U.S. COMMODITY FUTURES TRADING COMMISSION

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95-88

DIVISION OF
TRADING & MARKETS

October 10, 1995

Re: Qualified Eligible Participants for Purposes of Rule 4.7

Dear :

This is in response to your letter dated August 17, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated August 29, 1995, and telephone conversations with Division staff, in which you request that "A" and "B" be treated as qualified eligible participants ("QEPs") under Rule 4.7.[1/] The decision to treat "A" and "B" as QEPs is necessary to allow "U", of which "A" and "B" are limited partners, to claim relief under Rule 4.7.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. "U" is a private investment partnership that principally engages in long term equity acquisitions or securities investments and invests its cash pending such acquisitions or investments in securities. "U" intends to invest a small portion of its assets as initial margin deposits and premiums in futures and options on futures for hedging or risk management purposes. The general partners of "U" are "C" and "D". "C" and "D" are both registered as commodity pool operators. "A" and "B" are limited partners and Managing Directors of "U". Additionally, "A" and "B" are employed by "U" to "target" merger and acquisition opportunities. All decisions concerning the activity "U" should take with respect to such opportunities are, however, made by "C" and "D".

In support of your request to treat "A" and "B" as QEPs, you state that they are accredited investors within the meaning of Rule 501(a) under the Securities Act of 1933. Furthermore, "A" and "B" have consented to treatment as QEPs.

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), amended by 60 Fed. Reg. 38146 (July 25, 1995).

With respect to "A", you indicated that he has been employed by "U" since January 1994. Prior to joining "U", from June 1991 through December 1993, he was the sole principal of an entity formed by him to engage in, and consult on, venture capital investments. Concurrently, from December 1991 through March 1993, he was a Vice-President for acquisitions at "V", a securities investment firm. From 1988 through 1991, he was a Vice President in investment banking with the "W" and from 1984 through 1986, an investment banker in mergers and acquisitions with "X".

With respect to "B", you state that he has been employed by "U" since April 1994. Prior to joining "U", from 1991 through 1994, he was a First Vice President at "Y", a division of "Z", and a portfolio manager in charge of high-yield investments. From 1987 through 1990, he was an equity analyst for "Y".

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 "C" and "D" for failure to comply with the QEP criteria of Rule 4.7 with respect to "A" and "B".

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 "U" change in any way from those represented to us.

We note that this letter relieves "C" and "D" solely from the QEP criteria of Rule 4.7 with respect to "A" and "B" and does not excuse them 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, they remain 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.

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 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