000 in-invested in the Partnership and became an investor in December 1989. The beneficiaries of the Trust are the children of the co-trustees and grantors, "L" and "M". "L" has a net worth in excess of $1 million and is an accredited investor. She has invested in marketable and non-marketable securities on numerous occasions. "M" is the president of a private investment company, and has received a B.A. and M.S. in physics, and a Ph.D. in mathematics. "M" has taught at "P", "Q", "R" and "S". "M" was a general partner, where his responsibilities involved trading activities in various and complex financial strategies and financial instruments. "M" is a QEP.

The Partnership is a QEP, as that term is defined in Rule 4.7(a)(1)(ii)(B)(2)(xi), but not all of its limited partners are QEPs. Thus, absent relief, the General Partners may not file a Rule 4.7 Claim of Exemption for the Partnership and they are subject to the provision in Rule 4.7(a)(1)(ii)(B)(2)(xi) prohib-

iting a pool in which not all of the participants are QEPs from investing more than ten percent of its assets in Rule 4.7 exempt pools (the "Ten Percent Limitation").

In support of your request you note that: (1) the Trustees of the non-QEP trusts are, at a minimum, accredited investors; (2) the grantors of the trusts (with the exception of "L") are QEPs; and (3) the decision-makers for the non-QEP foundation are an accredited investor and a QEP. You further represent that: (1) all of the non-QEPs are personally known to the General Partners and have been limited partners in the Partnership for at least the past five years, except for the Trust, a trust whose grantor and financial/investment manager are QEPs; (2) the General Partners will not accept any future investments by any investor who is not a QEP; and (3) each of the limited partners has consented to being treated as a QEP and to a waiver of the Ten Percent Limitation and understands that more than ten percent of the fair market value of the assets of the Partnership will be invested in Rule 4.7 exempt pools if the relief requested is granted by the Division.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest and the purpose of Rule 4.7. Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against: (i) the General Partners for failure to comply with the QEP criteria of Rule 4.7; or (ii) the CPO of any Rule 4.7 exempt pool in which the Partnership is or becomes a participant based solely upon the Partnership investment of more than ten percent of the Partnership's assets in such Rule 4.7 exempt pool. This relief is, however, subject to the condition that the General Partners comply with the procedures set forth in Rule 4.7(a)(3)(i)(I)(2) for previously offered pools for which the CPO proposes to file a claim for exemption under Rule 4.7.[2/]

This letter is based upon 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 the Partnership, the

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2/ Rule 4.7(a)(3)(i)(I)(2) requires that, where a pool has been offered or sold in full compliance with Part 4, the CPO must notify the pool's existing participants of its intention to claim a Rule 4.7 exemption, provide the participants with twenty-one days from the date of notification to object to such exemption, and provide objecting participants with disclosure and reports that comply with Part 4 or allow such participants to redeem their units within ninety days of the Rule 4.7 filing.

General Partners, or the participants in the Partnership change in any way from those as represented to us. Further, this letter is applicable to the General Partners solely in connection with their operation of the Partnership and to the CPOs of Rule 4.7 exempt pools in which the Partnership is a participant solely in connection with the Partnership's participation therein.

We note that this letter relieves the General Partners 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 (the "Act")[3/] or in the Commission's regulations issued thereunder. For example, they remain subject to the antifraud provisions of Section 4o of the Act,[4/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to 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 contact me or Myra Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

3/ 7 U.S.C. §1 et seq. (1988 & Supp. V 1993).

4/ 7 U.S.C. §6o.