

**CFTC Letter No. 97-19****March 26, 1997****Division of Trading & Markets**

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

Dear :

This is in response to your letter dated February 14, 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 relief from the qualified eligible participant ("QEP") criteria of Rule 4.7(a)<sup>1</sup> on behalf of X , a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), with regard to "Fund", a commodity pool operated by X which invests primarily in United States securities.

Based upon your representations, we understand the relevant facts to be as follows. By letter dated September 30, 1996, the Division stated that it would not recommend that the Commission take any enforcement action against X for failure to comply with Rule 4.7(a) if it claimed relief pursuant to Rule 4.7, notwithstanding investment in the Fund by four investors who were not QEPs, and treated those investors as QEPs. X now seeks further relief under Rule 4.7(a) in order to permit additional persons who are not QEPs ("Non-QEP Investors") to invest in the Fund as limited partners. 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, reporting and recordkeeping safeguards of the Commodity Exchange Act ("Act")<sup>2</sup> and the Commission's regulations. Specifically, these Non-QEP Investors are:

(1)-(2) A and B , who are listed principals of and investment managers for Y , an affiliate of X which is registered as a CTA and CPO and serves as co-investment manager to the Fund.

(3)-(6) C , D , E and F , who are investment managers for Y .

(7) G , who is an employee of Y . As F's principal trading assistant, G assists in managing the Fund's investments in international equities. He worked at W as a financial analyst involved in international equities research and institutional brokerage from 1993 to May 1995, and in May 1995 left W to form his own fund, Z , to trade diversified equities.<sup>4</sup>G ,

who received a bachelor's degree in economics in 1993, has a net worth in excess of \$400,000.

(8) H , who has personally known<sup>5</sup> I for approximately 17 years and worked with I as a trader for approximately nine years.<sup>6</sup> H is a registered representative as a consultant to V , a registered broker/dealer that actively trades equity securities for proprietary accounts. He also is registered as an associated person and listed as a principal of V , which is registered as an introducing broker. H is an accredited investor as defined in Regulation D under the Securities Act of 1933,<sup>7</sup> as amended.

In support of your request, you represent that X will: (1) obtain from each Non-QEP Investor his written consent to be treated as a QEP; and (2) cause any limited partner who is employed by or a principal of X or Y to redeem or transfer his interests in the Fund if he is no longer so employed or listed as a principal. 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 X 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 X 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 40 of the Act,<sup>8</sup> 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 X 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.

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

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

<sup>2</sup> 7 U.S.C. § 1 et seq. (1994).

<sup>3</sup> On November 4, 1996, the Division granted X an exemption from compliance with Rules 4.21, 4.22(a) and (b), 4.24, 4.25 and 4.26 in connection with its operation of ("U"), another commodity pool operated by X that invests primarily in securities. CFTC Interpretative Letter No. 96-82 (November 4, 1996) (to be published in Comm. Fut. L. Rep. (CCH)). A , B , C , D and E are limited partners in U .

<sup>4</sup> Z has ceased trading and currently is being liquidated, with distribution of all capital to be completed by April 1, 1997. You represent that Z and G's managed accounts had \$4.5 million in assets.

<sup>5</sup> I is a registered CPO and the sole managing member of X and Y .

<sup>6</sup> H intends to invest in the Fund either individually or through his personal account.

<sup>7</sup> 17 C.F.R. § 230.501 (1996).

<sup>8</sup> 7 U.S.C. § 6o (1994).