



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF  
TRADING AND MARKETS

95-09

February 2, 1995

Re: Request for Relief to Treat an Individual as a Qualified Eligible Client under Rule 4.7(b)(1)(ii)

Dear :

This is in response to your letter dated December 6, 1994, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated December 23, 1994, January 4, 1995 and January 17, 1995 and by telephone conversations with Division staff. By your December 6 letter, you request confirmation that "X", a registered commodity trading advisor ("CTA"), may claim relief under Rule 4.7<sup>1/</sup> in connection with providing commodity interest trading advice to an individual who is not a qualified eligible client ("QEC"), as defined in Rule 4.7(b)(1)(ii).

Based upon the representations made in your letter, as supplemented, we understand the facts to be as follows. "X" currently provides commodity trading advice solely to QECs pursuant to a claim of exemption filed under Rule 4.7 with the Commission and the National Futures Association.<sup>2/</sup> "X" offers a trading program with respect to futures and options contracts on soybeans and related products on the Chicago Board of Trade. "B", who is registered as an associated person of "X" ("AP"), is primarily responsible for directing the trading program.

"X" wishes to open an account for "A", a citizen and resident of Switzerland, who is not a QEC, and to treat "A" as a QEC for purposes of the relief provided by Rule 4.7. In support of your request, you represent that "A": is an accredited investor, as defined in Regulation D under the Securities Act of 1933; is not a United States person for purposes of Rule 4.7(a)(1)(ii);

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

<sup>2/</sup> Commission records indicate that the filing was made on December 1, 1994.

and will agree to be treated as a QEC. In addition, you note the close prior business relationship between "A" and the AP.

Specifically, you represent that prior to his association with "X", the AP was employed by "Y", an international dealer in grain products, for twenty-seven years. The AP and "A" worked closely with each other during 1986 and 1987 at "Y's" office in Geneva, Switzerland, where "A" provided the AP with trading research in the soybean, grain and oilseed complexes, among others, in connection with trading responsibilities for "Y". This business association continued until recently, when the AP left "Y". Because of a "Y" policy prohibiting researchers from directly trading their own futures accounts, "A" would like to establish a discretionary trading account with "X". The decision of "A" to trade through "X" is a result of his professional relationship with the AP, which developed over their years together at "Y". While at "Y", "A" gained personal knowledge of the AP's familiarity with the soybean complex as well as the AP's trading performance with both hedge and speculative trades, also in the soybean complex. Therefore, "A" believes that the AP is the appropriate person to conduct his current trading.

Based upon the foregoing representations, the Division believes that your request has merit. Accordingly, subject to the condition set forth below, the Division will not recommend that the Commission take any enforcement action against "X" for failing to comply with the QEC criteria of Rule 4.7(b)(1)(ii) with respect to his provision of commodity interest trading advice to "A". This position is subject to the condition that "A" agrees to be treated as a QEC.

This letter is based upon the representations made in your letter, as supplemented, and is subject to the compliance with the condition stated above. 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 "X" or the AP change in any way from those as represented to us.

We note that this letter relieves "X" solely from the QEC criteria of Rule 4.7(b) with respect to providing commodity interest trading advice to a non-QEC and does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act, 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992) ("Act"), or in the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. 6o (1988 & Supp. IV 1992), 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.

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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 Myra Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin  
Chief Counsel