

CFTC Letter No. 97-87

October 29, 1997

Division of Trading & Markets

Re: Request for Relief from Rules 4.21, 4.22(a) and 4.22(b), 4.24, 4.25, and 4.26

Dear :

This is in response to your letter dated September 3, 1997 to the Division of Trading & Markets of the Commodity Futures Trading Commission (Commission) as supplemented by telephone conversations with Division staff. By your correspondence, you seek relief from the requirements of Rules 4.21, 4.22(a) and (b), 4.24, and 4.26¹ on behalf of R , a registered commodity pool operator (CPO) and commodity trading advisor (CTA), with regard to R s operation of the Fund².

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The Fund was organized as an investment partnership for the purpose of permitting certain principals and/or employees of R and/or its affiliate, V³ to invest in W, a fund which invests in commodity interests and U.S. equity and debt securities.⁴ Participation in the Fund is strictly voluntary, and R will not market the Fund to the general public.

R proposes to admit as participants in the Fund ten persons (the Proposed Participants), three of whom are principals of R and/or V. The remaining seven Proposed Participants are employees of R and are exclusively engaged in the management of the Fund s assets allocated to W. With one exception (B, discussed below), all of the Proposed Participants have duties with respect to the day-to-day trading and/or operation of W. All but one of the Proposed Participants (A, discussed below) also have five or more years of experience in various capacities within the financial services sector. Specifically, the Proposed Participants are:

- (1) B, who is a QEP and the controlling principal of both R and V.
- (2) C, who is a principal of R and is the principal trader for W. Before joining R, he was the vice-president of research for a large New York brokerage firm where he was employed between 1982 and 1993. C is an accredited investor who intends to make an initial investment of \$1 million.
- (3) D, who is a principal of R and a senior trader for W. D has been

employed in the securities business in both sales and research capacities for the past 12 years. She also holds a Series 3 license which she obtained in 1989.

(4) E, who is the director of research for W. E is a mathematician by training who obtained a Ph.D degree in mathematics in 1984. Since earning this degree, E has taught mathematics for a large university. Between 1989 and 1995, before he joined R, E worked as a research consultant for a large New York brokerage firm and as a senior research analyst for a high technology computer firm.

(5) F, who is a trading assistant for W. Between 1986 and 1988, F worked as a foreign exchange trader for a large New York brokerage firm, and from 1988 until 1996, F was a currency and commodity trader for a well-known firm registered as a CPO and CTA.

(6) A, who is also a trading assistant for W. A has a B.S. degree in accounting, which he obtained in 1994. A has been employed as a portfolio accountant for R since 1995. He proposes to invest only \$7,000 in the Fund.

(7) G, who is the director of technology for W. G holds a B.S. degree in computer science, and, since 1979, has held computer programming and consulting positions with large New York brokerage firms. He has also worked as the director of technology for a large European banking institution.

(8) H, who is a senior member of the technical staff for W. H obtained a B. A. degree in computer science in 1987, and, since that time, has held several computer programming positions. Between 1990 and 1994, H worked as a programmer in the fixed-income area of a large New York brokerage firm. H proposes to invest only \$5,000 in the Fund.

(9) I, who is a senior member of the technical staff for W. I is an applied physicist who has a Ph.D. degree in physics and a Series 7 license, which he obtained in 1988. Between 1987 and 1996, I also performed analytical research and trading in the equity, fixed income, and complex option areas for a large New York brokerage firm.

(10) J, who is also a senior member of the technical staff for W. J is a mathematician who obtained a Ph.D in mathematics in 1985. Among other things, J has taught mathematics and performed research involving applied

mathematics and physics. J also has written more than 40 technical publications which relate to the financial markets.

(11) K, who joined R as a junior trader for W in September 1997. K has a B. A. degree in economics, which she obtained in May 1996, and a Series 3 license. She proposes to invest between \$5,000 and \$10,000 in the Fund.

In support of the request, R claims that each of the Proposed Participants is a sophisticated investor fully capable of understanding and evaluating the risks associated with trading commodity futures contracts. R believes that A, who has been employed by R since 1995, adequately understands the risks associated with futures trading, and his proposed investment will not exceed ten percent of his overall net worth.

each Proposed Participant has received, read, and understood the Private Placement Memorandum. All of the books and records of the Fund, including daily and monthly trading statements, bank statements, general ledger and cash journals, will be available for inspection by any Proposed Participant. R will provide each Proposed Participant with quarterly financial statements and annual audited financial statements. R will notify each Proposed Participant that the Fund is being operated pursuant to exemptive relief granted by the Division, will explain the nature and purpose of the exemption to each Proposed Participant, and will obtain written acknowledgment that each Proposed Participant does not object to the Fund's operation pursuant to exemptive relief. R will also cause any Proposed Participant who ceases to be a principal or employee of R or V to redeem or transfer his or her interests in the Fund. Finally, absent further relief, R will not offer interests in the Fund to any person not described herein.

Based upon your representations, it appears that granting the requested relief would not be contrary to the public interest. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts R from compliance with Rules 4.21, 4.22(a) and (b), 4.24, 4.25, and 4.26 in connection with its operation of the Fund.

You should be aware that the relief granted herein does not excuse R from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the Act⁵) or the Commission's regulations thereunder. For example, R remains subject to Section 4o of the Act,⁶ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and all other provisions of Part 4. Moreover, this relief is applicable to R solely in connection with its operation of the Fund.

This letter is based upon the representations that have been made to us and is subject to compliance with the conditions set forth above. 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.

If you have any questions concerning this correspondence, please contact me or Helene D. Schroeder, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

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

² R previously obtained relief from Rules 4.21, 4.22(a) and (b), 4.24, 4.25, and 4.26 in connection with its operation of T, a commodity pool whose participants include principals and employees of R and an affiliated firm, S, as well as certain members of their immediate families. CFTC Interpretative Letters No. 96-82, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,911 (Nov. 4, 1996); No. 97-18, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) (March 24, 1997). R has also obtained relief from Rule 4.7(a) in connection with its operation of U, a commodity pool. CFTC Interpretative Letters No. 96-69, (1994-1996 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 26,795 (Sept. 30, 1996); No. 97-28, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,038 (March 26, 1997).

³ V is registered as a CTA and CPO and serves as an advisor to the Fund.

⁴ The Fund will participate in W as a limited partner thereof.

⁵ 7 U.S.C. § 1 et seq. (1994).

⁶ 7 U.S.C. § 6q (1994).