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COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
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DIVISION OF
TRADING AND MARKETS

August 21, 1995

Re: Request to Treat Charitable Foundation as a Qualified Eligible Participant Under Rule 4.7

Dear :

This is in response to your letters dated July 24, 1995 and August 14, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, in which you request that the "X", a charitable foundation, be treated as a qualified eligible participant ("QEP") under Rule 4.7. The decision to treat the "X" as a QEP is necessary to allow "Y", a registered commodity pool operator ("CPO"), to continue to claim relief under Rule 4.7[1/] in connection with its operation of ("Pool") if it allows the "X" to become a participant in the Pool.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. The "X", formed as a corporation in 1992, is a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code. The "X" distributes most of its income to educational organizations, primarily in economically-depressed urban areas. It has approximately $1,100,000 in net assets and wishes to maintain an allocation of approximately thirty-five percent of its assets in the Pool. As you note in your correspondence, the "X" does not come within the definition of a QEP because it does not meet the portfolio and total asset criteria of Rule 4.7.

In support of your request to treat the "X" as a QEP, you explain that the "X's" investment decisions are made by "A", who is a QEP and has a net worth exceeding twenty-five million

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1/ Commission records indicate that "Y" filed a Rule 4.7 claim of exemption with respect to its operation of Pool on December 16, 1993. Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995).

dollars, more than twenty-five years of professional management experience, extensive experience with interest-rate arbitrage, a long-standing professional and personal relationship with the principals of the Pool's commodity trading advisor ("CTA"), and, through the latter relationship, has detailed knowledge about the Pool. He is also the president of the "X", and his wife, who is also a QEP, is the "X's" vice-president. These two individuals formed and funded the "X" and serve as its directors. In addition, they have consented to the treatment of the "X" as a QEP.

Based upon the representations made in your correspondence, the Division believes that your request has merit. Accordingly, the Division will not recommend that the Commission take any enforcement action against "Y" for failing to comply with the QEP criteria of Rule 4.7 with respect to the "X" if "Y" allows the "X" to become a participant in the Pool.

This letter is based on the representations made in your letters, as supplemented. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations or activities of the "X" change in any way from those represented to us.

We note that this letter relieves "Y" solely from the QEP criteria of Rule 4.7 with respect to participation of the "X" in the Pool and does not excuse "Y" from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (1994) ("Act"), or in the Commission's regulations issued thereunder. For example, "Y" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. 6o (1994), 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.[2/]

Further, 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

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[2/] 17 C.F.R. Ch. I Part 4 (1995), amended by 60 Fed. Reg. 38146 (July 25, 1995).

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

Very truly yours,

Susan C. Ervin
Chief Counsel