U.S. COMMODITY FUTURES TRADING COMMISSION
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96-16

DIVISION OF
TRADING & MARKETS

January 17, 1996

Re: Request for Relief Under Rule 4.7

Dear :

This is in response to our telephone conversation of December 21, 1995 as supplemented by your letter of December 22, 1995 by which you requested on behalf of "X", a registered commodity pool operator ("CPO") and general partner of the "Partnership", confirmation that it may claim relief under Rule 4.7[1/] despite the fact that certain limited partners in the Partnership, as described more fully below, will not be qualified eligible participants ("QEPs") as that term is defined in the rule.[2/] In addition, you request on behalf of the Partnership relief from the restriction in Rule 4.7(a)(1)(ii)(B)(2)(xi) (the "ten percent restriction") that would prevent the Partnership, as a pool with non-QEP participants, from investing more than ten percent of its assets in other pools for which the CPOs thereof have claimed relief under Rule 4.7 ("Rule 4.7 exempt pools").

(a) General Representations.

As noted in our November 22, 1995 letter and based upon your correspondence, "X" is a closely held corporation owned equally by "A" and "B". "X" is the general partner of the Partnership.

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

2/ "A", a principal of "X", and Thomas E. Joseph, an attorney on my staff, also took part in the December 21, 1995 telephone conversation. By letter dated November 22, 1995, we granted similar relief to that requested herein with respect to certain non-QEP investors who will invest in the Partnership. We note that the names of persons submitted by your current request were previously submitted to us as part of your earlier request, but, as noted in our November 22, 1995 letter, your request concerning these persons was withdrawn after a conversation with Division staff. Any relief granted in this letter is in addition to that granted by our November 22, 1995 letter.

The Partnership is a fund of funds. All investments by the Partnership in commodity interests will be through its investments in other funds. None of the funds in which the Partnership invests will have significant exposure to commodity futures or commodity options contracts, although such funds may trade such commodity interests in a manner solely incidental to their securities trading activities. It is anticipated that total assets in the Partnership will be in excess of $5 million. In addition, you state that the Partnership may on occasion wish to invest more than ten percent of the fair market value of its assets in Rule 4.7 exempt pools. With the possible exception of certain persons with respect to whom "X" received relief by our November 22, 1995 letter, interests in the Partnership will be sold only to limited partners qualifying as QEPs, as defined in Rule 4.7. You are now requesting that we grant relief for the potential non-QEP investors described below (the "Non-QEP LPs") so that they may invest in the Partnership and "X" may still claim relief under Rule 4.7.

Finally, you represent that if the relief requested herein is granted, each of the Non-QEP LPs will be required to consent to being treated as a QEP, including express consent that they will not receive certain disclosures that would otherwise be required to be given to non-QEP investors, and to a waiver of the ten percent restriction and will be notified that more than ten percent of the fair market value of the assets of the Partnership may be invested in Rule 4.7 exempt pools.

(b) Non-QEP LPs.

"C", who is a partner in the largest law firm and is Chairman of the firm's Corporate Securities Department. "C" is the personal attorney for an individual with a net worth of over $500 million. As part of his services to this individual, "C" reviews and discusses investments with the individual and the individual's certified public accountant. This individual is also one of the largest and most important clients of "X". This client is predominantly invested in hedge funds of which "C" has conducted due diligence and analyzed their investment strategies. Many of the funds invested in by "C's" client are identical to those invested in by the Partnership. In his capacity as attorney to this wealthy individual, "C" is in frequent contact with the principals of "X" and has access to their consulting advice. "C" is a trustee of, and makes all investment decisions for, a trust with assets of more than $20 million. He is a co-trustee of, and shares investment discretion for, a trust with assets of over $10 million. "C" is an accredited investor.

"D" who has a net worth of $1.5 million, invested primarily in stocks, bonds and nontraditional investments. He personally manages his investment portfolio and is involved in and has

input into the investment decisions made for "Y" and "Z" which have combined assets in excess of $50 million.[3/] These trusts are among the largest and most important clients of "X". "D" has an undergraduate degree in international marketing and a masters degree in business administration. He is the son of "E", a QEP who is the trustee of the "Z" Trust. He is advised by an investment adviser who has worked closely with "X" and "V" since 1985 and who serves as personal investment adviser to "E". "D" is an accredited investor. He is personally acquainted with the principals of "X".

"F" who has a net worth of $1.2 million, invested primarily in stocks, bonds and nontraditional investments. She personally manages her portfolio and has regularly attended financial seminars and money market meetings. As is her brother "D", she is involved in making the investment decisions for "Y" and the "Z" and is advised by "E's" personal investment adviser. "F" is an accredited investor.

"G", who owns securities with a market value of approximately $1.2 million. For over 30 years, "G" has participated in general partnerships investing in commercial real estate. She also is an attorney. She is the sister-in-law of "H", who serves as the Chief Financial Officer of the Foundation (described below). "H", with whom "X" and "V" informally consult on issues related to their investments, informally advises "G" on her investments.[4/] "G" is an accredited investor.

"I", who has been the Executive Director of the Foundation since 1989 and has been employed by the Foundation since 1978. The Foundation is the largest charitable foundation and has assets of over $170 million. The Foundation was founded by the father-in-law of "B", and it has been a consulting client of "V" since 1992. "I" works closely with "B", a principal of "X" and a trustee of the Foundation, in selecting investments and monitoring the Foundation's current investments. In his role as Executive Director, "I" must approve all of the Foundation's investments. His position with the Foundation has given him extensive knowledge of the hedge fund industry. One hundred percent of the Foundation's assets are currently invested in hedge funds, including funds that employ convertible bond arbitrage, risk arbitrage and other

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3/ "Z" was one of the subjects of the relief granted by our November 22, 1995 letter, and will be an investor in the Partnership.

4/ You represent that "H" is a large investor with "X" and that "H" and "B", a principal of "X", speak two or three times a week.

sophisticated strategies. The Foundation has historically invested a significant portion of its assets in many investment partnerships that are identical to those invested in by the Partnership. "I" is an accredited investor and has a net worth in excess of $1,000,000.

"J", who has a net worth of $1 million, approximately sixty percent of which is invested in commercial real estate and approximately forty percent of which is invested in investment securities. Before a recent divorce settlement, "J" had a net worth of approximately $2 million and was a QEP. For approximately the last six months, "J" has been a sales person for one of the largest underwriters of government bonds in the United States. She has her Division 52 license to buy and sell bonds. "J" has managed her own portfolio for approximately twenty years and has accumulated her net worth through her own trading. She is in the process of liquidating her real estate holdings and investing in securities. She has conducted extensive research on the hedge fund industry. "J" is personally acquainted with the principals of "X". "J" is an accredited investor.

(c) Relief.

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 conditions stated below, the Division will not recommend that the Commission take any enforcement action against: (i) "X" if "X" files a Rule 4.7(a) claim for exemption as the CPO of the Partnership, notwithstanding the participation in the Partnership of any of the Non-QEP LPs listed above, and treats each Non-QEP LP as a QEP; and (ii) the CPO of any Rule 4.7 exempt pool in which the Partnership is or becomes a participant based solely upon the Partnership's investment of more than ten percent of the Partnership's assets in a Rule 4.7 exempt pool. This relief is subject to the conditions that each Non-QEP LP consents to being treated as a QEP and that "X" notifies all Non-QEP LPs that the Partnership may invest more than ten percent of its assets in pools that are operated pursuant to a Rule 4.7 exemption before such Non-QEP LPs are allowed to invest in the Partnership.

This letter is based upon the representations made to us and is subject to compliance with the conditions 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 if the operations or activities of the Partnership, "X" or the other persons and entities referred to above change in any way from those represented to us. Further, this letter is applicable to "X" solely in connection with its 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 "X" solely from certain requirements of Rule 4.7 and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")[5/] or in the Commission's regula-tions issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 4o of the Act,[6/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission regulations, and to all other applicable requirements of Part 4.

This letter represents the views of the Division only and does not necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence, please contact me or Thomas E. Joseph, an attorney on my staff, at (202)418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

5/ 7 U.S.C. § 1 et seq. (1994).

6/ 7 U.S.C. § 6o (1994).