



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

9721

COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD
APR 8 3 49 PM '97

DIVISION OF
TRADING & MARKETS

March 21, 1997

Re: Rule 4.7 -- Request to Allow Certain Non-QEP Investors in a Rule 4.7(a) Exempt Pool, for Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools, and to Treat the Pool as a QEC

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"). By your correspondence, you request that: (1) the Division not recommend that the Commission take any enforcement action against (the "General Partner"), the general partner of (the "Pool"), for failure to comply with Rule 4.7(a)¹ if it allows four non-qualified eligible participant ("QEP") investors to invest in the Pool and for failure to comply with Rule 4.7(b) if it treats the Pool as a qualified eligible client ("QEC"); and (2) the Pool be granted relief from the ten percent investment limitation found in Rule 4.7(a)(1)(ii)(B)(2)(xi) ("Ten Percent Limitation").

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. The General Partner is a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), and serves as the CPO and CTA of the Pool. The General Partner is managed by its general partner, ("X").

The Pool began trading in November of 1990 and as of December 31, 1996, the capitalization of the Pool was approximately \$277 million. Commission records show that the General Partner filed Notices of Claim of Exemption under Rule 4.7(a) with respect to the Pool and under Rule 4.7(b) with respect to qualified eligible clients on May 25, 1993. Interests in the Pool are presently only offered to QEP investors. The General Partner proposes to allow four persons (the "Select Investors") to invest in the Pool even though they are not QEPs as defined in Rule 4.7(a). Each Select Investor: (1) qualifies as an "accredited investor" under Regulation D of the Securities Act of 1933; (2) possesses extensive

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).

experience in the financial services industry; and (3) is employed by "Y", the general partner of "X", the general partner of the Pool's CPO. Through their employment by "Y", the Select Investors are involved in the General Partner's investment activities and/or operations and have complete access to all of the General Partner's records regarding those activities, including all information relating to the Pool. You have provided the following additional information about each Select Investor:

1. "A". "A" joined "Y" in November 1991. He has more than five years of experience in trading financial instruments and managing portfolio financing activities. In April 1994 he assumed the role of Portfolio Manager-U.S. Equity Derivatives. He has passed the Series 7 and 24 examinations and holds a B.A. in Economics and an M.B.A. in Finance.

2. "B". "B" joined "Y" in February 1994. He holds the position of Portfolio Manager-Risk Arbitrage and is responsible for the selection and trading of all risk arbitrage positions. He has passed the Series 7 examination and holds a B.S. in Mathematics and Anthropology, an M.B.A. and a J.D.

3. "C". "C" joined "Y" in October 1993. He has developed derivative pricing models for equity-warrants and convertible bonds for "Y" and worked on the implementation of risk management systems and statistical arbitrage trading strategies. Prior to joining "Y" he worked with models of foreign exchange forecasting. He holds a Ph.D. in Physics.

4. "D". "D" joined "Y" in August 1996. "D" evaluates, converts and trades private placement convertible securities issued by publicly-traded entities. He also continues to work as a principal of "Z", which manages separate accounts. Prior to joining "Y", "D" was the general partner of a private limited partnership which at its peak managed \$17 million in assets and before that he worked as an equity analyst and auditor. He holds a B.S. in Economics and a Masters of Management degree.

Based upon the foregoing, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7. Accordingly, subject to the condition specified below, the Division will not recommend that the Commission take any enforcement action based solely upon failure to comply with Rule 4.7 against: (1) the General Partner if it claims relief pursuant to Rules 4.7(a) and 4.7(b), notwithstanding investment in the Pool by the Select Investors; and (2) the General Partner or the CPO of any Rule 4.7(a) exempt commodity pool in which the Pool invests, if the Pool invests more than ten percent of the fair market value of its assets in Rule 4.7(a) exempt pools. In accordance with this relief, the General Partner may treat the Pool as an exempt pool under Rule 4.7(a) and the account of the Pool as an exempt account under Rule 4.7(b). This relief is, however, subject to the condition that each Select Investor consents to treatment as a QEP.

This letter is based upon the representations made to us, is subject to compliance with the condition set forth above, and is applicable to the General Partner solely with respect to the Pool. 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 that the activities or composition of the Pool, the General Partner or the Select Investors differ in any respect from those as represented to us.

This letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Commodity Exchange Act² (the "Act") or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all otherwise applicable provisions of Part 4.

Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect 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 Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

² The Act is found at 7 U.S.C. §§ 1 et seq. (1994).