

**CFTC Letter No. 97-23****February 27, 1997****Division of Trading & Markets**

Re: Request to Treat Investor as a Qualified Eligible Participant under Rule 4.7

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Dear :

This is in response to your letter dated January 15, 1997 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 on behalf of (the General Partner), a registered commodity pool operator ("CPO"), relief from Rule 4.7(a)<sup>1</sup> in connection with its operation of "the Partnership"<sup>2</sup> such that it may treat A as a qualified eligible participant ("QEP") as defined in the rule.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The General Partner wishes to permit A, who is not a QEP, to invest in the Partnership. In support of your request, you represent that A: (1) has been a Managing Director of X's operations since October 1995; (2) previously was employed as a trading strategist by Y and, in that capacity, was responsible for developing new trading strategies for a \$100 million proprietary fund; (3) received an M.B.A. in Finance and Entrepreneurial Management from Z in May 1993; (4) is fully familiar with the investment activities of the Partnership and has access to its books and records; and (5) consents to treatment as a QEP.

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(a). Accordingly, the Division will not recommend that the Commission commence enforcement action against the General Partner for failure to comply with Rule 4.7(a) solely based on its treatment of A as a QEP. This relief is applicable to the General Partner solely in connection with its operation of the Partnership.

This letter is based upon the representations made in your correspondence. 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 Partnership, including the composition of its investors,

change in any way from those represented to us. The relief issued by this letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")<sup>3</sup> or the Commission's regulations issued thereunder. For example, the General Partner remains subject to the antifraud provisions of Section 4o<sup>4</sup> of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4. Further, this letter represents the position of this 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 Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

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

<sup>2</sup> On behalf of the Pool, the General Partner filed a Notice of Claim for Exemption pursuant to Rule 4.7, which became effective on October 30, 1995. On November 21, 1995, the Division granted the General Partner relief from 4.7(a) such that certain non-QEPs, i.e., an individual and certain trusts, were deemed to be QEPs.

<sup>3</sup> 7 U.S.C. §1 et seq. (1994).

<sup>4</sup> 7 U.S.C. §6o (1994).