

**CFTC Letter No. 97-68****August 6, 1997****Division of Trading & Markets**

Re: Request for Confirmation of Rule 4.31 Relief Where Fund will Have Non-U.S. Persons and U.S. QECs as Participants

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Dear :

This is in response to your letter dated July 18, 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 letter, you request that the Division confirm the applicability of the exemption from compliance with the disclosure document requirement of Rule 4.31<sup>1</sup> previously granted to the Company, a registered commodity trading advisor ( CTA ), in connection with providing commodity interest trading advice to the Fund, notwithstanding the admission of additional investors in the Fund, as described below.

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Company has executed an agreement with the Fund pursuant to which the Company will have discretionary authority to trade, among other things, commodity interests for the Fund. The Fund is an open-end investment company organized as a corporation under the laws of the Cayman Islands. It does not have any shareholders, officers or directors who are United States persons as that term is defined in Rule 4.7(a)(1)(ii)(C), nor does it contain any capital directly or indirectly contributed from United States ("U.S.") sources. By letter dated May 28, 1997 ("Prior Relief Letter"), the Division exempted the Company from compliance with Rule 4.31 in connection with its providing commodity interest trading advice to the Fund.<sup>2</sup> In your July 18, 1997 letter, you advise the Division that in addition to having non-U.S. persons as participants, the Fund also wishes to have as participants U.S. persons who are within the definition of the term "qualified eligible client" ("QEC") provided in Rule 4.7(b).

Rule 4.31 provides that no CTA registered or required to be registered under the Commodity Exchange Act ("Act")<sup>3</sup> may solicit a prospective client or enter into an agreement to direct the client's commodity interest account or to guide the client's commodity interest trading, unless the CTA has provided the client with a disclosure document containing specified information. Pursuant to Rule 4.7(b)(2), a registered CTA who files a notice of claim for exemption pursuant to Rule 4.7(b)(3) may claim relief from the disclosure document requirement of Rule 4.31 with respect to accounts owned by QECs.

The Division has granted relief from Rule 4.31 to a CTA who (1) had claimed relief pursuant to Rule 4.7(b) with respect to its clients who were U.S. persons and QECs and (2) subsequently acquired as a client an offshore fund comprised solely of non-U.S. persons.<sup>4</sup> Your request presents a similar situation in that both (1) non-U.S. persons and (2) U.S. persons who are QECs would be participants in the same fund to which the Company provides commodity interest trading advice.

Based upon the foregoing, we believe that your request has merit. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division confirms that the Company may continue to claim relief from compliance with the disclosure document requirement of Rule 4.31 in connection with its commodity interest trading advice to the Fund.

This letter does not excuse the Company 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>5</sup> to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other provisions of Part 4. Moreover, this letter is applicable to the Company solely in connection with its commodity interest trading advice to the Fund.

This letter is based upon the representations you have made to us. 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 that the activities of the Company or the Fund change in any way from those as represented to us. 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

Acting Director

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>2</sup> The Division issued the Prior Relief Letter based upon, *inter alia*, your representation that the Company had no U.S. persons as clients. You have confirmed the continued validity of this representation to Division staff in connection with making the instant request.

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

<sup>4</sup> Division of Trading and Markets Interpretative Letter No. 97-9, [Current Transfer Binder] Comm. Fut.

L. Rep. (CCH), ¶ 26,976 (February 6, 1997). This relief was necessary because Rule 4.7(b) does not include non-U.S. persons within the QEC definition.

<sup>5</sup> 7 U.S.C. § 6o (1994).