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U.S. COMMODITY FUTURES TRADING COMMISSION
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COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING & MARKETS

July 2, 1997

Re: Rule 4.7(a); -- Request to Treat Investor as Qualified Eligible Participant and for Relief from the Ten Percent Limitation on Assets Invested in Exempt Pools

Dear Ms.:

This is in response to your letter dated June 12, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). By your letter, you request on behalf of "X", a registered commodity pool operator ("CPO"), that: (1) the Division permit "X", in connection with its serving as the general partner and CPO of the "Fund", to treat an officer of the Advisor, a registered commodity trading advisor ("CTA") and the Fund's CTA, as a qualified eligible participant ("QEP") as that term is defined in Rule 4.7(a);[1] and (2) "X" be granted relief from the ten percent investment limitation found in Rule 4.7(a)(1)(ii)(B)(2)(xi) in connection with its operation of the Fund.

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. The Fund is operated pursuant to the criteria of Rule 4.7(a).[2] You request relief in order that "X" may allow "Y", a principal of the Advisor who does not qualify as a QEP, to invest in the Fund. "Y" serves as the Chief Financial Officer of the Advisor, Secretary and Treasurer of all five general partners of the Advisor and Chief Financial Officer of "Z", a securities broker-dealer. He formerly served as Vice President - Finance for a publicly traded company and as a financial consultant. "Y" holds an L.L.B. degree and he is a certified public accountant. In support of your request, you state that "Y" consents to being treated as a QEP and that he has access to all information pertinent to an investment in the Fund.

Based upon the foregoing representations and consistent with our prior practice in this area,[3] it appears that granting the requested relief would not be contrary to the public interest or

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

[2] Pursuant to a Notice of Claim for Exemption under Rule 4.7(a) filed January 16, 1996, interests in the Fund may be sold only to QEPs.

[3] See, e.g., CFTC Interpretative Letter No. 97-17, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,009 (March 21, 1997).

the purpose of Rule 4.7(a). Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" based solely upon: (1) its operation of the Fund as an exempt pool pursuant to the claim of exemption filed under Rule 4.7(a) notwithstanding participation in the Fund by "Y"; or (2) its investment of more than ten percent of the fair market value of the Fund's assets in Rule 4.7(a) exempt pools. In addition, the Division will not recommend the Commission take any enforcement action against the CPO of any Rule 4.7(a) exempt pool in which the Fund is or becomes a participant based solely upon the Fund's investment of more than ten percent of the fair market value of its assets in the Rule 4.7(a) exempt pool.

We note that this letter relieves "X" solely from compliance with certain requirements of Rule 4.7(a) and does not excuse it from compliance with any otherwise applicable requirements of the Commodity Exchange Act[4] ("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 regulations and to all otherwise applicable provisions of Part 4. Moreover, this letter is applicable to "X" solely in connection with its operation of the Fund.

The relief granted by this letter is based upon the representations that you have made to us and is strictly limited to those representations. Any different, changed or omitted facts or conditions 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" or the Fund, including the composition of the Fund's investors, change in any way from those represented to us. Further, this letter represents the position of the Division only. It 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 contact me or Barbara Stern Gold, Assistant Chief Counsel, at 202-418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

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

[5] 7 U.S.C. § 6o (1994).