97-16

U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

COMMODITY FUTURES TRADING COMMISSION RECEIVED FOR PUBLIC RECORD
Mar 26 5 11 PM '97

March 21, 1997

Re: Request to Treat Charitable Foundation as a Qualified Eligible Participant Under Rule 4.7(a)

Dear :

This is in response to your letter dated February 27, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, in which you request that "X", a charitable foundation, be treated as a qualified eligible participant ("QEP") for purposes of Rule 4.7(a).[1] The decision to treat "X" as a QEP is necessary to allow "Y" to continue to claim relief under Rule 4.7(a) in connection with its operation of the "Pool" in the event that it allows "X" to become a participant in the Pool.[2]

Based upon the representations made in your letter, as supplemented, we understand the pertinent facts to be as follows. "X", a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code, was established solely for the purpose of making charitable contributions and incurs no material expenses other than accounting expenses. "X" has approximately $740,000 in net assets and wishes to invest approximately $500,000 of its assets in the Pool. As you note in your letter, "X" does not come within the definition of a QEP because it does not meet the portfolio and total asset criteria of Rule 4.7(a).

In support of your request to treat "X" as a QEP, you explain that the trustee of, and the person who makes the investment decisions for, "X" is "A". Among other things, "A" also: (1) established and is the sole source of funding of "X"; (2) is

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

[2] Commission records indicate that "Y" filed a notice of claim of exemption pursuant to Rule 4.7 with respect to its operation of the Pool on February 4, 1997.

registered as an associated person of "Y"; and (3) is a QEP with an investment portfolio of more than $25 million and more than 25 years of investment experience. "A" consents to the treatment of "X" as a QEP with repect to its investment in the Pool.

Based upon the representations made in your letter, as supplemented, the Division believes that your request has merit.[3] Accordingly, the Division will not recommend that the Commission take any enforcement action against "Y" for failure to comply with the QEP criteria of Rule 4.7(a) with respect to "X" solely on the ground that "Y" allows "X" to become a participant in the Pool.

This letter is based upon the representations made in your letter, 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 "X" change in any way from those represented to us.

We note that this letter relieves "Y" solely from the QEP criteria of Rule 4.7(a) with respect to participation of "X" in the Pool and does not excuse "Y" 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, "Y" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. 6o, to the reporting requirements for traders set forth in Parts 15, 18, 19 of the Commission's regulations and to all other applicable provisions of Part 4.

Further, this letter represents the views of the 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

[3] See Division of Trading and Market Interpretative Letter No. 95-72, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,502 (August 21, 1995).

contact me or Gary L. Goldsholle, an attorney on my staff, at (202) 415-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel