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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

March 29, 1996

Re: Request to Treat Foundation and Trusts as Qualified Eligible Participants under Rule 4.7

Dear :

This is in response to your letter dated March 6, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request relief from the qualified eligible participant ("QEP") criteria of Rule 4.7(a)[1/] on behalf of "A", a registered commodity pool operator ("CPO") and QEP, with respect to "the Fund", a commodity pool operated by "A". You seek confirmation that "A" may claim relief under the rule with respect to the Fund despite the fact that certain persons interested in investing in the Fund will not be QEPs.

Based upon the representations contained in your letter, as supplemented, we understand the relevant facts to be as follows. On November 1, 1995, "A" filed a Notice of Claim for Exemption pursuant to Rule 4.7 ("Rule 4.7 Notice") on behalf of the Fund. Pursuant to this exemption, interests in the Fund may be sold only to QEPs. However, "A" would now like to admit the following non-QEP investors ("Non-QEP Investors") into the Fund:

(1) "The Foundation", a non-profit association that currently has approximately $4,200,000 in assets. "A" is the major contributor to the Foundation, but some amounts were donated by a close family friend of "A", who independently meets the criteria of a QEP. "A" may make additional contributions to the Foundation in the future.

(2) A charitable remainder trust, which has approximately $500,000 in assets. It provides income to "A" for three years (until December 1998), followed by income

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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).

to each of "A's" two daughters for her life if "A" predeceases her. The remainder of the trust will be distributed to the Foundation. The trust has two trustees: (1) "B", "A's" attorney, and (2) "C", a close friend of "A".

(3) A charitable remainder trust, which has approximately $2,750,000 in assets. It provides income to "A" for life, followed by income to his wife for life if "A" predeceases her. The remainder of this trust will be distributed to the Foundation. "B" and "C" also are the trustees of this trust.

In support of your request, you represent that the Foundation and the two trusts all have been established as part of "A's" financial and estate planning, and that "A" will make the investment decisions for each of them.

Based upon the representations you have made, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7. Accordingly, the Division will not recommend that the Commission take any enforcement action against "A" for failure to comply with Rule 4.7(a) if he continues to claim relief pursuant to Rule 4.7, notwithstanding investment by the Non-QEP Investors and treats each such investor as a QEP. This relief is, however, subject to the condition that each Non-QEP Investor consents in writing to being treated as a QEP.

We note that this letter relieves "A" solely from compliance with certain requirements of Rule 4.7 and does not excuse him from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")[2/] or the Commission's regulations issued thereunder. For example, he remains subject to the antifraud provisions of Section 4o of the Act,[3/] the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable requirements of Part 4.

This letter is based upon your representations and is subject to compliance with the condition stated above. 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 that the operations or activities of the Fund, including the composition

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2/ See 7 U.S.C. § 1 et seq. (1994).

3/ 7 U.S.C. § 6o (1994).

of its investors, change in any way from those as represented to us. This letter represents the position of the Division only. It does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel