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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

September 30, 1996

Re: Request to Treat Investors as Qualified Eligible Participants under Rule 4.7

Dear :

This is in response to your letter dated July 31, 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 "U", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), with regard to the "Fund", a commodity pool operated by "U" that invests primarily in United States securities.

Based upon your representations, we understand the relevant facts to be as follows. The Fund has been operated pursuant to the criteria of Rule 4.12(b).[2/] "U" now seeks relief under Rule 4.7, as it wishes to cause the Fund to invest more than ten percent of its assets in commodity interests and still be exempt from certain disclosure and monthly reporting requirements of Part 4. With the exception of certain existing and prospective non-QEP investors ("Non-QEP Investors"), all limited partners of the Fund are QEPs. You represent that the Non-QEP Investors are sophisticated investors "fully capable of evaluating and assuming the risks of an investment in the Fund" as QEPs without the full disclosure and reporting safeguards of the Commodity Exchange Act

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1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

2/ Interests in the Fund have been privately offered and sold under Section 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder. Pursuant to a Claim of Exemption under Rule 4.12 filed on January 2, 1996, the Fund may not invest more than ten percent of its assets in commodity interests.

("Act")[3/] and the Commission's regulations. Specifically, the Non-QEP Investors who are existing limited partners of the Fund are:

(1) "A", a former employee of "V", a member of "U". He currently is employed by "W" as an equity securities trader and has more than fifteen years of professional experience in financial matters. "A", who is an accredited investor as defined in Regulation D and has a net worth exceeding $1 million, owns interests in the Fund directly and through an Individual Retirement Account.

(2) "B" and "C", the parents of "D", a limited partner of the Fund who is an investment manager. They are accredited investors and have a net worth exceeding $1 million.

The prospective Non-QEP Investors are friends or relatives of "E", a securities trader hired on May 15, 1996 by "X", an affiliate of "U" that is registered as a CTA and CPO and serves as co-investment manager to the Fund. All of the prospective Non-QEP Investors were investors in "Y", a securities investment fund for which "E" made trading decisions before being hired by "X".[4/] The prospective Non-QEP Investors are:

(3) "F", "E's" uncle. "F" currently is employed by "Z", a corporation controlled by "E's" father. He has a total net worth of approximately $865,000 and an annual income of approximately $100,000.

(4) "H", the father of "I", a trading assistant at "X" who reports directly to "E". "H" is an accredited investor with a net worth exceeding $1 million.

3/ 7 U.S.C. § 1 et seq. (1994).

4/ "E", who received a bachelor's degree in history in 1991, traded securities and commodities for his own account throughout college until 1993. "E" traded for "Y" beginning in February 1993 and was registered as a principal of "T" from May 1995 to May 1996. He is no longer affiliated with either "Y" or "T".

You represent that "E" met "G", who is individually registered as a CPO and is the sole managing member of "U" and "X", at the end of 1995 and employment negotiations began in early 1996. Of all the investment managers at "X", "E" currently is second only to "G" in the amount of money allocated to him and traded pursuant to one of the Fund's primary trading strategies.

In support of your request, you represent that "U" will: (1) notify each existing and prospective limited partner that the Fund may invest more than ten percent of its assets in commodity interests; (2) obtain the consent of each limited partner to "U's" claiming relief under Rule 4.7 consistent with Rule 4.7(a)(3)(i)(I)(2); (3) obtain from each Non-QEP Investor its written consent to be treated as a QEP; and (4) cause any limited partner who is a family member of "E" to redeem or transfer its interests in the Fund if "E" ceases to trade on behalf of "X". In addition, all limited partners, including each Non-QEP Investor, will have access to all of the Fund's books and records.

Based upon your representations, 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 "U" for failure to comply with Rule 4.7(a) if it claims relief pursuant to Rule 4.7, notwithstanding investment by the Non-QEP Investors in the Fund, and treats the Non-QEP Investors as QEPs.

We note that this letter relieves "U" solely from compliance with certain requirements of Rule 4.7 and does not excuse it from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act,[5/] 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. Further, this letter is applicable to "U" solely in connection with its operation of the Fund.

This letter is based upon the representations you have made to us. 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 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.

5/ 7 U.S.C. § 6o (1994).

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